employs an auditable time stamp, because: [59]

- ''Correspondence handled by USPS subject to confidentiality statutes and regulations.''
- ''Neutral third party with universal public service mandate.''
- ''Federally imposed regulations on USPS employees— enhancing customer confidence.''
- ''History of providing postmarks with legal significance.''
- ''Long-lived statutory purpose 'to bind the nation together through the * * * correspondence of the people.' 39 U.S.C. 101.''

In the same vein, the Universal Postal Union recently indicated that it ''is working with * * * progressive postal services to promote an electronic postmark that would facilitate electronic transactions and guarantee their security * * *.'' [60] The electronic postmark is described as the ''digital equivalent of the * * * indicia that appears on every stamped envelope today and has legally binding implications in matters of mail tampering.'' [61]

4. Procedural Matters

Comments. By this order, the Commission hereby gives notice that comments from interested persons concerning the proposed amendment to the Commission's rules are due on or before March 1, 2004. Reply comments may also be filed and are due April 1, 2004.

Representation of the general public. In conformance with § 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, Director of the Commission's Office of the Consumer Advocate, to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

It is ordered:

1. Interested persons may submit initial comments by no later than March 1, 2004. Reply comments may also be filed and are due no later than April 1, 2004.

2. Shelley S. Dreifuss, director of the Office of the Consumer Advocate, is designated to represent the interests of the general public.

3. The Secretary shall arrange for publication of this proposed rulemaking in the **Federal Register**.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

Issued: January 16, 2004.
By the Commission.

Steven W. Williams,

Secretary.

For the reasons discussed above, the Commission proposes to amend 39 CFR part 3001 as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b); 3603; 3622–24; 3661, 3663.

Subpart A—Rules of General Applicability

2. Amend § 3001.5 by adding new paragraph (r) to read as follows:

§ 3001.5 Definitions.

* * * * *

(r) *Postal service* means the delivery of letters, printed matter, or packages weighing up to 70 pounds, including acceptance, collection, processing, transmission, or other services supportive or ancillary thereto.

[FR Doc. 04–1389 Filed 1–22–04; 8:45 am]

BILLING CODE 7710–FW–P

[59] U.S. Postal Service Benefits of EPM page <*http://www.usps.com/electronicpostmark/benefits.htm*>.

[60] UPU Press Release, Electronic Postmark Aims to Build Confidence, Trust and Security for Global E-Trade and E-Business, Bern, Switzerland, 10 December 2003 <*http://www.upu.int/presse/eu/electronic_postmark_aims_to_build_confidence_en.pdf*>.

[61] Ibid.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 579

[Docket No. NHTSA 2001–8677; Notice 8]

RIN 2127–AI92

Reporting of Information and Documents About Potential Defects

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Response to petitions for reconsideration.

SUMMARY: This document denies the petitions filed by several associations of motor vehicle manufacturers for reconsideration of the final rule published on July 10, 2002, that implemented the early warning reporting (EWR) provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act and responds to petitions for rulemaking. Under the final rule, in general, all manufacturers of motor vehicles whose yearly production of vehicles for sale in the United States is 500 or more in a particular vehicle category are required to report comprehensive information to NHTSA, including the numbers of property damage claims, consumer complaints, warranty claims, and field reports. Manufacturers of fewer than 500 vehicles per year are required to report only limited types of information (*e.g.*, information about incidents involving deaths referred to in claims and notices received by the company). We have decided to retain the existing thresholds for the present time, although we will consider this issue in approximately two years, after we have had experience under the early warning reporting regulation.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact Jonathan White, Office of Defects Investigation, NHTSA (phone: 202–366–5226). For legal issues, contact Andrew DiMarsico, Office of Chief Counsel, NHTSA (phone: 202–366–5263).

SUPPLEMENTARY INFORMATION:

I. Background

On July 10, 2002, NHTSA published a final rule implementing the early warning reporting provisions of the TREAD Act, established by 49 U.S.C. 30166(m) (67 FR 45822). The agency published its responses to some issues raised by petitions for reconsideration on April 15, 2003 (68 FR 18136) and others on June 11, 2003 (68 FR 35132 and 35145) and announced that it would respond to other issues at a later date. The reader is referred to those documents, and the prior notice of proposed rulemaking (NPRM) (66 FR 66190) for further information.

The final rule established different reporting requirements for manufacturers, depending upon the type of product produced and, for vehicle manufacturers, the number of vehicles produced annually. Manufacturers of tires and child restraint systems (CRS) and vehicle manufacturers that produce 500 or more vehicles per year of one of four categories of vehicles (light vehicles, medium-heavy vehicles and buses, motorcycles, and trailers) must provide comprehensive quarterly reports to NHTSA. In general, such comprehensive reports must include information on deaths and injuries

based on claims and notices about incidents involving the manufacturer's products, and the numbers of property damage claims, consumer complaints, warranty claims, and field reports received by the manufacturer. For field reports other than those from dealers, a copy of the field report must also be submitted. All other manufacturers of equipment, and manufacturers that produce fewer than 500 vehicles per year of each category, need only report a very limited amount of information; *i.e.*, information regarding claims and notices of death received by the manufacturer involving its products.

Petitions for reconsideration of this aspect of the rule were filed on or before August 26, 2002, by the National Association of Trailer Manufacturers (NATM), the National Truck Equipment Association (NTEA), and the Recreational Vehicle Industry Association (RVIA), among others. NATM filed untimely supplemental comments on October 15, 2002, and a petition for rulemaking was filed by the National Trailer Dealers Association (NTDA) on November 1, 2002 relating to the threshold for comprehensive reporting.

NTEA, NTDA, and RVIA petitioned for an increase in the threshold number of ''fewer than 500'' with regard to vehicles that their members produce or sell. NTEA suggested that instead of basing the threshold on the number of vehicles produced by a manufacturer in a given category, such as trailers, that NHTSA consider a manufacturer's annual total production and raise the threshold significantly. To support this suggestion, NTEA cited the agency's temporary exemption regulation, 49 CFR part 555. This regulation (implementing 49 U.S.C. 30113) establishes a threshold of an annual production of less than 10,000 motor vehicles for applying for hardship exemptions from the Federal motor vehicle safety standards. Under the provisions authorizing exemptions on bases other than hardship, exemptions covering up to 2,500 vehicles a year may be granted.

Alternatively, NTEA recommended that the threshold be 5,000 motor vehicles per year, as did RVIA, on the ground that this number is consistent with similar NHTSA and other Federal regulations. RVIA noted that S14.1 of Federal Motor Vehicle Safety Standard (FMVSS or Standard) No. 208 exempts from its provisions ''vehicles that are manufactured by a manufacturer that produces fewer than 5,000 vehicles worldwide annually'' (as does S14.3(d)), and that ''a similar 5,000 vehicle per year limit appears in the new FMVSS 138 [relating to tire pressure monitoring systems], issued June 5, 2002, at Section 7.6.'' It considered ''this figure '' consistent with Environmental Protection Agency definitions, which [establish] a subcategory [of small volume manufacturer] of 5,000 vehicles per year for maximum benefits (see 40 CFR 86.1845–04(b)(3) and Table S04–06).'' RVIA concluded that: ''Establishing a 5,000 vehicle per year definition ''in these final rules will maintain consistency and harmonization with current FMVSS and across agency boundaries.''

NATM took a different approach, in which it requested that trailers with a gross vehicle weight rating (GVWR) of 26,000 lbs. or less be excluded from comprehensive early warning reporting. In its view, merely increasing the threshold from 500 ''to some higher number will * * * do little if anything to alleviate the unfair burden upon the 26,000 lbs.-and-under GVWR trailer manufacturers, 96 percent of which are also 'small businesses.'''

II. Discussion

1. The Development of the Current Threshold

In our advance notice of proposed rulemaking to implement the early warning reporting provisions, we requested comments, in general, and specific answers to certain questions. We specifically asked: ''Which of the manufacturers * * * should be covered by the Final Rule and why?'' 66 FR 6532 at 6537 (January 22, 2001). The Truck Trailer Manufacturers Association (TTMA) responded that 500 motor vehicles was an appropriate threshold since ''some trailer manufacturers are so small that their reporting would not advance the Agency's goals in any meaningful way.'' Docket # 2001–8677–30, available at *http://dms.dot.gov*. We then proposed the threshold figure of 500 vehicles per category in the early warning reporting regulation notice of proposed rulemaking (NPRM), and we received comments on this issue from NTEA, RVIA, Gillig Corporation, and the Waste Equipment Technology Corporation (WASTEC). These commenters, as did NTEA in its petition for reconsideration, recommended that the limit be based on Part 555 (10,000 vehicles, or alternatively, 2,500). The rationale that NTEA offered for these suggestions was that ''many companies producing multi-stage trucks and RVs in quantities greater than 500 are nevertheless 'small businesses' by the criteria of the Small Business Administration (SBA) (13 CFR 121.201 (2000)).'' In adopting the Final Rule, we did not find this argument persuasive, observing that our investigations into alleged defects in products by relatively small businesses had led to safety recalls (67 FR 45822 at 45832). We discuss this below in more detail.

2. Safety-Related Defect Concerns

The TREAD Act requires NHTSA to undertake a rulemaking to enhance the Secretary's ability to carry out the provisions of Chapter 301 of Title 49 of the U.S. Code (49 U.S.C. 30101 *et seq.*), which includes the identification of vehicles and equipment with safety-related defects. The TREAD Act also authorizes NHTSA to require manufacturers to provide information to the extent that such information may assist in the identification of defects related to motor vehicle safety. 49 U.S.C. 30166(m).

Since the purpose of requiring comprehensive early warning reporting is to assure that NHTSA's Office of Defects Investigation (ODI) has relevant data to promptly identify possible safety defects, we have considered whether safety recalls have been conducted by, or are applicable to, low-production vehicle manufacturers. Although we do not have precise production data, we were able to identify a number of safety recalls in each vehicle category in 49 CFR 579.21–24 that were conducted by companies whose annual production of vehicles in the category at issue was more than 500, but not significantly over 500. We chose manufacturers with an annual production between 500 and 1500. Many of these recalls involved serious safety problems. The following are illustrative examples of recalls by such manufacturers during the past five years, with one example provided for each category or subcategory of vehicle:

1. Recall No. 98V–331 (transit buses with steering arms that can fail without warning, causing a loss of steering);

2. Recall No. 99V–167 (passenger cars in which the fuel lines to the fuel injection system can leak, possibly resulting in a fire);

3. Recall No. 01V–088 (motorhomes (medium heavy vehicles) in which a floor support leg could collapse, causing the liquid propane gas line to leak);

4. Recall No. 00V–273 (motorhomes (both light vehicles and medium heavy vehicles) in which safety belt buckles could unlatch in a collision);

5. Recall No. 99V–254 (motorcycles on which the rear wheel could lock without warning);

6. Recall No. 00V–102 (full size trailers equipped with pregreased axle hubs that could experience hub and wheel separations); and

7. Recall No. 00V–241 (small trailers in which the pinbox can fail, resulting in release of the trailer from the towing vehicle).

If we were to raise the threshold for comprehensive reporting to a higher level, such as 1,500 vehicles per year, we would not receive timely early warning information about these types of safety problems from a significant number of manufacturers. Raising the threshold to 5,000 vehicles per year, as requested by some petitioners, would allow even more potential problems to escape our consideration.

In addition, the regulations cited by NTEA and RVIA (*i.e.*, Standards Nos. 138 and 208) are distinguishable from the early warning reporting requirements. Those regulations provide a delayed compliance date for manufacturers whose world-wide production of vehicles is less than 5,000 per year. The early warning reporting regulation threshold is fewer than 500 vehicles for sale in the United States for each of four specific categories, regardless of the manufacturer's world-wide production. Adopting a world-wide limitation of 5,000 vehicles would result in a foreign manufacturer that produces more than 5,000 vehicles annually, but that sells fewer than 500 of a given category in the United States, having to report fully even though only reports of incidents of death are required under the current rule.

3. NATM's Suggested Weight-Based Threshold for Trailers

As noted above, NATM's petition for reconsideration was not based upon a numerical production or sales-based threshold. Rather, NATM asked the agency ''to separate out and treat differently for early-warning reporting purposes'' all trailer manufacturers whose trailers have a gross vehicle weight rating (GVWR) of 26,000 pounds or less, regardless of the manufacturer's annual sales or production. NATM asserted that this category encompasses two types of trailers, trailers that it regarded as small (those with a GVWR less than 10,000 lbs.) and trailers that it classified as medium (those with a GVWR from 10,000 lbs. to and including 26,000 lbs.). NATM claimed that small and medium trailers ''are rarely involved in a death or serious personal injury,'' because of their ''much reduced exposure to over-the-road travel and its attendant hazards.'' It estimated that ''the smaller trailer rarely logs more than 10,000 miles per year on the public highways.'' It also claimed that the costs of compliance with the comprehensive early warning reporting requirements would be excessive.

In support of its suggestion, on June 27, 2003, NATM submitted the result of a survey that it had conducted of its 154 ''large-volume trailer manufacturers,'' *i.e.*, those that produce more than 500 trailers annually.[1] NATM had first asked ''each member to provide the total numbers of fatalities and serious injuries occurring during the past ten (10) years in which its trailers have been involved.'' It next asked, ''of these ''trailer'' accidents or incidents, how many prompted allegations of a manufacturing or design defect or a trailer malfunction causing the fatality or injury.'' Third, the survey asked ''how many NHTSA recalls (responding to FMVSS violations or safety-related defects) each member initiated.'' Finally, ''to add perspective to the data, the survey concludes by asking each responding manufacturer how many vehicles it manufactured each year during the past five (5) years.''

NATM provided only a general summary of survey results, as opposed to copies of actual responses. NATM stated that it received 91 responses to its survey from the 154 inquiries sent. Thus, the survey results do present a complete representative picture of NATM's membership, much less the entire population of manufacturers of trailers with a GVWR less than or equal to 26,000 lbs.

The NATM survey indicated that, during the past five years, there were 14 safety recalls of trailers manufactured by these 91 respondents (2.8 per year). Yet, an ODI review of recalls during the period from calendar year 1995 through 2002 (described below) reveals that there were 80 safety recall campaigns conducted by such trailer manufacturers (10 recalls per year, or almost four times the rate reported by the NATM survey respondents). Moreover, NATM's survey was limited in scope to only questions on death and serious injuries, employed a definition of defect that is narrower than that in 49 U.S.C. § 30102, and failed to include other information required by subpart C of 49 CFR part 579, such as numbers of property damage claims, warranty claims, consumer complaints and field reports received by the manufacturer.

In response to NATM's petition for reconsideration, ODI conducted a review of safety-related recalls involving trailers initiated between calendar years 1995 and 2002 (excluding certain noncompliance recalls such as those involving labeling, since they are not relevant to the early warning reporting regulation). ODI divided the data into the categories of under 26,000 pounds GVWR and of 26,000 pounds GVWR and over. The results of this review have been placed in the Docket for this rulemaking proceeding.

Table 1 summarizes the results of ODI's review. It lists the trailer safety recalls by calendar years 1995 to 2002 by the numbers of recalls and numbers (population) of recalled trailers. More particularly, it first provides the number of recalls by trailer weight rating in two categories—under 26,000 pounds GVWR, and 26,000 pounds GVWR and over—and states the total. It then states the percentage of trailer recalls where the trailers weighed under 26,000 pounds GVWR or less for any given year. Next, it provides similar information in terms of the number of trailers recalled. Lastly, the table provides the number of ODI-influenced recalls (those where the recall was initiated after ODI began an investigation), divided into the categories of trailers under 26,000 pounds GVWR and 26,000 pounds GVWR and over.

TABLE 1.—TRAILER SAFETY RECALLS: 1995–2002

Year	# Recalls by trailer weight rating (in pounds)		Total recalls	% recalls gvwr<26k	Recall population by weight rating		Total recall population	ODI–influenced recalls	
	<26K	26K+			<26K	26K+		<26K	26K+
1995	8	7	15	53	47,494	9,291	56,785	3	0
1996	7	2	9	78	7,165	7,164	14,329	2	0
1997	6	3	9	67	3,236	2,542	5,778	2	0

[1] According to its website, *www.natm.com*, NATM has 339 members.

TABLE 1.—TRAILER SAFETY RECALLS: 1995–2002—Continued

Year	# Recalls by trailer weight rating (in pounds)		Total recalls	% recalls gvwr<26k	Recall population by weight rating		Total recall population	ODI–influenced recalls	
	<26K	26K+			<26K	26K+		<26K	26K+
1998	7	4	11	64	23,145	1,676	24,821	3	0
1999	12	4	16	75	86,918	215	87,133	4	2
2000	17	6	23	74	23,993	19,098	43,091	1	3
2001	12	7	19	63	24,437	2,454	26,891	2	1
2002	11	6	17	65	12,287	6,981	19,268	1	3
Total	80	39	119	67	228,675	49,421	278,096	18	9

As shown in the Table, during the past eight years, trailers with a GVWR of less than 26,000 pounds have accounted for, overall, 67 percent of the trailer safety recalls. Moreover, the trailers under 26,000 pounds accounted for approximately 82 percent of the total trailers recalled. Of the ODI influenced recalls, two-thirds of the recalls involved trailers of less than 26,000 pounds GVWR.

ODI also reviewed the potential risks to safety posed by the identified defects in the recalls reflected in Table 1. Many of these recalls were conducted to address significant safety risks. Examples of safety defects that have been found to exist in trailers with a GVWR equal to or below 26,000 pounds include brake failure, wheel separation, hitch/tongue separation, and fire hazard due to electrical short circuits or fuel leakage.

In addition, it is important to recognize that many trailers with a GVWR equal to or below 26,000 pounds are used extensively on the public roads. This category of trailer covers a wide range of designs, from recreational and part-time living quarters to freight and equipment hauling. Consequently, some applications may result in year-round highway use versus seasonal or recreational use, as suggested by NATM. In any event, it would not be practical to base the threshold for comprehensive reporting on the anticipated amount of on-road use of a vehicle, since this could vary widely within a given categories or types of vehicles.

Although NATM asserted in its petition that trailers with a GVWR equal to or below 26,000 pounds tend to be manufactured by entities that are small businesses, NATM did not advocate reducing the early warning reporting requirements that apply to its smaller members. Indeed, in a June 27, 2003 letter to the agency, NATM stated that, in its view, raising the threshold for comprehensive reporting to 2500 trailers per year would be worse than maintaining the status quo.

This position is apparently based on NATM's belief that ''most trailer manufacturers producing more than 2500 trailers per year may have only minimal concerns about their [alleged] economic disadvantage (stemming from their early warning compliance obligations) competing against trailer manufacturers producing fewer than 500 units per year, but with no early warning reporting burdens,'' but would fear ''far more serious competition from much stronger, more substantial, viable companies producing, for example, only 2400 trailers per year.''

As described below, NATM has significantly exaggerated the costs of preparing for, and complying with, the early warning reporting requirements. A majority of the trailer manufacturers that have provided cost information to ODI stated that their anticipated compliance costs were well under $50,000. Other trailer manufacturers that did not provide a cost figure have stated that the annual compliance cost would be negligible. Moreover, the information provided by these trailer manufacturers confirm NHTSA's conclusion in the Final Regulatory Evaluation (FRE) that the major portion of the costs associated with early warning reporting involves setting up the manufacturer's reporting system, while the annual, recurring costs of compliance are low. Since the first quarterly reports were due on December 1, 2003, it is likely that most, if not all, manufacturers have already completed these initial preparations and have already incurred those set up costs. For these reasons, there is little likelihood that companies that are not required to provide comprehensive reports will have any significant competitive advantage over larger manufacturers.

4. Burden on Small Vehicle Manufacturers [2]

The TREAD Act provided for the promulgation of the early warning reporting regulation without reference to the size of manufacturers of motor vehicles under SBA definitions. *See* 49 U.S.C. § 30166(m). The Act directed the agency only not to impose requirements that are unduly burdensome to a manufacturer, taking into account cost and the agency's ability to use the information to assist in the identification of defects related to motor vehicle safety. *See* 49 U.S.C. 30166(m)(4)(D).

In the Final Regulatory Analysis (FRE) that accompanied the Final Rule, we stated that: ''We estimate that there are 8 large manufacturers and hundreds of small businesses that manufacture trailers.'' For the eight ''large'' trailer manufacturers, NHTSA estimated that setting up a computer system to handle all this information would cost $200,000. For the others we assumed that they would have so few claims of fatalities, injuries and property damage, warranty claims, and field reports that they would not set up a computer system for reporting, but would review and process the claims manually as they came in. We estimated a $10,000 annual cost for these manufacturers.

NATM claims in its petition for reconsideration that ''Industry estimates put the annual cost at $145,000 per company.'' This is unsubstantiated. The cost estimates in the FRE were based on estimates of the costs that were likely to be incurred by very large vehicle manufacturers. The amount of data likely to be received by trailer manufacturers, and particularly relatively small companies, will not require that level of expenditure.

[2] Additional points related to the burden imposed by the early warning reporting regulation on small manufacturers are set forth in the discussion of the regulation under the Regulatory Flexibility Act, which appears later in this document.

We continue to believe that the burden on relatively small manufacturers from early warning reporting will not be significant. Vehicle manufacturers that are subject to comprehensive reporting have to provide the numbers of property damage claims, consumer complaints, warranty claims, and field reports.[3] As explained in the Regulatory Flexibility Act statement below, it is unlikely that relatively small manufacturers will receive many of these items in any calendar quarter, and therefore they will not have to develop complex, computerized data systems. For example, ODI's docketed review of the number of consumer complaints received by trailer manufacturers whose products were the subject of defect investigations during the past nine years revealed that, with a few exceptions, the manufacturers had received fewer than five consumer complaints about the product under investigation. (And it is likely that there would be even fewer complaints about products that are not the subject of a defect investigation.) Moreover, as specified in Section 579.29(a), these manufacturers will be able to submit the small amount of relevant data that they compile as an attachment to an e-mail message. And, as explained below, all vehicle manufacturers are already required to retain the data in question for five years under NHTSA's recordkeeping regulations, 49 CFR part 576.

A number of trailer manufacturers, most of whom produce trailers with a GVWR of less than 26,000 pounds, have contacted the agency to inquire about the early warning reporting regulation. ODI has had discussions with many of these manufacturers about their experiences in preparing to comply with that regulation. In these discussions, ODI obtained information about the expenditures that they have incurred and expect to incur, both to set up their reporting systems and to provide information in the future. (We believe that it is reasonable to assume that the information provided would also be applicable to manufacturers of vehicles other than trailers.)

ODI discussed these issues with 31 trailer manufacturers, with annual production ranging from 674 to over 30,000 vehicles. ODI made no attempt to verify the responses or to obtain details about the precise expenditures made and/or anticipated. A summary of the responses has been placed in the Docket for this rulemaking proceeding, with the names of the specific manufacturers deleted to maintain confidentiality.

ODI asked whether the manufacturers were confident about their ability to comply with the early warning reporting regulation. The overwhelming majority of manufacturers were confident and did not anticipate any problems in complying. Of the few that were not, the chief concerns involved computer upgrades, software, data retention, or personnel resources.

ODI also asked the manufacturers whether they had experienced any problems in preparing for compliance with the early warning reporting regulation. About one third stated that they had not had any problems and that they have the necessary mechanisms set up for reporting. Another third stated that that they had experienced some difficulties in sorting or categorizing input data, converting their existing data system to report in accordance with the requirements of early warning reporting regulation, or capturing the historical data required by the rule. Only a very small percentage referred to a financial burden associated with the preparation for reporting.

Slightly over one third of the manufacturers informed ODI that they had not needed to make any significant investment in connection with the regulation. About a third reported that they hired or reassigned personnel to handle early warning reporting. Approximately one fourth of the manufacturers stated that they had to purchase computer hardware or software, or that they had hired a consulting service to assist them.

With respect to the estimated cost of preparing for compliance, about one fourth of the manufacturers described the cost as ''minimal'' and did not provide a dollar estimate; four others simply did not provide an estimate. Twenty-two manufacturers provided cost information in dollar figures. These estimates are set out in Table 2, Costs of Early Warning Reporting Start-Up. The estimates ranged from $0 to as high as $250,000. Of those estimating relatively high expenditures, most did not explain why the costs were so high or state whether those costs also addressed other issues. As we had anticipated, the larger companies generally had the highest average costs.

TABLE 2.—COSTS OF EARLY WARNING REPORTING START-UP

Annual production range	Number of respondents	Average expense	Median expense	Expense range	
				Low	High
500–2,500	9	$46,080	$125,000	$0	$250,000
2,501–5,000	6	41,202	100,000	0	200,000
5,001–10,000	4	126,250	132,500	15,000	250,000
10,001–20,000	1	15,000			
>20,000	2	142,500	.....	100,000	185,000

With respect to the estimated cost of ongoing compliance, only twelve manufacturers provided a dollar figure. Ten others stated that they would have to incur the cost of adding one employee to handle early warning reporting, while six stated that costs of continued compliance would be ''negligible'' or they did not expect any additional costs.

Table 3, below, reflects the annual estimated compliance costs reported by those manufacturers that provided a dollar figure. Notably, there are very large differences in the anticipated costs reported by these manufacturers, and the differences are not explainable by the size of the companies.

[3] Regardless of the threshold, all vehicle manufacturers have to report incidents involving deaths based on claims and notices received by the company. *See* 49 CFR 579.27. The petitioners agree that their member companies will not receive many of these claims or notices, and therefore they will not have to report a large number of such incidents.

TABLE 3.—ANNUAL COMPLIANCE COST FOR MANUFACTURERS THAT REPORTED A DOLLAR FIGURE

Annual production range	Number of respondents	Average expense	Median expense	Expense range	
				Low	High
500–2,500	10	$15,244	$15,000	$0	$30,000
2,501–5,000	5	21,800	17,000	5,000	45,000
5,001–10,000	4	132,500	200,000	0	400,000
10,001–20,000	2	20,355	.....	15,000	25,710
>20,000	2	95,000	.....	90,000	100,000

To obtain additional information on the cost issue, ODI contacted a business that provides consultation services and computer software designed to assist vehicle and equipment manufacturers in preparing for and complying with the early warning reporting regulation. This company advised ODI that its fee for its consulting services (including on-site visits) is a minimum of $10,000, up to a maximum of $50,000 for six weeks of consultation. The software offered costs $16,000 or more, depending upon the amount and complexity of reporting to be performed by the vehicle manufacturer. According to this company, the annual cost for maintaining the software, including updates, is $3,000.

For the reasons set forth above, as well as those set forth in the Regulatory Flexibility Act Statement below, at this time we are denying the petitions requesting us to raise the reporting threshold, and to exempt all manufacturers of trailers of 26,000 pounds GVWR or less from comprehensive reporting. However, as we stated in the Final Rule, 67 FR 45822, 45867 and 45870 (July 10, 2002), and consistent with 49 U.S.C. 30166(m)(5), we will conduct a review to determine whether it would be appropriate to make changes to the early warning reporting regulation, including possible changes to the reporting threshold. We expect to complete this review by the end of 2005. If we find that the information submitted by relatively small vehicle manufacturers does not help in the prompt identification of safety defects, we will commence a rulemaking proceeding to adjust the reporting requirements appropriately.

III. Rulemaking Analyses

Regulatory Policies and Procedures. We previously considered the impact of this rulemaking under E.O. 12866 and the Department of Transportation's regulatory policies and procedures in the Final Rule. 67 FR 45870 (July 10, 2002). We incorporate our previous statements by reference.

Regulatory Flexibility Act. The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant impact on a substantial number of small entities.

In the TREAD Act, Congress directed NHTSA to adopt regulations that impose early warning reporting obligations on manufacturers of motor vehicles and motor vehicle equipment. 49 U.S.C. 30166(m). Congress included a provision directing the agency not to impose requirements that are ''unduly burdensome * * * taking into account the manufacturer's cost of complying with such requirements and [NHTSA's] ability to use the information sought in a meaningful manner to assist in the identification of defects related to motor vehicle safety.'' 49 U.S.C. 30166(m)(4)(D). In proposing and adopting the EWR regulation, NHTSA considered this provision, as well as other Federal laws and policies (including the RFA) that generally seek to minimize or reduce the impact of regulations on small businesses.

NHTSA addressed the RFA at the time it issued the EWR NPRM, and the agency issued a certification statement of no significant impact at that time. 66 FR 66190 at 66216–66217 (December 21, 2001). No one submitted any responsive comments. The agency published another RFA certification statement with the Final Rule. 67 FR 45822 at 45870–45871 (July 10, 2002). After considering the information and arguments related to small business impacts that were submitted with the petitions for reconsideration, we are supplementing that statement in this document.[4]

[4] Additional issues related to the impact of the EWR regulation on small businesses are discussed in Section II.4 of this notice, which is incorporated by reference in this RFA statement.

As explained earlier in this notice, the EWR regulation establishes different reporting requirements for manufacturers, depending upon the type of product produced and, for vehicle manufacturers, the number of vehicles produced annually. Manufacturers of tires and child restraint systems (CRS) and vehicle manufacturers that produce 500 or more vehicles per year of one of four categories of vehicles (light vehicles, medium-heavy vehicles and buses, motorcycles, and trailers) must provide comprehensive quarterly reports to NHTSA. In general, such comprehensive reports must include information on deaths and injuries based on claims and notices about incidents involving the manufacturer's products, and the numbers of property damage claims, consumer complaints, warranty claims, and field reports received by the manufacturer. For field reports other than those from dealers, a copy of the field report must also be submitted. All other manufacturers of equipment, and manufacturers that produce fewer than 500 vehicles per year of each category, need only report a very limited amount of information; *i.e.*, information regarding claims and notices of death received by the manufacturer involving its products.

Business entities are defined as small by standard industry classification for the purposes of receiving Small Business Administration (SBA) assistance. One criterion for determining size, as stated in 13 CFR 121.201, is the number of employees in the firm. For establishments primarily engaged in manufacturing or assembling automobiles, light and heavy duty trucks, buses, motor homes, new tires, or motor vehicle body manufacturing, the firm must have less than 1,000 employees to be classified as a small business. For establishments manufacturing truck trailers, motorcycles, child restraint systems, lighting, motor vehicle seating and interior trim packages, or re-tread tires, the firm must have less than 500 employees to be classified as a small business. That 500-employee limit also

applies to vehicle alterers and second-stage vehicle manufacturers. For establishments manufacturing many other equipment items, the firm must have less than 750 employees to be classified as a small business.

The EWR regulation will have some cost impact on both large and small manufacturers throughout the motor vehicle and motor vehicle equipment industry. With respect to equipment manufacturers, we believe that there are many thousands of manufacturers of original equipment and of replacement equipment (other than tires and CRS), most of which are small businesses. However, as noted above, we decided not to require such equipment manufacturers to submit comprehensive EWR information.

We believe that there are few, if any, manufacturers of CRSs that are small businesses. While there are some tire manufacturers that are small businesses, it is likely that they will not have to report comprehensive EWR information about their products, since the agency included a provision under which such reporting is not required for ''each group of tires with the same SKU [stock keeping unit], plant where manufactured, and year for which the volume produced or imported is less than 15,000, or are deep tread, winter-type snow tires, space-saver or temporary use spare tires, tires with nominal rim diameters of 12 inches or less, or are not passenger car tires, light truck tires, or motorcycle tires.'' See the introductory paragraph to 49 CFR 579.26, as amended at 68 FR 35132 (June 11, 2003).

Most vehicles are manufactured by large businesses; however, many vehicle manufacturers are small businesses under the SBA guidelines. While those guidelines refer to the number of employees and the EWR regulation differentiates in terms of vehicle production, it is reasonable to assume that the number of employees of a company is related to the number of vehicles produced by that company.

With respect to trailer manufacturers, their production ranges from under 500 to over 50,000 units per year. In the Preliminary Regulation Evaluation (PRE) [5] for the EWR regulation, we estimated that there were eight large trailer manufacturers and hundreds of small trailer manufacturers of trailers. (We did not attempt to divide this group by the size of the trailers manufactured by the company.) We received no comments in response to that estimate, and we retained it in the Final Regulatory Evaluation (FRE).[6]

Following receipt of the petitions for reconsideration, we have reexamined the trailer manufacturing industry. Among other things, we reviewed the North American Industry Classification System (NAICS) maintained by the SBA, which indicates that, in 2000, there were slightly over one thousand manufacturers of truck trailers and travel/camper trailers that are considered small businesses (*i.e.*, that have fewer than 500 employees). *See http://www.sba.gov/advo/stats/us00_n6.pdf*. However, the NAICS does not indicate which of these manufacturers produce 500 or more vehicles per year. NATM, which submitted one of the petitions for reconsideration of the EWR regulation, stated that 154 of its members manufacture over 500 trailers per year, and 148 of those members employ less than 500 employees.[7]

In order to estimate the percentage of vehicle manufacturers that will be required to submit comprehensive EWR reports (*i.e.*, those that produce 500 or more vehicles per year), we examined World Manufacturer Identifier (WMI) data.[8] The WMI is included in the Vehicle Identification Number (VIN), which is required on all vehicles. *See* 49 CFR part 565. From its WMI, it is possible to determine whether a given manufacturer produces fewer than 500 vehicles per year.[9] It is likely that virtually all of those manufacturers are small businesses as defined in the SBA regulations.

There are approximately 23,500 WMI codes assigned to manufacturers for vehicles intended for sale in the United States. This number likely overstates the number of current manufacturers, since a WMI code is assigned for 30 years, and some of the manufacturers that have been assigned WMI codes may no longer be in business.[10] However, the WMI data allow us to estimate the proportion of manufacturers that produce 500 or more vehicles per year.

Of those 23,500 codes, approximately 17,700 (75 percent) are assigned to manufacturers that produce fewer than 500 vehicles per year. By examining the VINs, we were able to ascertain the vehicle category for approximately 15,000 of those 17,700 small manufacturers.[11] Of those, 84 percent (about 12,800) were trailer manufacturers, 8 percent were medium/heavy truck and bus manufacturers, 5 percent were motorcycle manufacturers, and 3 percent were light vehicle manufacturers.

The remaining 5800 WMI codes were assigned to manufacturers of 500 or more vehicles per year. Of the approximately 3400 manufacturers for which the vehicle category could be determined, approximately 64 percent (almost 2,200) were trailer manufacturers, 9 percent were medium/heavy truck and bus manufacturers, 10 percent were motorcycle manufacturers, and 16 percent were light vehicle manufacturers.

We do not have data that would enable us to identify how many manufacturers of 500 or more vehicles per year employ over 500 (or 1000) employees. However, it is reasonable to assume that there are at least several hundred (and perhaps more) manufacturers of 500 or more vehicles per year that would be considered small businesses under the SBA criterion, while there are thousands of small businesses that manufacture fewer than 500 vehicles per year. The vast majority of the latter group are trailer manufacturers.

We previously considered the economic impacts of early warning reporting on manufacturers that are small entities in the context of 49 U.S.C. 30166(m)(4)(D) and the RFA. As noted earlier, in the NPRM, we asked interested persons to submit information on estimated costs of compliance. Although we received responses on behalf of large vehicle manufacturers, we did not receive any usable information with respect to the cost impacts on small businesses.

[5] Docket NHTSA–2001–8677–64. Available at *http://dmses.dot.gov/docimages/pdf75/145583_web.pdf*.

[6] Docket NHTSA–2001–8677–470. Available at *http://dmses.dot.gov/docimages/pdf82/178899_web.pdf*.

[7] NATM's Web site states that the association has 339 members. Thus, somewhat over half of its members are not subject to the comprehensive EWR reporting requirements.

[8] The agency's analysis of the WMI data is described in more detail in a memorandum submitted to the docket for this proceeding. A table listing all WMIs is publicly available through the NHTSA Web site. The table can be viewed on the Internet as follows:

1. Enter the address ''*ftp://ftp.nhtsa.dot.gov/Manufacture*.''

2. Open the MS Access database titled ''Manufacturer.mdb.''

3. Open the table titled ''WMI.''

[9] Such manufacturers have a ''9'' in the third position of the WMI code and a specific numeric code in the 12th, 13th, and 14th position of the VIN.

[10] In addition, while the vast majority of manufacturers have only a single WMI, a few manufacturers have more than one (*e.g.*, a large U.S. manufacturer with production facilities worldwide may utilize several WMI codes for the same make and model of vehicle that is produced in different countries). Also, foreign manufacturers may register for a WMI for use in the United States, but then decide not to sell any vehicles in this country.

[11] In the other cases, the information was either not provided, vague, or in a foreign language.

It is clear that the limited reporting required of equipment manufacturers (other than manufacturers of tires and CRSs) and of those small vehicle manufacturers that produce fewer than 500 vehicles per year would impose at most a negligible economic burden, and in most cases absolutely no burden at all. These manufacturers need only report information about claims and notices they receive that involve deaths allegedly associated with their products. *See* 49 CFR 579.27. Most of these manufacturers will never receive such a claim or notice, and therefore they would not need to submit anything to the agency under the regulation. And, in those rare instances where such a manufacturer does receive such a claim or notice, it can provide the required information to NHTSA by filling out a simple form that can be found on the NHTSA Internet Web site. *See* 49 CFR 579.28(a)(2).

As we explained above, this group contains approximately 75 percent of all vehicle manufacturers (based on an analysis of the WMI codes) and all of the many thousands of equipment manufacturers, many of which are small businesses under the SBA criterion. Thus, it is likely that well over 80 percent of all the manufacturers in the motor vehicle industry, and probably well over 90 percent of the small businesses in that industry, will have a negligible reporting burden.

Vehicle manufacturers that must report comprehensive EWR information (*see* 49 CFR 579.21–24) will have a reporting burden that is larger than the burden on those manufacturers that only report information about incidents involving deaths under Section 579.27. However, as explained below, we continue to believe the regulation will not impose a significant burden on a substantial number of small entities.

As we first pointed out in the preamble to the Final Rule (67 FR at 45870), the costs of reporting are directly related to the volume of reportable communications submitted to a given manufacturer. After explaining that the regulation does not require manufacturers to undertake new collections of information, we concluded that the total number of reportable communications to relatively small manufacturers would probably be low enough that the company would not have to invest in a new computer system. *Id.*[12]

Unlike the large manufacturers, small vehicle manufacturers are unlikely to prepare any field reports, as that term is defined in the EWR regulation, since they generally do not maintain an engineering staff or an extensive dealer network. And, as noted above, the vast majority are unlikely to receive any claims or notices of deaths or injuries and will receive few (if any) property damage claims.

It is likely that small vehicle manufacturers will receive some warranty claims and, to a lesser extent, consumer complaints. In an effort to estimate the number of consumer complaints that are likely to be received by relatively small manufacturers, NHTSA's Office of Defects Investigation (ODI) reviewed data compiled during its investigations of alleged defects in trailers during the past nine years.[13] A total of 18 defect investigations were opened on trailers of all sizes from 1995 through 2003, and ODI received information about the number of consumer complaints submitted to the manufacturer about the alleged defect in 14 of those investigations. The overall average number of such complaints in those 14 investigations was 26; however, 3 of the investigations had significantly larger number of complaints than all the rest. The average number of consumer complaints in the 11 other investigations was 2. Considering the number of affected models and model years involved, there was an average of approximately one consumer complaint per model and model year of production in these investigations. The overall average number of vehicles involved in those 14 investigations was 40,000. However, there were 4 outlying populations—two large (398,918 and 85,361) and two small (8 and 133)—which skew the data. Absent these 4 unrepresentative investigations, the average vehicle production was 8,000.

These data from ODI investigative files likely overstate the average number of such items received by trailer manufacturers in general, since ODI would not have opened an investigation unless there was reason to believe that there was a possible defect in the vehicle in question. Thus, it is likely that vehicles that are not the subject of a defect investigation would be the subject of fewer, if any, warranty claims and consumer complaints than vehicles that are the subject of an ODI investigation.[14]

It is important to recognize that the burden of maintaining and retaining information about warranty claims and consumer complaints is not attributable to the EWR regulation. Pursuant to NHTSA's recordkeeping regulations, set out at 49 CFR part 576, all vehicle manufacturers (small as well as large) have long been required to maintain all records ''that contain information concerning malfunctions that may be related to motor vehicle safety,'' including ''work performed under warranties,'' for a period of five calendar years. *See* 49 CFR 576.5(a) and 576.6.[15] The only additional burden added by the EWR regulation is to sort this information into specified systems and components,[16] prepare the data in a specified format, and submit it to NHTSA electronically four times per year. Those additional steps do not impose a significant burden on these manufacturers.

As discussed above in this notice, during the summer of 2003, ODI received information from a number of trailer manufacturers about the anticipated burdens of compliance with the EWR regulation. Almost all of the companies indicated that they had not had, and did not foresee, any significant difficulties in complying. Although the anticipated costs varied widely, depending in part upon the size of the

[12] In the PRE and in the FRE, we provided estimates of the numbers of reportable communications and costs. However, because we did not have much information about relatively small companies, most of this analysis was based on information provided by the Alliance of Automobile Manufacturers (Alliance), which represents most of the largest light vehicle manufacturers. It is evident that the number of items to be reported by the members of the Alliance will far exceed the numbers to be reported by small manufacturers, as will the costs of such reporting.

[13] We limited this inquiry to trailer investigations because, as shown above, most trailer manufacturers are small businesses, and it is difficult to identify which manufacturers of other categories of vehicles are small businesses. We limited the inquiry to consumer complaints because we did not have relevant warranty data for most of those investigations. More details about this analysis are included in a memorandum that we have placed in the docket for this rulemaking.

[14] We recognize that if there were an emerging problem in a vehicle model that led to an increase in the number of death and injury incidents and/or the amount of other reportable data, it could increase the costs of EWR reporting. However, any such deviation from the normal, expected number of problems is exactly the sort of information that NHTSA needs to promptly identify potential safety defects, which is consistent with the Congressional direction in 49 U.S.C. § 30166(m)(4)(D) to weigh reporting burdens against the need to obtain relevant information about safety defects.

[15] Companies also maintain warranty data for their own business purposes. First, the cost of repairing products under warranty can be deducted from income, assuming proper records are kept. Moreover, companies generally want to identify problems that lead to warranty repairs as soon as possible, so they can correct those problems prospectively in new production and thereby minimize future warranty costs. Unless they keep warranty data, they cannot identify any problem trends. Similarly, consumer complaints can also indicate product problems that companies will want to address.

[16] There are 14 such groupings for trailers (*see* 49 CFR 579.24(b)(2)) and several additional categories for other types of vehicles that contain engines (*see* paragraph (b)(2) of 49 CFR 579.21 through 579.23).

manufacturer, estimated average start-up costs ranged from $15,000 to $142,500, and estimated average annual compliance costs ranged from $15,244 to $132,000.

In a separate effort to obtain cost information, ODI contacted a business that provides consultation services and computer software that is designed to assist vehicle and equipment manufacturers in preparing for and complying with the EWR regulation. As discussed above, this company advised ODI that its fee for these services would vary, depending on the amount and complexity of reporting to be performed by the manufacturer.

For the reasons stated above, including the matters discussed in Section II.4 of this notice, and based on the best information available to the agency at this time, I certify that maintaining the existing 500-vehicle threshold for comprehensive early warning reporting will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism). We previously considered Executive Order 13132 in the Final Rule. 67 FR 45871 (July 10, 2002). We incorporate our previous statements by reference.

Civil Justice Reform. This notice makes no changes to the current early warning reporting regulation, nor will it have a retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Paperwork Reduction Act. We received Paperwork Reduction Act clearance from OMB on December 20, 2002, which will expire on December 31, 2005. The clearance number is 2127–0616. This notice does not make any substantive amendments to the Final Rule, so the overall paperwork burden is not changed.

Data Quality Act. We previously considered the Data Quality Act in the Final Rule. 67 FR 45871–45872 (July 10, 2002). We incorporate our previous statements by reference.

Unfunded Mandates Reform Act. We previously considered the Unfunded Mandates Reform Act in the Final Rule. 67 FR 49263–49264 (July 30, 2002). We incorporate our previous statements by reference.

Issued on: January 16, 2004.

Jeffrey W. Runge,

Administrator.

[FR Doc. 04–1469 Filed 1–22–04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 040113012–4012–01; I.D. 121903D]

RIN 0648–AR62

50 CFR Part 648

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Framework Adjustment 4

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes measures contained in Framework Adjustment 4 (Framework 4) to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) that would allow for the transfer at sea of scup between commercial fishing vessels, and clarify the circumstances under which a vessel must operate with the specified mesh. Regulations regarding the establishment and administration of research set-aside (RSA) quota would also be amended to clarify how unused RSA quota is to be returned to the fishery.

DATES: Comments on this proposed rule must be received by February 9, 2004.

ADDRESSES: Copies of the Framework 4 document, its Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), the Environmental Assessment (EA), and other supporting documents for the framework adjustment are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901–6790. The EA/RIR/IRFA is also accessible via the Internet at *http:/www.nero.nmfs.gov*. Written comments on the proposed rule should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Framework 4 (Scup).'' Comments may also be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Paul Perra, Fishery Policy Analyst, (978) 281–9153, fax (978) 281–9135, e-mail paul.perra@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils. The management unit for scup (Stenotomus chrysops), specified in the FMP, is defined as U.S. waters of the Atlantic Ocean from 35°13.3′ N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border. The FMP and its implementing regulations at 50 CFR part 648, subparts A (general provisions), and H (scup) describe the process for specifying commercial scup measures that apply in the Exclusive Economic Zone (EEZ). The states manage these fisheries within 3 nautical miles of their coasts, under the Commission's Interstate Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. The Federal regulations govern vessels fishing in the EEZ, as well as vessels possessing a Federal fisheries permit, regardless of where they fish.

The Council initiated Framework 4, pursuant to § 648.127(a), to reduce regulatory discards of scup that can occur when vessels catch large amounts of scup, which would exceed their trip limits, and must discard them. The majority of these discarded scup would die, and thus be counted as fishing mortality, rather than landings that would be counted under the quota. Framework 4 would allow the commercial scup fishery to be more efficient and to better achieve the management objectives of the FMP, specifically regarding attainment of optimum yield from the scup fishery.

The commercial scup fishery is managed under a system that allocates the annual quota to three periods: Winter I, January-April (45.11 percent); Summer, May-October (38.95 percent); and Winter II, November-December (15.94 percent). During the Winter periods, the quota is monitored on a coastwide basis. During the Summer period, the quota is also monitored on a coastwide basis, but the Commission uses a state-by-state allocation system to help manage the Federal quota. The Federal commercial scup fishery is closed coastwide when the allocation for a period is reached. In addition, any overages during a quota period are subtracted from that period's allocation for the following year. Any quota overages by a state during the Summer period (whether or not the total Summer period quota is exceeded) are subtracted