(9) Emphasis on responsibility of owners of towing vessels to employ qualified, experienced personnel as operators in charge (or masters) of their vessels.

In response to comments received from industry requesting a public hearing, the Coast Guard is holding this meeting to receive additional views on the licensing requirements as proposed in the NPRM.

In addition to the requirements set forth in this rulemaking, mariners serving on seagoing towing vessels must meet the training certification and watchkeeping requirements in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW). The Convention was adopted in 1978 and it entered into force in 1984. The U.S. became a party in 1991. The Convention applies to mariners serving on board seagoing vessels that operate beyond the boundary line as defined in 46 CFR part 7. On July 7, 1995, a Conference of Parties to STCW adopted a comprehensive package of Amendments to STCW. The amendments will enter into force on February 1, 1997. They will affect virtually all phases of the system used in the U.S. to train, test, evaluate, license, certify, and document merchant mariners for service on seagoing vessels. On March 2, 1996, the Coast Guard published a notice of proposed rulemaking in the Federal Register (61 FR 13284) concerning changes to the U.S. licensing and documentation system to conform to STCW as recently amended.

Public Meeting

Attendance is open to the public. Persons who are hearing impaired may request sign translation by contacting the person under **FOR FURTHER INFORMATION CONTACT** at least one week before the meeting. With advance notice, and as time permits, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the person listed under **FOR FURTHER INFORMATION CONTACT** no later than the day before the meeting. Written material may be submitted prior to, during, or after the meeting. Persons unable to attend the public meetings are encouraged to submit written comments as outlined in the interim rule prior to October 17, 1996.

Dated: August 20, 1996.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 96–21734 Filed 8–23–96; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 22, 24, 90

[WT Docket No. 96–6; FCC 96–283]

Flexible Service Offerings in the Commercial Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this Further Notice of Proposed Rule Making the Commission seeks comment on the regulatory treatment of entities offering fixed services on CMRS spectrum. The rule amendments are necessary to respond to the strong support to flexible services show in the initial Notice of Proposed Rule Making. The comment period is necessary for clarification prior to making a final determination with respect to the regulatory treatment of licensees providing such services. The intended effect of this action is to provide a service that will further the public interest.

DATES: Comments are to be filed on or before November 25, 1996, and reply comments are to be filed on or before December 24, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: David Krech, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418–0620.

SUPPLEMENTARY INFORMATION: The First Report and Order and Further Notice of Proposed Rule Making in WT Docket No. 96–6, adopted on June 27, 1996, and released on August 1, 1996, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 575, 2000 M Street N.W., Washington, D.C. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800.

Summary of Action

I. Introduction & Executive Summary

1. In the Notice of Proposed Rule Making in WT Docket No. 96–6 (''NPRM'') (Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, Notice of Proposed Rule Making, WT Docket No. 96–6, 11 FCC Rcd 2445 (1996)), released on January 25, 1996, 61 FR 6189 (February 16, 1996), we sought comment on proposals for expanding permitted offerings of fixed wireless service by Commercial Mobile Radio Service (''CMRS'') providers. In addition, we sought comment with regard to the regulatory treatment for such services under Section 332 of the Communications Act of 1934, as amended. 47 U.S.C. § 332.

2. In this Further Notice of Proposed Rule Making, we seek additional comment on the regulatory treatment of entities offering fixed services on CMRS spectrum:

- We do not intend to alter the regulatory treatment of licensees offering the types of ancillary, auxiliary, and incidental fixed services that have been offered by CMRS providers under our rules prior to this order.
- We propose to establish a presumption that licensees offering other fixed services over CMRS spectrum should be regulated as CMRS. We seek comment on such a presumption and, if adopted, what factors should be used to support or rebut this presumption.

II. Further Notice of Proposed Rule Making

3. *Discussion.* Based on our review of the record in WT 96–6, we believe it is premature to attempt a final comprehensive determination regarding the regulatory treatment of these various types of fixed services that may be offered by licensees. While some commenters argue that all of the fixed offerings described above should be treated as sufficiently related to CMRS to justify uniform regulatory treatment, we believe that a uniform approach would be premature at this time. Instead, we believe that the regulatory issues raised by this proceeding require further development of the record and more specific analysis related to the particular fixed service offerings that carriers develop. Therefore, we propose to refine the approach set forth in the NPRM by seeking comment on additional guidelines for determining when fixed wireless services may fall within the scope of CMRS regulation.

4. At the outset, we emphasize that our decision in the First Report in Order to allow carriers to offer co-primary fixed services on spectrum allocated for CMRS does not alter in any way our regulatory treatment of fixed services

that have been provided by CMRS providers under our prior rules. In the CMRS Second Report and Order, 59 FR 18493 (April 19, 1994), we stated that ancillary, auxiliary, and incidental services offered by CMRS providers fall within the statutory definition of mobile service, and are subject to CMRS regulation. We reaffirm that determination here. In the First Report and Order, however, we broadened the potential scope of fixed services that may be offered by CMRS providers. We therefore seek further comment on the regulatory treatment of such fixed services that may not be considered ancillary, auxiliary or incidental to mobile service.

5. Several parties argue that because the definition of ''mobile service'' contains a clause referencing PCS licenses, Congress intended that all service provided through a PCS license would be treated as mobile. According to Omnipoint, inclusion of the PCS clause means that the Act, unlike FCC regulations, does not limit the amount of fixed service a PCS provider may offer, and the offering of fixed service by a PCS licensee does not change its status as a CMRS provider. AT&T and CTIA argue, further, that since one goal of Congress and the Commission is regulatory parity for similarly situated CMRS providers, all services provided through a license for a CMRS service, not just a PCS license, come within the definition of ''mobile service.'' One could also read the definition of ''mobile service'' to require the use of ''mobile stations'' and the ''and includes'' language which precedes the description of the three enumerated services to mean that they are examples. In that case, a service provided with a PCS license would have to include the use of a ''mobile station'' to come within the definition of ''mobile service'' and consequently be considered in the definition of ''commercial mobile service.'' ''Mobile station'' is defined in the Act as ''a radio-communication station capable of being moved and which ordinarily does move.'' 47 U.S.C. § 153(28). We seek comment on these alternative statutory interpretations and their regulatory consequences. Parties should submit support from the legislative history or prior Commission rulings for or against the argument that the language ''and includes'' in the definition of ''mobile service'' sets out examples of mobile services, rather than listing additional services which come under the definition.

6. CTIA also argues that the Commission has substantial discretion under the Act to define ''mobile services.'' CTIA states that this authority stems from the language in the PCS clause of the definition of ''mobile service'' that refers to ''any successor proceeding.'' According to CTIA, that language allows the Commission to establish alternative definitions of ''mobile service'' in successor proceedings. We seek comment on the breadth and scope of Commission authority under the PCS clause and the ''any successor proceeding'' language.

7. As noted above, in the CMRS Second Report and Order we found that the definition of ''mobile service'' includes ''all auxiliary services provided by mobile service licensees.'' We seek comment on what precedential value, if any, we should give to our treatment of auxiliary, ancillary, and incidental services as CMRS for regulatory purposes when determining how to regulate other fixed wireless services provided by CMRS providers. For example, because we consider a fixed service that is ancillary to a mobile service to be CMRS, what implications should that have for how we should treat a wholly fixed service that may use no mobile stations.

8. Some parties have also argued that because these fixed wireless services would be provided by CMRS providers in spectrum that has been allocated for CMRS, the service providers must therefore be regulated as CMRS. We disagree. The regulatory structure for providers of the primary service to which the spectrum is allocated does not necessarily dictate the type of regulation to which every service provider in that same band will be subject regardless of the particular attributes of that service. A pertinent example is BETRS. While BETRS is provided in a spectrum band allocated to Public Land Mobile Service, we have determined that BETRS is a fixed service, rather than a mobile service, and therefore BETRS providers are not subject to CMRS regulation under Section 332. Similarly, private service licensees in the 220 and 800 MHz SMR bands are not subject to CMRS regulation. Likewise, we do not intend to base our decision here merely on the classification of the majority of users of the spectrum in which the fixed service in question is provided.

9. We believe that, ultimately, the regulatory issues on which we seek comment herein may require resolution on a case-by-base basis. We seek comment on this conclusion, including whether we may be able to establish a uniform approach for determining the regulatory status of fixed services offered on CMRS spectrum. To provide a framework for a case-by-case analysis, we propose to establish a rebuttable presumption that any wireless service provided under a CMRS provider's license would be considered to come within the definition of CMRS and consequently regulated as CMRS. Based on the record in this proceeding, we believe this to be a reasonable presumption. Most of the fixed wireless service applications which commenters have discussed in the record would be provided in conjunction with a traditional CMRS services such as cellular or paging.

10. Under our proposed approach, the Commission would allow any interested party to challenge this presumption regarding a particular service offered by a CMRS provider. If a party could demonstrate that the service provider in question does not meet the definition of CMRS for a particular offering, we would not regulate that particular offering as CMRS. We seek comment on this approach and what types of evidence the Commission should evaluate when considering a challenge to a presumption that a fixed wireless service provided by a CMRS provider should be regulated as CMRS. Possible factors may include: the relative mobility of mobile stations used in conjunction with the fixed service; whether the fixed service is part of a larger package which includes mobile services or is offered alone; the size of the service area over which the fixed wireless service is provided; the amount of mobile versus fixed traffic over the wireless system; whether the fixed service is offered over a discrete block of spectrum separate from the spectrum used for mobile services; the degree to which fixed and mobile services are integrated; and whether customers perceive the service to be a fixed service. Part of any analysis of customer perception may also include consideration of how the service is marketed by the CMRS provider to potential customers.

11. The Commission seeks comment on the appropriateness of using these factors or other types of evidence that may be presented to rebut this presumption. We also seek comment on the extent to which services provided under separate licenses or by separate entities may be relevant to the regulatory status of a particular fixed service offering provided under a given license. For example, should we consider only the services provided under a particular license or consider the services provided by a common licensee under multiple licenses, e.g., a licensee who provides fixed service under its PCS license and mobile service under a cellular license in the same market. Similarly, in instances

where fixed and mobile services are provided by different corporate affiliates, should we look at each affiliate's service separately or at the services provided by the corporation as a whole? Another possible scenario would be where a CMRS provider provides fixed service under its own license and has a joint marketing arrangement or resale agreement with another CMRS provider in that market. How should we consider such arrangements in making our analysis under this presumption? We seek comment on our proposal for regulating fixed wireless service provided by a CMRS provider and we seek alternative suggestions for presumptive regulatory classifications.

12. Some parties have advocated that we regulate any fixed wireless service provided by a CMRS provider as CMRS until such time that the service constitutes a substitute for land line telephone exchange service in a substantial portion of a state. Under this approach a state would have to petition the Commission under Section 332(c)(3), and the Commission would have to grant such a petition, before a CMRS provider's fixed wireless service would be subject to state regulation. The Commission seeks comment on this approach. We also seek comment on what federal regulation should be imposed on a CMRS provider's offering of fixed wireless service if we find that it does not come within the purview of CMRS. To the extent that there are interstate common carrier services, such services would be subject to regulation under Title II; if so are there any Title II regulations from which such services should be exempt?

13. The Commission recognizes that we are addressing a related issue in the context of our proceeding on implementation of Section 251 of the Communications Act, as amended by the 1996 Act—i.e., in what circumstances, if any, a CMRS provider should be regulated as a ''local exchange carrier'' under the Act. Herein we are concerned with whether service providers should be regulated as CMRS if they provide fixed services. While we will review and consider the comments submitted in the Section 251 proceeding, we do not believe that resolution of the issue presented in the Section 251 proceeding resolves the issues presented here. For example, even if we were to find that a CMRS provider could be considered a local exchange carrier in terms of the requirements in Section 251, we tentatively conclude that it could still be considered engaged in the provision of CMRS under Section 332 and therefore exempt from states' regulation of intrastate rates. We seek comment on this tentative conclusion and whether the other obligations imposed on LECs have a direct relationship to the rates charged by CMRS providers, and thus may impact on the rate regulation scheme set out in Section 332.

III. Procedural Matters

A. Regulatory Flexibility Act

14. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. We also seek comment on the number of CMRS entities affected by the proposed rules are small businesses, and request that commenters identify whether they themselves are small businesses. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Further Notice of Proposed Rule Making, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this First Report and Order and Further Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. § 601 et. seq. (1981).

1. Reason for Action

15. This rule making proceeding was initiated to secure comment on proposals for allowing CMRS providers greater flexibility in the provision of fixed wireless services. The proposals advanced in the Further Notice of Proposed Rule Making are designed to determine the appropriate regulatory scheme for CMRS providers who wish to offer fixed wireless services. The Commission seeks comment on the appropriate role of the federal government and the states in the regulation of CMRS providers who offer hybrid mobile and fixed services on a co-primary basis.

2. Objectives

16. The Commission proposes to establish a rebuttable presumption that any wireless service provided under a CMRS provider's license would be considered to come within the definition of CMRS and consequently regulated as CMRS. Under this approach, the Commission would allow any interested party to challenge this presumption regarding a particular service offered by a CMRS provider. If a party could demonstrate that the service provider in question does not meet the definition of CMRS for a particular offering, we would not regulate that particular offering as CMRS. We seek comment on this approach and what types of evidence the Commission should evaluate when considering a challenge to a presumption that a fixed wireless service provided by a CMRS provider should be regulated as CMRS. We also seek comment on the extent to which services provided under separate licenses or by separate entities may be relevant to the regulatory status of a particular fixed service offering provided under a given license. Some parties have advocated that we regulate any fixed wireless service provided by a CMRS provider as CMRS until such time that the service constitutes a substitute for land line telephone exchange service in a substantial portion of a state. We seek comment on this approach. We also seek comment on what federal regulation should be imposed on a CMRS provider's offering of fixed wireless service if we find that it does not come within the purview of CMRS.

3. Reporting, Recordkeeping, and Other Compliance Requirements

17. The proposals under consideration in the Further Notice of Proposed Rule Making do not require recordkeeping, or other compliance requirements for small business entities.

4. Federal Rules Which Overlap, Duplicate or Conflict With These Rules

18. None.

5. Description, and Number of Small Entities Involved

19. Pursuant to the Contract with America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996), the Commission is required to estimate in its Final Regulatory Flexibility Analysis the number of small entities to which a rule will apply, provide a description of such entities, and assess the impact of the rule on such entities. To assist the Commission in this analysis, commenters are requested to provide information regarding how many total CMRS entities would be affected by the proposed rules in the Further Notice of Proposed Rule Making. In particular, we seek estimates of how many CMRS entities are small businesses.

20. There are different definitions of ''small business'' for the various services affected by this proceeding. Since the Commission did not define a small business with respect to cellular services, paging, and interconnected business radio service, we will utilize the Small Business Administration's (SBA) definition applicable to radiotelephone companies—i.e. an entity employing less than 1,500 persons. 13 CFR § 121.201, Standard Industrial Classification (SIC) Code 4812. We seek comment on whether this definition should be refined to take into account the different classes of cellular, paging and for-profit interconnected business radio services. With respect to narrowband and broadband PCS, the Commission defines small business to mean firms who have gross revenues of not more than $40 million in each of the preceding three calendar years. With respect to 800 MHz and 900 MHz SMR services, the Commission has a two-tiered definition of small business: (a) ''very small businesses'' are firms who have gross revenues of not more than $3 million in each of the preceding three calendar years; and (b) ''small businesses'' are firms who have annual gross revenues of not more than $15 million in the each of the preceding three years. With respect to commercial 220 MHz services, the Commission has proposed a two-tiered analysis: (1) for EA licensees, a firm with average annual gross revenues of not more than $6 million for the preceding three years and (2) for regional and nationwide licensees, a firm with average annual gross revenues of not more than $15 million for the preceding 3 years.

21. We seek comment on our use of these definitions in this context. Additionally, we request commenters to identify whether they are a ''small business'' under this definition. For commenters that are a subsidiary of another entity, we seek this information for both the subsidiary and the parent corporation or entity.

6. Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

22. In the Further Notice of Proposed Rule Making the Commission proposes to establish a rebuttable presumption that any wireless service provided under a CMRS provider's license would be considered to come within the definition of CMRS and be regulated as CMRS. The Commission seeks comment on this approach and what types of evidence the Commission should evaluate when considering a challenge to such a presumption. Other alternatives suggested in the comment to the Notice of Proposed Rule Making, 61 FR 6189 (February 16, 1996), include regulating any fixed wireless service provided by a CMRS provider as CMRS until such time that the service constitutes a substitute for land line telephone exchange service in a substantial portion of a state. We seek comment on that approach and any additional significant alternatives presented in the comments also will be considered. If the fixed wireless service provided by a CMRS provider, including small business entities, is not regulated as CMRS, that service may be subject to state regulation of entry and rates. We also seek comment on what Federal regulation should be imposed on a CMRS provider's offering of fixed wireless service if that service does not come within the purview of CMRS. We also seek comment on what impact each alternative may have on small business entities.

7. Legal Basis

23. The proposed action is authorized under Sections 4(i), 4(j), 7(a), 303(b), 303(f), 303(g), 303(r), 332(a), and 332(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 157(a), 303(b), 303(f), 303(g), 303(r), 332(a), and 332(c).

8. IRFA Comments

24. We request written public comment on the foregoing Initial Regulatory Flexibility Analysis. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines provided in paragraph 27 below.

B. Ex Parte Rules—Non-Restricted Proceeding

25. This is a non-restricted notice and comment rule making proceeding. Ex parte presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 CFR §§ 1.1202, 1.1203, and 1.1206(a).

C. Initial Paperwork Reduction Act of 1995 Analysis

26. The First Report and Order and Further Notice of Proposed Rule Making do not contain either a proposed or modified information collection.

D. Comment Dates

27. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415 and 1.419, interested parties may file comments on or before November 25, 1996, and reply comments on or before December 24, 1996. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications Commission, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

28. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis of the expected impact on small entities of the proposals suggested in the Further Notice of Proposed Rule Making. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the remainder of the Further Notice of Proposed Rule Making, but they must have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this Further Notice of Proposed Rule Making, including the IRFA, the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. § 601 et. seq. (1981).

E. Contacts for Information

29. For further information concerning this proceeding, contact David Krech at (202) 418–0620 (Commercial Wireless Division, Wireless Telecommunications Bureau).

List of Subjects

47 CFR Part 2

Radio.

47 CFR Part 22

Communications common carriers, Radio.

47 CFR Part 24

Communications common carriers, Radio.

47 CFR Part 90

Business and industry, Common carriers, Radio.

Federal Communications Commission
William F. Caton,
Acting Secretary.
[FR Doc. 96–21793 Filed 8–23–96; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 383 and 391

[FHWA Docket No. MC–93–23]

RIN 2125–AD20

Commercial Driver Physical Qualifications as Part of the Commercial Driver's License Process

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of meetings of negotiated rulemaking advisory committee.

SUMMARY: The FHWA announces the meeting dates of an advisory committee (the Committee) established under the Federal Advisory Committee Act and the Negotiated Rulemaking Act to consider the relevant issues and attempt to reach a consensus in developing regulations governing the proposed merger of the State-administered commercial driver's license (CDL) procedures of 49 CFR Part 383 and the driver physical qualifications requirements of 49 CFR Part 391. The Committee is composed of persons who represent the interests that would be substantially affected by the rule.

The FHWA believes that public participation is critical to the success of this proceeding. Participation is not limited to Committee members. Negotiation sessions are open to the public, so interested parties may observe the negotiations and communicate their views in the appropriate time and manner to Committee members.

For a listing of Committee members, see the notice published on July 23, 1996, 61 FR 38133. Please note that the United Motorcoach Association and the American Bus Association will serve as full members of the Committee. For additional background information on this negotiated rulemaking, see the notice published on April 29, 1996, at 61 FR 18713.

DATES: The second meeting of the advisory committee will begin at 10:00 a.m. on September 4–5, 1996. Subsequent meetings are scheduled to be held on October 22–23, 1996, and November 19–20, 1996 and will also begin at 10:00 a.m. each day.

ADDRESSES: The second meeting of the advisory committee will be held at the International Trade Commission, 500 E Street, SW, Washington, D.C. The Committee will meet in the main hearing room (room 101). Subsequent meetings will be held at locations to be announced.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Doggett, Office of Motor Carrier Research and Standards, (202) 366–4001, or Ms. Grace Reidy, Office of Chief Counsel, (202) 366–0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

Authority: [5 U.S.C. §§ 561–570; 5 U.S.C. App. 2 §§ 1–15]

Issued on: August 21, 1996.

George L. Reagle,
Associate Administrator for Motor Carriers.
[FR Doc. 96–21782 Filed 8–23–96; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 960520141–6224–03; I.D. 073096D]

RIN: 0648–AH05

Fisheries of the Northeastern United States; Amendment 8 to the Summer Flounder and Scup Fishery Management Plan; Resubmission of Disapproved Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement three provisions of Amendment 8 to the Fishery Management Plan (FMP) for the Summer Flounder and Scup Fisheries that were initially disapproved, but that have been revised and resubmitted by the Mid-Atlantic Fishery Management Council (Council). These measures would: Establish criteria under which vessels under construction or being rerigged for the scup fishery on January 26, 1993, could qualify for a moratorium permit, define scup pots and traps, and require the consideration of recreational landings in the process of setting annual recreational harvest limits. The intent of Amendment 8 is to reduce fishing mortality and allow the stock to rebuild.

DATES: Public comments must be received on or before September 16, 1996.

ADDRESSES: Comments on this proposed rule should be sent to Dr. Andrew A. Rosenberg, Director, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on the Resubmitted Portion of the Summer Flounder and Scup Plan.''

Comments regarding burden-hour estimates for collection-of- information requirements contained in this proposed rule should be sent to the Director, Northeast Region, NMFS (Regional Director), at the address above and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20502 (Attention: NOAA Desk Officer).

Copies of the resubmitted portion of Amendment 8 and other supporting documents are available upon request from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 508–281–9221.

SUPPLEMENTARY INFORMATION:

Background

The Council submitted Amendment 8 to the FMP on April 23, 1996. NMFS, on behalf of the Secretary of Commerce, disapproved six measures proposed in Amendment 8 upon preliminary evaluation of the amendment as authorized under section 304(a)(1)(A)(ii) of the Magnuson Fishery Management and Conservation Act (Magnuson Act). The measures, which were found to be inconsistent with the national standards and other applicable law, would have: (1) Conferred moratorium permit eligibility upon vessels that were rerigging on January 26, 1993, and landed scup prior to the implementation of the FMP, (2) required vessels to keep scup catches of less than 4,000 lb (1,814 kg) (the level at which the minimum mesh requirement is triggered) in 100–lb (45.36 kg) boxes to enhance enforcement, (3) accepted state dealer permits in lieu of the required Federal permit, (4) denied access to the exclusive economic zone to vessels from states that do not implement recreational measures equivalent to those specified in the Federal plan, (5) used state regulations to define scup pots for the residents of that state, and (6) established annual recreational