Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Blairsville, Channel 234A.

Federal Communications Commission,

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–28688 Filed 11–7–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 00–167; FCC 00–344]

Children's Television; Obligations of Digital Television Broadcasters

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on a range of issues related to application of our existing children's programming rules to digital broadcasting. This document focuses primarily on two areas: the obligation of commercial television broadcast licensees to provide educational and informational programming for children and the requirement that television broadcast licensees limit the amount of advertising in children's programs.

In addition, this document seeks comment on how to address the issue of the airing in programs viewed by children promotions that may be inappropriate for children to watch. Although this document seeks comment largely on challenges unique to the digital area, it also discusses several issues that apply equally to analog and digital broadcasting.

DATES: Comments are due on or before December 18, 2000; reply comments are due on or before January 17, 2001. Written comments by the public on the proposed information collections are due December 18, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before January 8, 2001.

ADDRESSES: Address all comments concerning this proposed rule to the Commission's Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to edward.springer@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Policy and Rules Division, Mass Media Bureau, (202) 418–2130. For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the *Notice of Proposed Rulemaking* (''*NPRM*''), MM 00–167; FCC 00–344 adopted September 14, 2000; released October 5, 2000. The full text of the Commission's *NPRM* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12 St. SW., Washington, DC. The complete text of this *NPRM* may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800, 1231 20th St., NW., Washington, DC 20036.

Paperwork Reduction Act

This *NPRM* contains a proposed new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this *NPRM*, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this *NPRM*; OMB comments are due 60 days from date of publication of this *NPRM* 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 Control Number: 3060–XXXX.

Title: NPRM—Children's Television Obligations of Digital Television Broadcasters.

Form No: FCC Form 398.

Type of Review: Revision of Existing Collection.

Respondents: Business or other for-profit.

Number of Respondents for FCC 398: 1,250.

Number of Respondents for Section 73.673: 1,225.

Estimated Time Per Response for FCC 398: 6 hours.

Estimated Time Per Response for Section 73.673: 1 minute per program and 6 minutes per program to publishers of program guides.

Total Annual Burden: 68,219 hours.

Total Annual Costs: $489,600.

The estimated time, burden and costs are based upon the existing burdens for the FCC 398 (3060–0754) and Section 73.673 (3060–0750). This burden in those collections could increase depending on what requirements are ultimately adopted.

Needs and Uses: This *NPRM* invites comments on how the existing children's educational television programming obligations and limitations should be interpreted and adapted to apply to digital broadcasters in light of the new capabilities made possible by that technology. This *NPRM* also seeks comments on what steps the FCC might take to increase public awareness of the availability of core programming and how to locate it. The current obligations consist of the FCC 398 which is required to be filed by commercial television broadcast stations each quarter.

This form is used to provide information on the efforts of commercial television stations to provide children's educational and informational programs aired to meet its obligation under the Children's Television Act of 1990 (CTA). The FCC 398 assists in efforts by the public and the Commission to monitor station compliance with the CTA.

In addition, Section 73.673 requires commercial TV broadcasters to identify programs specifically designed to educate and inform children at the beginning of the program and to provide information identifying such programs and the age groups for which they are intended to publishers of program guides. Depending on what requirements are ultimately adopted, there may be an increase in the burden for these collections.

Synopsis of Notice of Proposed Rulemaking

I. Introduction

1. We issue this *NPRM* to seek comment on a range of issues related to the obligation of digital television (''DTV'') broadcasters to serve children. We focus in this proceeding primarily on two areas: the obligation of television broadcast licensees to provide educational and informational programming for children and the requirement that television broadcast licensees limit the amount of advertising in children's programs. Although we seek comment largely on challenges unique to the digital area, we also explore several issues that children's advocates have raised about children's educational and informational programming more generally.

II. Background

2. American children spend a considerable amount of time watching television. Recent data show that children in this country spend, on average, almost three hours a day watching television. In view of the significant role that television plays in the lives of children, this medium has great potential to contribute to children's development. As Congress has stated, ''[i]t is difficult to think of an interest more substantial than the promotion of the welfare of children who watch so much television and rely upon it for so much of the information they receive.''

3. For over 30 years, the Commission has recognized that, as part of their obligation as trustees of the public's airwaves, broadcasters must provide programming that serves the special needs of children. The Commission's efforts to promote programming for children began in 1960 with the statement that children were one of the several groups whose programming needs television licensees must meet to fulfill their community public interest responsibilities. In 1974, the Commission instituted a wide ranging inquiry into children's programming and advertising practices, which led to publication of the *Children's Television Report and Policy Statement* (''*1974 Policy Statement*'').

The Commission concluded that broadcasters have ''a special obligation'' to serve children and stated its expectation that licensees would increase the number of programs aimed at children in specific age groups. The Commission also concluded that children are more ''trusting and vulnerable to commercial 'pitches' than adults'' and that children ''cannot distinguish conceptually between programming and advertising.'' The Commission stated its expectation that the industry would eliminate ''host selling'' and product ''tie-ins,'' use separation between programs and commercials during children's programming, and honor the industry's voluntary advertising guidelines for children's programs.

4. Later in the 1970s, the Commission undertook further study of the availability of educational programming for children. Finding that the industry had failed to respond to its earlier call for improvements, the Commission considered formal regulation. In 1984, however, the Commission decided not to establish quantitative program requirements for broadcasters, relying instead on market forces to ensure a sufficient supply of educational programming for children.

Following this decision, the amount of children's educational programming aired by commercial television stations decreased markedly. Also in 1984, the Commission repealed the commercial guidelines for children's programming, leading to an increase in the amount of commercial matter broadcast during children's programming.

5. In 1990, Congress enacted the Children's Television Act of 1990 (''CTA''). The CTA imposes two principal requirements. First, commercial television broadcast licensees and cable operators must limit the amount of commercial matter that may be aired during children's programs to not more than 10.5 minutes per hour on weekends and not more than 12 minutes per hour on weekdays.

Second, the CTA requires that, in its review of television broadcast renewal applications, the Commission must consider whether commercial television licensees have complied with the commercialization limits, and whether all television broadcast licensees have served ''the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs.'' In enacting the CTA, Congress found that, while television can benefit society by helping to educate and inform children, there are significant market disincentives for commercial broadcasters to air children's educational and informational programming. The objective of Congress in enacting the CTA was to increase the amount of educational and informational programming on television.

6. The Commission first promulgated rules implementing the CTA in 1991. The Commission determined that the statutory children's programming commercial limits would apply to programs originally produced and broadcast for an audience of children 12 years old and under. Commercial matter was defined as ''air time sold for purposes of selling a product.'' In other words, the advertiser must give some valuable consideration either directly or indirectly to the broadcaster as an inducement for airing the material.

The Commission also reaffirmed and clarified its long-standing policy that a program associated with a product, in which commercials for that product are aired, would cause the entire program to be counted as commercial time (a ''program-length commercial''). Television licensees are required to certify their compliance with the commercial limits as part of their license renewal application, and must maintain records sufficient to permit substantiation of the certification.

7. In August 1996, the Commission adopted its current educational programming rules enforcing the CTA. (*See* Policies and Rules Concerning Children's Television Programming, 61 FR 43981, August 27, 1996). The Commission's rules include several measures to improve public access to information about the availability of programming ''specifically designed'' to serve children's educational and informational needs (otherwise known as ''core'' programming).

These measures include a requirement that licensees identify core programming at the time it is aired and in information provided to publishers of television programming guides. Licensees are required to designate a children's liaison at the station responsible for collecting comments on the station's compliance with the CTA. Licensees must also prepare and place in their public inspection files a quarterly Children's Television Programming Report identifying their core programming and other efforts to comply with their educational programming obligations.

8. In addition, our rules establish a definition of ''core'' programming. ''Core'' programming is defined as regularly scheduled, weekly programming of at least 30 minutes, aired between 7:00 a.m. and 10:00 p.m., that has serving the educational and informational needs of children ages 16 and under as a significant purpose. The program must be identified as core programming when it is aired and in information provided to program guide publishers.

9. Finally, to provide certainty to broadcasters about how to comply with the CTA and to facilitate fair and efficient processing of the CTA portion of broadcasters' renewal applications, the Commission also adopted a processing guideline. Under this guideline, a broadcaster can receive staff-level approval of the CTA portion of its renewal application by airing at least three hours per week of programming that meets the definition of ''core'' educational programming.

Alternatively, a broadcaster can receive staff-level renewal by showing that it has aired a package of different types of educational and informational programming that, while containing somewhat less than three hours per week of core programming, demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of core programming. Licensees not meeting these criteria will have their license renewal applications referred to the Commission.

10. We seek comment today on how these existing children's television obligations, developed with analog technology in mind, should be adapted to apply to digital television broadcasting. Digital television is a new technology for transmitting and receiving broadcast television signals that delivers better pictures and sound, uses the broadcast spectrum more efficiently, and offers a range of possible applications. DTV broadcasters will have the technical capability and regulatory flexibility to: Air high definition TV (HDTV); ''multicast,'' that is, to send as many as 4–6 digital ''standard-definition television'' (SDTV) signals; or provide ''ancillary or supplementary services,'' including video and data services that are potentially revenue-producing, such as subscription television, computer software distribution, data transmissions, teletext, interactive services, and ''time-shifted'' video programming. Broadcasters could choose to shift back and forth among these different DTV modes—HDTV, SDTV, and new video/information services—during a single programming day. To facilitate the transition from analog to digital television, Congress directed the Commission to grant a second channel for each full-service television licensee in the country to be used for digital broadcasting during the period of conversion to an all-digital broadcast service.

11. In December 1999, we released a *Notice of Inquiry* (''*NOI*''), 65 FR 4211, January 26, 2000, to commence collecting views on how the public interest obligations of television broadcasters should change in the digital era. As we observed in the *NOI*, both Congress and the Commission have recognized that digital television broadcasters have an obligation to serve the public interest. Congress stated in section 336 of the Communications Act that ''[n]othing in this section shall be construed as relieving a television broadcasting station from its obligation to serve the public interest, convenience, and necessity.''

In implementing section 336, the Commission required that broadcasters air a ''free digital video programming service the resolution of which is comparable to or better than that of today's service, and aired during the same time period that their analog channel is broadcasting.'' The Commission also reaffirmed that ''digital broadcasters remain public trustees with a responsibility to serve the public interest,'' and stated that ''existing public interest requirements continue to apply to all broadcast licensees.''

12. We recognize that the CTA is written broadly to apply to television broadcast licensees and that there is nothing in the CTA itself, nor the legislative history, to suggest that the statutory requirement, or the regulations promulgated thereunder, should be limited to analog broadcasters. Indeed, the objectives of the CTA—*e.g.,* to increase the amount of educational and information broadcast television programming available to children and to protect children from overcommercialization of programming—would apply equally to the digital broadcasting context.

Given this, and in light of explicit congressional intent expressed in section 336 to continue to require digital broadcasters to serve the public interest, we conclude that digital broadcasters are subject to all of the CTA's commercial limits and educational and informational programming requirements. Digital broadcasters must also continue to comply with our policies regarding program-commercial separation, host selling, and program-length commercials. The purpose of this proceeding is to determine how these requirements should be interpreted and adapted with respect to digital broadcasting in light of the new capabilities made possible by that technology.

13. We request comment herein on a variety of issues related to application of our existing children's programming rules to digital broadcasting. We also invite comment on a number of specific proposals offered by commenters responding to the *NOI,* and on some of the views expressed by the President's Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters (''Advisory Committee'').

As we indicated in the *NOI,* the Advisory Committee, representing a broad cross-section of interests from industry, academia, and public interest organizations, submitted a report in 1998 containing recommendations on the public interest obligations digital television broadcasters should assume. Although the Advisory Committee focused on many issues beyond the scope of this proceeding, we will discuss some of the recommendations of the committee and of individual participants that relate to children's television.

III. Issues and Request for Comment

A. Educational and Informational Programming

14. *Background.* One of the questions we posed in the *NOI* is how public interest obligations generally, including the obligation to provide children's educational and informational programming, apply to a DTV broadcaster that chooses to multicast. We also asked how we should take into account the fact that DTV broadcasters have the flexibility to vary the amount and quality of broadcast programming they offer throughout the day. For example, a broadcaster could air 4 SDTV channels from 8 a.m. to 3 p.m., switch to two higher definition channels from 3 p.m. to 8 p.m., and finish with one HDTV channel for prime-time and late-night programming.

Different broadcasters are likely to provide a different overall combination of broadcast hours and quality. We also note that DTV broadcasters may choose to devote a portion of their spectrum to either non-video services, such as datacasting, or to subscription broadcast services available only to viewers who pay a fee, consistent with the requirement that they provide at least one free, over-the-air video program service to viewers.

15. *Discussion.* Our current three-hour children's core educational programming processing guideline applies to DTV broadcasters. We invite comment, however, on how the guideline should be applied in light of the myriad of possible ways that broadcasters may choose to use their DTV spectrum.

Should the processing guideline apply to only one digital broadcasting program stream, to more than one program stream, or to all program streams the broadcaster chooses to

provide? Should the guideline apply only to free broadcast services, or also to services offered for a fee? In this regard, we note that the CTA requires that television broadcast licensees serve the educational and informational needs of children ''through the licensee's *overall* programming, including programming specifically designed to serve such needs.'' How should we interpret this phrase in terms of digital broadcasters' requirement to provide educational programming?

16. We also ask how the existing three-hour guideline would be best applied in the digital context. Commenters responding to questions posed in the *NOI* offer a number of suggestions as to how the processing guideline could be adapted to apply in a multicast environment. We welcome comment on these specific proposals, outlined, as well as other suggestions for ways our guideline should be interpreted and adapted with respect to digital broadcasting. We also seek comment on when any new requirements that relate to digital broadcasting should become effective.

17. *Proportional Hours.* One approach, suggested by Children Now and People for Better TV, is that each digital television broadcaster be required to provide an amount of weekly core programming that is proportional to the three hour per week quantitative guideline. Specifically, these commenters propose that DTV broadcasters be required to devote three percent of their programmable broadcast hours per week to core educational programming.

This three percent figure is derived by dividing the current 3 hour guideline by 105, or the total number of hours/week available for core programming during the 7 a.m. to 10 p.m. broadcast window (15 hours/day times 7 days/week equals 105 hours/week). Under this approach, to derive their quantitative core programming obligation, broadcasters would calculate their total digital broadcast hours per week, multiply that total by 3 percent, and round up to the closest five-tenths as half-hour segments are the smallest unit for programming under the definition of core programming. Broadcasters would be required to report this calculation in their quarterly Children's Television Programming Reports, which would determine the broadcaster's core programming obligation for the following quarter.

18. In light of the range of possible technical qualities available with DTV technology, from SDTV to HDTV with different datacasting and interactive capabilities included, we also invite comment on whether we should require broadcasters to provide core educational programming in a certain technical format. One approach would be to require broadcasters to use for core programming a technical format that is consistent with the overall quality of the broadcaster's other programming. Our concern in this regard is to ensure that broadcasters not segregate core programming consistently to the lowest possible audio/visual quality offered by the broadcaster.

19. The Children Now proportional hours proposal raises a number of questions. If we were to impose a 3 percent core programming obligation, what kind of programming should be included for purposes of calculating the overall number of hours of core programming a DTV broadcaster would be required to provide? Should the percent requirement apply only to free video programming (*e.g.,* 3 percent of all free video programming must be core), or should the percent also apply to datacasting (*e.g.,* 3 percent of all free video programming and datacasting must be core)? Should subscription programming be included in the calculation? Should the 3 percent figure apply to a DTV broadcasters' total amount of programming, or to each programming stream?

In addition, how should we address how core programming should be distributed on the broadcaster's channels? Should we require broadcasters to air their core programming on their ''primary'' channel, or allow them the flexibility to decide how that programming should be distributed over their various program streams? We invite comment on the proportional hours proposal and on these related issues.

20. *Pay or Play.* Children Now also suggests that, as a corollary to their proportional hours proposal, the Commission could adopt a ''Pay or Play'' model to allow digital broadcasters maximum flexibility in meeting their core programming obligation. Under this approach, once the core programming obligation is quantified, broadcasters would have the choice of meeting these obligations either through their own programming or by paying other networks or channels to air these hours for them, or a combination of both. Children Now points out that this model could promote partnerships among commercial broadcasters or among commercial and non-commercial broadcasters in a given market, and could provide much needed support to public broadcasters who have a strong commitment to core programming.

Children Now also notes, however, that, under such a model, children's programming could be limited to public broadcasting or to less popular commercial stations, resulting in less exposure to such programming for children. Another concern is that commercial broadcasters may not pay public broadcasters or less successful commercial broadcasters enough to fund high quality children's programming which could, in the end, result in an overall reduction in the quality of core programs. We note that the Commission's rules currently allow broadcasters, under certain conditions, to meet their CTA obligation by sponsoring core programs aired on another station in the same market. We invite comment on the ''Pay or Play'' approach and the advantages and disadvantages of adopting such a model for educational programming.

21. *Menu Approach.* The Center for Media Education, filing jointly with nine other individuals and public interest organizations (collectively referred to herein as ''CME *et al.*''), urges the Commission to adopt children's guidelines that impose additional obligations on broadcasters, but provide them with flexibility in meeting these obligations. CME *et al.* argues that the current amount of three hours-per-week of core programming is insufficient in light of the added capacity multicasting offers.

Specifically, CME *et al.* proposes that digital broadcasters have the option of satisfying their children's programming obligation by providing, at their option, some combination of the following: (1) Additional ''core'' educational and informational programming; (2) broadband or datacasting services to local schools, libraries, or community centers that serve children; or (3) support for the production of children's educational programming by local public stations or other noncommercial program producers, such as the National Endowment for Children's Programming. CME *et al.* points out that public television stations could use additional funding to create new children's educational programs that take advantage of DTV's enhanced capabilities. CME *et al.* would not require that DTV broadcasters air core programs on each of their program streams, but instead would permit the creation of specialized channels where core programming could be more easily located by children and parents.

22. We invite comment on the CME *et al.* proposal and, more generally, on the concept of offering broadcasters a choice of ways they can meet their obligation under the CTA. If we were to adopt a

menu approach, are there other types of obligations, apart from those suggested by CME *et al.,* that we should allow broadcasters to choose from? One option would be to allow broadcasters to undertake additional outreach efforts to make parents and others aware of the availability of core programs and how to identify and locate them. If we were to include this as an option in a menu approach, what kind of outreach efforts should we require?

23. *Daily Core Programming Obligation.* The Advisory Committee Report describes another approach regarding the obligation of digital broadcasters to air children's programming that would require digital broadcasters to air no less than 1 hour of children's educational programming each day on the broadcaster's main channel. We invite comment generally on this proposal.

24. *Other Digital Improvements.* Finally, we ask commenters to address whether the advanced capabilities of digital broadcasting can be used in other ways to help implement the CTA. One approach would be to require broadcasters to use datacasting to make available during a core program information explaining why the program is considered to qualify as ''core.''

Another option would be to require broadcasters to provide additional content ratings information on core programs from independent sources, such as public interest groups that rate educational children's programming. Such information could be provided through a direct link to the internet where the content ratings information could be accessed. We seek comment on these proposals, as well as other suggestions for how digital capacity could be used to help improve our existing children's programming requirements.

B. Preemption

25. *Background.* Related to the issue of how the children's educational and informational programming obligation will apply in the digital age is the issue of how we will treat preemptions of core programs by DTV broadcasters. To qualify as ''core programming'' for purposes of the three-hour-per-week processing guideline, the Commission requires that a children's program be ''regularly scheduled,'' that is, a core children's program must ''be scheduled to air at least once a week'' and ''must air on a regular basis.''

In adopting its current educational programming rules, the Commission stated that television series typically air in the same time slot for 13 consecutive weeks, although some episodes may be preempted for programs such as breaking news or live sports events. The Commission noted that programming that is aired on a regular basis is more easily anticipated and located by viewers, and can build loyalty that will improve its chance for commercial success. The Commission stated that it would leave to the staff to determine, with guidance from the full Commission as necessary, what constitutes regularly scheduled programming and what level of preemption is allowable.

26. Since the adoption of the Children's Programming *Report and Order* (''*R&O*''), 61 FR 43981, August 27, 1996, the ABC, CBS, and NBC networks have requested flexibility to reschedule episodes of core programs that are preempted by live network sports events without adversely affecting the program's status as ''regularly scheduled.'' Separate requests have been made in connection with each of the 1997–98, 1998–99, and 1999–2000 television seasons. For two of these seasons, the Mass Media Bureau has allowed the networks limited flexibility in preempting core children's programming.

Specifically, within certain limitations, the Bureau advised that preempted core programs could count toward a station's core programming obligation if the program were rescheduled. The Bureau also indicated that it would revisit this limited flexibility regarding preempted core programming based on the level of preempted programs, the rescheduling and broadcast of the preempted programs, the impact of promotions and other steps taken by the stations to make children's educational programming a success.

27. The Commission requires licensees, in their quarterly Children's Television Programming Reports, to identify for each core program the number of times the program was preempted and rescheduled. In another *R&O* adopted today, the Commission revised its quarterly Children's Television Programming Report to make the preemption information in that report clearer and to collect information on the reason for each preemption as well as the licensee's efforts to promote the rescheduled program. The purpose of these changes is to collect more complete data regarding the level of preemption of core programs and station practices in rescheduling these programs. This data will in turn allow the FCC and others to better monitor the impact of preemptions on the availability of core programs.

28. *Discussion.* As noted, the Commission required that programming must be ''regularly scheduled'' to qualify under the three-hour guideline. This requirement was based on the fact that programming that is aired on a regular basis is more easily anticipated and located by viewers, and therefore more likely to be seen by its intended audience. Although acknowledging that preemption might occur, the Commission expected that preemption of core programming would be rare. The Mass Media Bureau staff has recently reviewed a random sample of the Children's Television Programming Reports, and determined that the average preemption rate by stations affiliated with the largest networks during the past two years is nearly 10%, and has been as high as 25% during a quarter when a network had a large number of sports programming commitments.

Given this level of preemption, we believe we should consider whether we should adopt another approach to preemptions in the digital context to ensure that our preemption policy does not thwart the goals of the CTA. DTV broadcasters will have the option of airing multiple streams of programming simultaneously, thus increasing their flexibility to either avoid preempting core programs or to reschedule such programs to a regular ''second home.'' Given this capability, are there ways in which the Commission could revise its preemption policies to simplify or eliminate the need for networks to seek approval of their planned preemption and rescheduling practices for each television season, and to streamline licensees' recordkeeping and reporting requirements?

One approach would be to fashion a rule that would provide clear guidance to digital broadcasters on the meaning of the requirement that a ''core'' program be ''regularly scheduled.'' Such a rule could cover the number of times a core program could be preempted and still count toward the three-hour-per-week processing guideline, and/or the efforts that must be made to reschedule and promote preempted programs in order for these programs to contribute toward the core programming guideline. If we were to adopt such a rule, should we continue to exempt from the requirement that core programs be rescheduled core programs preempted for breaking news?

We request comment generally on all of these issues, and on how we could refine and clarify our definition of ''regularly scheduled'' to address the issue of preempted core programs in the digital age. We also ask commenters to

address specifically the kind of rescheduling practices and promotion of rescheduled programs that we could require from digital broadcasters consistent with our goal of ensuring that viewers can anticipate and locate the rescheduled program.

For example, should a station be allowed to shift a preempted core program to another digital program stream? If so, should we require that the substitute program stream be of the same technical quality as the stream on which the program is regularly scheduled? Should we permit a preempted program to be shifted from a free to a pay program stream?

C. Commercial Limits

29. *Background.* Another issue posed by the transition from analog to digital broadcasting is how the Commission's children's programming advertising limits and policies will apply to DTV broadcasters. By converging internet capabilities with broadcasting, digital television permits a new level of interactivity between broadcasters, advertisers, and viewers. This capability offers great potential for enhancing the educational value of children's programs by, for example, permitting children to click on icons that appear on the screen during the program which take them to websites with more in-depth information about the topics covered in the program.

However, the interactive capabilities of DTV also allow for the direct sale of goods and services over the television. This capability presents marketers with new opportunities to reach children, which raises concerns in light of the difficulty young children have in distinguishing commercials from programming and the particular vulnerability of children to advertising.

30. *Discussion: Application of Existing Commercial Limits Rules and Policies to DTV.* We seek comment both on how the limits on the amount of commercial matter in children's programming should apply in this digital environment and how we should interpret with respect to DTV broadcasters the policies set forth in the *1974 Policy Statement* on children's programming. One question that arises is whether children's advertising limits and policies should apply only to free over-the-air channels, or to all digital channels both free and pay? We raised this issue in our *NOI*, where we asked whether a licensee's public interest obligations apply to its ancillary and supplementary services, and asked commenters to address the relevance of section 336 in this regard.

31. CME *et al.* expresses the view that the existing advertising restrictions, including the separations, host-selling, and program-length commercial policies, should apply to all digital programs directed to children ages 12 and under, regardless of the program stream on which they are offered. Thus, CME *et al.* argues that these policies should apply when children are watching video programs, regardless of whether the channel is free or pay. We request comment on this view.

32. In addition, CME *et al.* proposes that the Commission prohibit all direct links to commercial websites during children's programming. We invite comment on this proposal. Should the Commission prohibit the use of digital television interactivity capability in children's programs to sell products? Is such a prohibition appropriate in light of the unique ability of children to be influenced by commercial matter and their difficulty distinguishing commercials from other programming? If commercial links are freely available in programs not subject to our commercial limits (*e.g.,* programs directed at adults and children over the age of 12), would prohibiting them or restricting them in programming directed to children ages 12 and under make this programming less desirable and thus less likely to be selected by children?

Should we make a distinction between websites that carry only commercial products, and websites that also offer educational information related to the program? If we permit certain kinds of direct commercial links during children's programs, should such links be permitted to appear during the program itself, or be limited to appearing during commercials adequately separated from program material as required by our separations policy? In addition, if we were to allow the use of direct commercial links, should we limit the duration of time they appear on the screen? How should the appearance of a commercial link be counted in calculating the number of commercial minutes for purposes of our commercial limits?

Finally, if we allow certain kinds of direct commercial links, should we prohibit links to websites that sell products associated with the program in which the links appear under our program-length commercial policy, or links to websites where the program host is used to sell products? We invite commenters to address all of these issues, as well as any other issues related to the use of direct website links during children's programming.

33. *Definition of Commercial Matter.* We also invite commenters to address a broader question related to our restriction on the duration of advertising during children's programming. This is an issue that arises with respect to both analog and digital broadcasting. Under our current policy, the limitation of 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays applies to ''commercial matter.'' ''Commercial matter'' is defined to exclude certain types of program interruptions from counting toward the commercial limits, including promotions of upcoming programs that do not contain sponsor-related mentions, public service messages promoting not-for-profit activities, and air-time sold for purposes of presenting educational and informational material.

We have observed that there is a significant amount of time devoted to these types of announcements in children's programming. As a result, the amount of time devoted to actual program material is often far less than the limitation on the duration of commercial matter alone might suggest. For example, in an hour-long weekend program, only 10.5 minutes may be devoted to commercial matter, leaving 49.5 minutes for actual program material. In fact, however, many programs contain far less than this amount of actual program time as a result of numerous other interruptions that do not count toward the commercial limit restriction.

34. We invite comment on whether the Commission should revise its definition of ''commercial matter'' to include some or all of these types of program interruptions that do not currently contribute toward the commercial limits. We note that some of the types of program interruptions currently excluded from the commercial limits may contain information valuable to children, such as promotion of upcoming educational programs or certain types of public service messages. Should we require that the time devoted to these announcements nonetheless count toward the commercial limits to maximize the amount of time devoted to program material and reduce the time taken by interruptions? This might prove especially beneficial for educational and informational programs, where it would increase the amount of time available for delivering educational messages. The issue of the total time taken by program interruptions in children's programs arises in both the analog and digital world. If we were to revise our definition, is there any reason to apply

the new definition only to digital broadcasting?

Finally, we ask commenters to address whether our ability to revise this definition is restricted by the CTA and its legislative history. The CTA itself does not define the phrases ''commercial matter'' or ''advertising.'' Both the House and Senate Reports state that ''[t]he Committee intends that the definition of 'commercial matter' . . . be consistent with the definition used by the Commission in its Former FCC Form 303.'' We seek comment on whether we must apply the definition of ''commercial matter'' in the way defined on former FCC Form 303 for purposes of administering the CTA.

D. Promotions

35. *Background.* Another issue we raised in the *NOI* relates to the airing, in programs viewed by children, of promotions for other upcoming programs that may be unsuitable for children to watch because either the promotions themselves or the programs they refer to contain sexual or violent content or inappropriate language. This is another issue that arises with respect to both analog and digital broadcasting. The Commission staff has received many informal complaints from members of the public and children's advocates about inappropriate promotions in programs viewed by children.

We asked in the *NOI* whether the ratings of programs promoted by broadcasters should be consistent with the ratings of the program during which the promotions run. We note that the broadcast, cable, and motion picture industries have voluntarily agreed to rate video programming that contains sexual, violent, or other indecent material and to broadcast signals containing these ratings so that these programs can be screened by ''V-Chip'' technology available in television sets. The ratings identify the age group for which a particular program is appropriate and when the program contains violence, sexual content, or suggestive or coarse language.

36. *Discussion.* We again invite commenters to address this issue. Are there steps the FCC can take to ensure that programs designed for children or families do not contain promotions for broadcast, cable or theater movies or other age-inappropriate product promotions that are unsuitable for children to watch?

One option would be to require that promotions themselves be rated and encoded so they can be screened by V-Chip technology. Yet another option would be to require that promotions be rated and that programs with a significant child audience contain only promotions consistent with the rating of the program in which they appear. We invite comment on these and other approaches that might be used to address this issue.

37. We recognize that the current ratings system was adopted by the broadcast, cable, and motion picture industries voluntarily, and was found acceptable by the Commission. Would it be preferable to urge the industry itself to make a voluntarily commitment to take steps to protect against the airing of inappropriate promotions in children's programs?

As we noted, the issue of inappropriate promotions in children's programming arises with respect to both analog and digital programming. If we were to take steps to address this issue, should these steps be limited to digital broadcasting or should they apply to analog broadcasting as well? Does DTV technology offer any additional capability that could be used to address this issue in digital broadcasting?

E. Other Steps To Improve Educational Programming

38. We seek further information on children's television viewing habits, and in particular empirical evidence concerning the extent to which they watch designated educational and informational programming. We note that the Annenberg Public Policy Center has annually evaluated the educational and informational programming provided by networks and certain individual stations. We seek further information including the audience share of such programs and, in particular, the audience share of educational and informational programming contrasted with that of other programming for children.

We additionally seek information on stations' and networks' efforts to promote educational and informational programming to children and parents. Are stations promoting this programming? How and where? Is the programming being promoted during network prime time programming? During children's programming? Is the promotion effective?

Studies of the effectiveness of the three-hour-per-week processing guideline show that parents continue to be unaware of the availability of educational programming and continue to fail to identify core programs. We invite commenters to address what steps the FCC might take to increase public awareness of the availability of core programming and how to locate it. Should the FCC require that broadcasters promote core programs? If so, what kind of requirement should we impose? Should we require promotion during prime time or other specific day parts? Should we require stations to air PSAs about the value of educational programming and the meaning of the E/I icon? Are there other steps we could take apart from establishing a rule for promotions and PSAs?

Should the FCC itself undertake promotional efforts to highlight and publicize core educational programming? Apart from the issue of public awareness, are there other steps the FCC could take to improve the quality of educational programming? We invite comment on all of these questions and welcome other suggestions for ways to improve both the quality and public awareness of educational and informational children's programming.

IV. Conclusion

39. We institute this proceeding to examine how our existing children's educational programming rules and our preemption policies should be adapted to apply to digital broadcasters. Our goal is to ensure that, as we transition from analog to digital television, children and parents continue to have access, as Congress intended, to an ample supply of educational and informational programming specifically designed for children. We also seek comment on how the current limitations on advertising in children's programming should be applied to DTV broadcasters in light of the new capabilities offered by digital technology. Our objective in this effort is to ensure that children continue to be protected from overcommercialization on television.

Finally, we raise a number of issues related to the definition of ''commercial matter'' for purposes of the commercial limits for children's programs, promotions of programs for more mature audiences aired during children's programs, and other steps the Commission could take to help improve the availability of educational and informational programming. These latter issues arise in both the analog and digital worlds. We seek comment on all of the issues we have raised herein, and welcome other ideas commenters may have to achieve our objectives.

V. Administrative Matters

40. *Comments and Reply Comments.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before December 18, 2000 and reply comments on or before January 17, 2001. Comments may be

filed using the Commission's Electronic Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

41. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form, <your e-mail address.>'' A sample form and directions will be sent in reply.

42. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW.; TW–A325, Washington, DC 20554.

43. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Wanda Hardy, 445 Twelfth Street, SW.; 2–C221, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number (MM Docket No. 00–167), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette.

The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 445 Twelfth Street, SW.; CY–B402, Washington, DC 20554.

44. *Ex Parte Rules.* This is a permit-but-disclose notice and comment rulemaking 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).

45. *Initial Regulatory Flexibility Analysis.* With respect to this *NPRM*, an Initial Regulatory Flexibility Analysis (''IRFA'') is contained in Appendix B. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. 603, the Commission has prepared an IRFA of the possible economic impact on small entities of the proposals contained in this *NPRM*. Written public comments are requested on the IRFA. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *NPRM*, and should have a distinct heading designating them as responses to the IRFA.

46. *Initial Paperwork Reduction Act Analysis.* This *NPRM* may contain either proposed or modified information collections. As part of our continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on the information collections contained in this *NPRM,* as required by the Paperwork Reduction Act of 1996. Public and agency Comments are due at the same time as other comments on the *NPRM.*

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) ways to enhance the quality, utility, and clarity of the information collected; and (c) 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.

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street, SW., Room C–1804, Washington, DC 20554, or via the Internet to *jboley@fcc.gov*; and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *edward.springer@omb.eop.gov.*

VI. Ordering Clauses

47. This *NPRM* is issued pursuant to the authority contained in Sections 4(i), 303, 307, and 336(d) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, 307, and 336(d), and in the Children's Television Act of 1990.

48. The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this *NPRM,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

VII. Initial Regulatory Flexibility Act Analysis

49. As required by the Regulatory Flexibility Act, 5 U.S.C. 603 (''RFA''), the Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') of the expected impact on small entities of the proposals contained in this *NPRM.* Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the *NPRM,* but they must have a separate and distinct heading, designating the comments as responses to the IRFA. The Commission shall send a copy of this *NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the RFA, 5 U.S.C. 603(a).

A. Need for and Objectives of the Proposed Rules

Our goal in commencing this proceeding is to seek comment on how the existing children's educational television programming obligations and limitations on advertising in children's programs should be interpreted and adapted to apply to digital television broadcasting in light of the new capabilities made possible by that technology. In seeking comment on what steps the FCC might take to address the issue of the airing of promotions inappropriate for children in programs viewed by children, our goal is to protect children from programming with inappropriate sexual or violent content or suggestive or coarse language. We also invite comment on a number of specific proposals offered by commenters responding to the *NOI* in MM Docket No. 99–360.

50. We invite comment on how the children's core educational programming processing guideline should be applied to DTV broadcasters that choose to multicast. For example,

we ask whether the guideline should apply to only one digital broadcasting program stream, to more than one program stream, or to all program streams the broadcaster chooses to provide.

We also ask whether the guideline should apply only to free broadcast services or also to pay services, and whether a three-hour guideline is sufficient in light of the additional program capacity made available by digital technology. We also seek comment on whether the Commission's policies regarding preemption of core programs should be revised in view of the greater programming capacity available to DTV broadcasters.

51. With respect to the children's programming advertising limits and policies, we ask whether these rules and policies should apply to both free and pay program streams. We also seek comment on how these rules and policies should be interpreted in light of the interactive capabilities made possible by digital technology. For example, we ask whether we should permit the use of direct commercial website links in children's programs and, if so, whether we should limit the duration of time they appear on the screen. We also ask how such links should be treated under our program-length commercial and host-selling policies.

52. We also invite comment on a broader question related to the advertising limits that arises with respect to both analog and digital broadcasting. Specifically, we ask whether the Commission should revise its definition of ''commercial matter'' to include types of program interruptions that do not currently contribute toward the commercial limits, such as certain program promotions.

53. In addition, we invite comment on how to address the issue of the airing in programs viewed by children of promotions for other upcoming programs that may be unsuitable for children to watch because either the promotions themselves or the programs they refer to contain sexual or violent content. This is an issue that arises with respect to both analog and digital broadcasting.

54. Finally, we invite commenters to address what steps the FCC might take to increase public awareness of the availability of core programming and how to locate it. We also ask whether there are other steps the FCC could take, apart from the issue of public awareness, to improve the quality of educational programming by, for example, seeking legislation to establish a mechanism to fund the production of high-quality educational and informational programming.

B. Legal Basis

Authority for the actions proposed in the *NPRM* may be found in Sections 4(i) and 303, 307, and 336(d) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, 307, and 336(d), and in the Children's Television Act of 1990.

C. Recording, Recordkeeping, and Other Compliance Requirements

The *NPRM* invites comment on how the existing children's educational television programming requirements and children's commercial limits should apply to digital broadcasters. The *NPRM* also invites comment on whether the Commission should revise its definition of ''commercial matter'' to include types of program interruptions in children programs that do not currently contribute toward the commercial limits. We also ask what steps the FCC might take to address the issue of the airing in programs viewed by children of promotions for other upcoming programs that may be unsuitable for children to watch because either the promotions themselves or the programs they refer to contain sexual or violent content or suggestive or coarse language.

D. Federal Rules That Overlap, Duplicate, or Conflict With the Proposed Rules

The rules under consideration in this proceeding do not overlap, duplicate, or conflict with any other rules.

F. Description and Estimate of the Number of Small Entities to Which the Rules Would Apply

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632.

A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.

55. Small TV Broadcast Stations. The SBA defines small television broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts.

56. The children's educational and informational programming requirements apply to commercial and noncommercial television stations. There are approximately 1,243 existing commercial television stations and 373 existing noncommercial television stations of all sizes that may be affected by the proposals contained in this *NPRM* related to our educational and informational programming requirements. The children's commercial limits apply to commercial television broadcasters and cable operators. Thus, in addition, there are approximately 10,500 cable systems of all sizes that could be affected by the proposals in the *NPRM* related to the children's commercial limits.

G. Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent With the Stated Objectives

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c).

57. This *NPRM* invites comment generally on a number of issues related to application of the existing children's television programming requirements to digital broadcasters, and asks commenters to address various proposals advanced by commenters responding to the *NOI* in this proceeding. We seek comment on whether there is any significant impact on small entities that might result from any of these proposals. Any significant alternatives presented in the comments will be considered.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–28610 Filed 11–7–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 99128355–0305–03; I.D. 101200F]

RIN 0648–AM50

Fisheries of the Northeastern United States; Proposed 2001 Fishing Quotas for Atlantic Surf Clams, Ocean Quahogs, and Maine Mahogany Ocean Quahogs

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

ACTION: Proposed 2001 fishing quotas for Atlantic surf clams, ocean quahogs, and Maine mahogany ocean quahogs; request for comments.

SUMMARY: NMFS issues proposed quotas for the Atlantic surf clam, ocean quahog, and Maine mahogany ocean quahog fisheries for 2001. Regulations governing these fisheries require NMFS to propose for public comment specifications for the 2001 fishing year. The intent of this action is to propose allowable harvest levels of Atlantic surf clams and ocean quahogs from the exclusive economic zone and an allowable harvest level of Maine mahogany ocean quahogs from the waters north of 43°50′N. lat. in 2001.

DATES: Comments must be received no later than 5 p.m., eastern standard time, on December 8, 2000.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and the Essential Fish Habitat Assessment, are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/IRFA is accessible via the Internet at http://www.nero.gov/ro/doc/nr.htm.

Written comments on the proposed specifications should be sent to the Regional Administrator. Mark on the outside of the envelope, ''Comments—2001 Clam and Quahog Specifications.'' Comments may also be sent via facsimile (fax) to (978)281–9371. Comments will not be accepted if submitted via e-mail or the Internet.

Send comments on any ambiguity or unnecessary complexity arising from the language used in this proposed rule to Patricia A. Kurkul, Regional Administrator.

FOR FURTHER INFORMATION CONTACT: Jennifer L. Anderson, Fishery Management Specialist, 978–281–9226.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan (FMP) for the Atlantic Surf Clam and Ocean Quahog Fisheries directs NMFS, in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surf clams and ocean quahogs on an annual basis from a range that represents the optimum yield (OY) for each fishery. It is the policy of the Council that the levels selected allow fishing to continue at that level for at least 10 years for surf clams and for 30 years for ocean quahogs. While staying within this constraint, the Council policy is to also consider the economic benefits of the quotas. Regulations implementing Amendment 10 to the FMP (63 FR 27481, May 19, 1998) added Maine mahogany ocean quahogs to the management unit and provide that a small artisanal fishery for ocean quahogs in the waters north of 43°50' N. lat. will have an annual quota with an initial amount of 100,000 Maine bushels (bu) (35,240 hectoliters (hL)) within a range of 17,000 to 100,000 Maine bu (5,991 hL to 35,240 hL). As specified in Amendment 10, the Maine mahogany ocean quahog quota is in addition to the quota specified for the ocean quahog fishery.

The fishing quotas must be in compliance with overfishing definitions for each species. The overfishing definition for ocean quahogs is based on a control rule, which requires a biomass target of ½ virgin biomass or 2 billion lb (907,200 mt) of meats (200 million bu); a fishing mortality rate (F) target of F0.1 = 0.02; a biomass threshold of ½ biomass target, or 1 billion lb (453,600 mt) of meats (100 million bu); and a fishing mortality threshold of F25% = 0.042. The current biomass is estimated to be around 3.3 billion lb (1.6 million mt) of meats (330 million bu), or about 80 percent of the virgin biomass, and current F is estimated to be 0.02. NMFS approved the overfishing definition for ocean quahogs contained in Amendment 12 to the FMP, but disapproved the proposed overfishing definition for surf clams because it was based only on surf clams from the Northern New Jersey area and did not take into account the entire range of the resource. The December 1999 Stock Assessment Review Committee (SARC) proposed an overfishing definition for surf clams, which the Council reviewed and approved at its March 2000 meeting. The Council-approved definition has a biomass target of ½ of current biomass as a proxy for FMSY (1.4 billion lb, or 640 thousand mt, or 82.4 million bu); a biomass threshold of ½ of the proxy for BMSY (700 thousand lb or 320 thousand mt); a fishing mortality threshold of FMSY, where the current best proxy for FMSY is the natural mortality rate (M) (0.15), and requires that the F target will always be set less than the F threshold and that it will be the F associated with the Council-selected quota (approximately 0.03 for 2001). This new overfishing definition for surf clams will be submitted to the Secretary for approval in Amendment 13, which the Council anticipates will be completed in early 2001.

In proposing these quotas, the Council considered the available stock assessments, data reported by harvesters and processors, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected effort and catches, and areas closed to fishing. This information was presented in a written report prepared by the Council staff. The proposed quotas for the 2001 Atlantic surf clam, ocean quahog, and Maine mahogany ocean quahog fisheries are shown in the following table. The status quo levels for 2000 for both the regular ocean quahog and the Maine mahogany ocean quahog will be maintained, but the surf clam quota will be increased by 11 percent, from 2.565 million bu to 2.85 million bu (1.366 million hL to 1.518 million hL).

PROPOSED 2001 SURF CLAM/OCEAN QUAHOG QUOTAS

Fishery	2001 final quotas (bu)	2001 final quotas (hL)
[1]Surf clam	2,850,000	1,518,000
[1]Ocean quahog	4,500,000	2,396,000
[2]Maine mahogany quahog	100,000	35,240

[1]1 bushel = 1.88 cubic ft. = 53.24 liters

[2] 1 bushel = 1.2445 cubic ft. = 35.24 liters

Surf Clams

The Council recommended a 2001 quota of 2.850 million bu (1.518 million