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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, November 9, 2010
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Presidential Documents

Title 3—

The President

Executive Order 13553 of September 28, 2010

Blocking Property of Certain Persons With Respect to Serious Human Rights Abuses by the Government of Iran and Taking Certain Other Actions

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701*et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601*et seq.*), the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Public Law 111–195) (CISADA), and section 301 of title 3, United States Code, and in order to take additional steps with respect to the national emergency declared in Executive Order 12957 of March 15, 1995,

I, BARACK OBAMA, President of the United States of America, hereby order:

Section 1. (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any overseas branch, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) the persons listed in the Annex to this order; and

(ii) any person determined by the Secretary of the Treasury, in consultation with or at the recommendation of the Secretary of State:

(A) to be an official of the Government of Iran or a person acting on behalf of the Government of Iran (including members of paramilitary organizations) who is responsible for or complicit in, or responsible for ordering, controlling, or otherwise directing, the commission of serious human rights abuses against persons in Iran or Iranian citizens or residents, or the family members of the foregoing, on or after June 12, 2009, regardless of whether such abuses occurred in Iran;

(B) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the activities described in subsection (a)(ii)(A) of this section or any person whose property and interests in property are blocked pursuant to this order; or

(C) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

(b) I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to subsection (a) of this section would seriously impair my ability to deal with the national emergency declared in Executive Order 12957, and I hereby prohibit such donations as provided by subsection (a) of this section.

(c) The prohibitions in subsection (a) of this section include but are not limited to:

(i) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(ii) the receipt of any contribution or provision of funds, goods, or services from any such person.

(d) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 2. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 3. For the purposes of this order:

(a) the term "person" means an individual or entity;

(b) the term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States;

(d) the term "Government of Iran" includes the Government of Iran, any political subdivision, agency, or instrumentality thereof, and any person owned or controlled by, or acting for or on behalf of, the Government of Iran; and

(e) the term "family member" means, with respect to an individual, a spouse, child, parent, sibling, grandchild, or grandparent of the individual.

Sec. 4. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 12957, there need be no prior notice of a listing or determination made pursuant to section 1(a) of this order.

Sec. 5. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and sections 105(a)–(c) of CISADA (22 U.S.C. 8514(a)–(c)), other than as described in sections 6 and 7 of this order, as may be necessary to carry out the purposes of this order other than the purposes of sections 6 and 7. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby further authorized to exercise the functions and waiver authorities conferred upon the President by section 401(b) of CISADA (22 U.S.C. 8551(b)) with respect to the requirement to impose or maintain sanctions pursuant to IEEPA under section 105(a) of CISADA (22 U.S.C. 8514(a)) and to redelegate these functions and waiver authorities consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 6. The Secretary of State is hereby authorized to exercise the functions and authorities conferred upon the President by section 105(a) of CISADA (22 U.S.C. 8514(a)) with respect to imposition of the visa sanctions described in section 105(c) of CISADA (22 U.S.C. 8514(c)) and to redelegate these functions and authorities consistent with applicable law. The Secretary of State is hereby further authorized to exercise the functions and authorities

conferred upon the President by section 105(c) of CISADA (22 U.S.C. 8514(c)) with respect to the promulgation of rules and regulations related to the visa sanctions described therein and to redelegate these functions and authorities consistent with applicable law. The Secretary of State is hereby further authorized to exercise the functions and waiver authorities conferred upon the President by section 401(b) of CISADA (22 U.S.C. 8551(b)) with respect to the requirement to impose or maintain visa sanctions under section 105(a) of CISADA (22 U.S.C. 8514(a)) and to redelegate these functions and waiver authorities consistent with applicable law. In exercising the functions and authorities in the previous sentence, the Secretary of State shall consult the Secretary of Homeland Security on matters related to admissibility or inadmissibility within the authority of the Secretary of Homeland Security.

Sec. 7. The Secretary of State, in consultation with the Secretary of the Treasury, is hereby authorized to submit the initial and updated lists of persons who are subject to visa sanctions and whose property and interests in property are blocked pursuant to this order to the appropriate congressional committees as required by section 105(b) of CISADA (22 U.S.C. 8514(b)) and to redelegate these functions consistent with applicable law. The Secretary of State, in consultation with the Secretary of the Treasury, is hereby further authorized to exercise the functions and waiver authorities conferred upon the President by section 401(b) of CISADA (22 U.S.C. 8551(b)) with respect to the requirement to include a person on the list required by section 105(b) of CISADA (22 U.S.C. 8514(b)) and to redelegate these functions and waiver authorities consistent with applicable law.

Sec. 8. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA, as may be necessary to carry out section 104 of CISADA (22 U.S.C. 8513). The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law.

Sec. 9. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to determine that circumstances no longer warrant the blocking of the property and interests in property of a person listed in the Annex to this order, and to take necessary action to give effect to that determination.

Sec. 10. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 11. The measures taken pursuant to this order are in response to actions of the Government of Iran occurring after the conclusion of the 1981 Algiers Accords, and are intended solely as response to those later actions.

Sec. 12. This order is effective at 12:01 a.m. eastern daylight time on September 29, 2010.

THE WHITE HOUSE,
September 28, 2010.

Billing code 3195–W1–P

ANNEX

Individuals

1. Mohammad Ali JAFARI [Commander of the Islamic Revolutionary Guard Corps, born September 1, 1957]
2. Sadeq MAHSOULI [Minister of Welfare and Social Security, former Minister of the Interior and Deputy Commander-in-Chief of the Armed Forces for Law Enforcement, born 1959]
3. Qolam-Hossein MOHSENI-EJEI [Prosecutor-General of Iran, former Minister of Intelligence, born circa 1956]
4. Saeed MORTAZAVI [Head of Iranian Anti-Smuggling Task Force, former Prosecutor-General of Tehran, born 1967]
5. Heydar MOSLEHI [Minister of Intelligence, born 1956]
6. Mostafa Mohammad NAJJAR [Minister of the Interior and Deputy Commander-in-Chief of the Armed Forces for Law Enforcement, born 1956]
7. Ahmad-Reza RADAN [Deputy Chief of the National Police, born 1963 or 1964]
8. Hossein TAEB [Deputy Islamic Revolutionary Guard Corps Commander for Intelligence, former Commander of the Basij Forces, born 1963]

[FR Doc. 2010–24839
Filed 9–30–10; 8:45 am]
Billing code 4811–33–C

Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 870

RIN 3206–AG63

Federal Employees' Group Life Insurance Program: Miscellaneous Changes, Clarifications, and Corrections

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is adopting as final changes to the Federal Employees' Group Life Insurance (FEGLI) Program regulations to provide for the new election opportunities for certain civilian and Defense Department employees deployed in support of a contingency operation required by Public Law 110–417; to provide for the continuation of coverage opportunities for Federal employees called to active duty required by Public Law 110–181; and to update the regulations with other changes, clarifications, and corrections.

DATES: Effective October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Ronald Brown, Policy Analyst, at (202) 606–0004 or e-mail: *ronald.brown@opm.gov.*

SUPPLEMENTARY INFORMATION: On December 31, 2009, OPM published proposed regulations (74 FR 69288) with miscellaneous changes, clarifications, and corrections. We have identified an additional correction in section 870.506(g)(2) which stated "an election of Optional elect insurance must be made within 60 days after the date of notification of deployment in support of a contingency operation." The word "elect" has been removed so that section correctly states "an election of Optional insurance must be made within 60 days of notification of deployment in support of a contingency operation." These final regulations reflect that change. Only one comment was received on the proposed rulemaking. The commenter requested we hold a FEGLI open season. We will evaluate the options for an open season and will make information available to Federal employees when we decide to hold one. Accordingly, we are adopting the December 31, 2009, proposed regulations with one correction.

The final changes, clarifications, and corrections are:

Changes

(1) Public Law 106–398 amended 5 U.S.C. 8702 to allow Department of Defense (DoD) employees who are designated as "emergency essential" under 10 U.S.C. 1580 to elect Basic insurance within 60 days of being so designated. Section 1103 of Public Law 110–417, the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, which became effective on October 14, 2008, further amended chapter 87 of title 5, U.S. Code, to allow "emergency essential" DoD employees, as well as civilian employees deployed in support of a contingency operation, to elect Basic insurance, Option A (Standard) coverage and Option B (Additional) coverage up to a maximum of five (5) multiples. We are amending the regulations to include these election opportunities. These changes can be found in § 870.503(e) and (f) and § 870.506(f) and (g).

(2) Public Law 110–279, enacted July 17, 2008, provides for certain Federal employee benefits to be continued for certain employees of the Senate Restaurants after the operations of the Senate Restaurants are contracted to be performed by a private business concern. The law provides that a Senate Restaurants employee, who is an employee of the Architect of the Capitol on the date of enactment and who accepts employment by the private business concern as part of the transition, may elect to continue coverage under certain Federal employee benefits programs during continuous employment with the business concern. Former Senate Restaurants employees who have FEGLI coverage as of the date of transfer may continue their coverage, if they also elected to continue their retirement coverage under either chapter 83 or 84 of title 5, U.S. Code. These individuals will continue to be eligible for FEGLI during continuous employment with the private contractor unless the employees opt out of the FEGLI program. We are revising the FEGLI regulations to address coverage for these individuals. These changes can be found in § 870.601(a) and § 870.602(b).

(3) Section 1102 of Public Law 110–181, the National Defense Authorization Act for Fiscal Year 2008, enacted January 28, 2008, amended 5 U.S.C. 8706 to authorize the continuation of FEGLI coverage for up to 24 months for Federal employees called to active duty. FEGLI coverage is free for the first 12 months, but employees must pay the full cost (Government and employee share) of the premiums for the additional 12 months. We are amending the regulations to include this election opportunity. These changes can be found in § 870.601(d)(3)(iii).

(4) Public Law 110–177, the Court Security Improvement Act of 2007, enacted January 7, 2008, deems certain categories of judicial officers to be considered as judges of the United States under section 8701 of title 5, United States Code. The law requires magistrate judges retired under section 377 of title 28, United States Code, to be considered Federal judges under the FEGLI law. Public Law 111–8, the Omnibus Appropriations Act of 2009, enacted March 9, 2009, further amended the FEGLI law, by identifying additional judges who should continue to be treated as employees following retirement. This law requires bankruptcy judges and magistrate judges retired under section 377 of title 28, U.S. Code, and judges retired under section 373 of title 28, to be considered Federal judges under the FEGLI law. In addition, we identified additional judges who also should continue to be treated as employees following retirement (DC judges and Tax Court judges). We are changing the regulations to add these judges. These changes can be found in § 870.703(e)(1).

(5) Currently, with a change in family circumstances an employee must already have Basic insurance and may elect only Option B and Option C. The number of multiples of Option B that such an employee may elect with a change in family circumstances is limited. We are eliminating the limitations on the coverage an employee

may elect, so that an employee making an election based on a change in family circumstances, may elect Basic insurance and any and all Optional insurance, including up to the maximum number of multiples available of Option B and Option C. These changes can be found in § 870.503(b)(3) and § 870.506(a).

(6) Newly eligible employees must be in pay and duty status before Optional insurance can become effective. The six-month belated election opportunity allows Optional insurance to become effective retroactive to the pay period following the one in which the employee became eligible, but it does not require the employee to be in pay and duty status at that time. We are changing the regulations to apply the same pay and duty status requirements for belated elections that are required for elections made on a timely basis. These changes can be found in § 870.503 and § 870.506.

(7) We are making a change to provide that no one but the insured individual has the right to convert coverage when insurance terminates, unless the insured individual has assigned his or her insurance, with the exception that an individual having power of attorney may convert on behalf of the insured. In addition, a family member may convert Option C coverage. These changes can be found in § 870.603(a)(1).

(8) We are changing the time frame for making an initial election of Optional insurance from 31 days to 60 calendar days after the employee becomes eligible. We are also extending the time frame for electing coverage by providing satisfactory medical information from 31 days to 60 calendar days after OFEGLI's (Office of Federal Employees' Group Life Insurance) approval. These changes will make these election time frames consistent with other election opportunities for Federal benefits. These changes can be found in § 870.504 (a)(1) and § 870.506(c).

(9) When an employee who elected a partial living benefit dies, the post-election BIA (Basic Insurance Amount) is multiplied by the extra benefit age factor in effect at the time that OFEGLI received the living benefit application. We are changing this computation to use the age factor in effect nine months from the date OFEGLI received the living benefit application to be consistent with the age factor used to compute the amount of the living benefit. These changes can be found in § 870.203.

(10) Public Law 108–445, The Department of Veterans Affairs (VA) Health Care Personnel Enhancement Act of 2004, provided for the payment of market pay, in addition to base pay, for physicians and dentists employed by the VA. Accordingly, in addition to base pay, market pay must be used to determine the annual rate of pay described in § 870.204 for these individuals. Public Law 96–330, currently cited in § 870.204(a)(2)(x), relating to the treatment of bonuses for physicians and dentists employed by the VA, is no longer in effect. We are revising § 870.204 to include market pay in the determination of annual pay for these individuals.

(11) In situations of concurrent employment, the amount of Basic insurance and Option B insurance is based on the combined salaries. However, if an employee accepts a temporary position while in nonpay status from a covered position, the amount of insurance is based on whichever salary is higher. We are eliminating this exception, so that this situation will be treated the same as other instances of concurrent employment. These changes can be found in § 870.204(g).

(12) Currently, the earliest that coverage elected as a result of providing satisfactory medical information can become effective is the day after the date OFEGLI approves the employee's request for coverage. We are changing the regulations to allow Basic insurance to become effective on the date of OFEGLI's approval if the employee is in pay and duty status. We are also allowing Option A and Option B coverage to become effective on the date of OFEGLI's approval if the employing office receives the employee's election on or before that date and the employee is in pay and duty status. These changes can be found in § 870.503 and § 870.506.

(13) We are changing the regulations to treat reemployed compensationers the same as reemployed annuitants. When a compensationer returns to work under conditions that allow him or her to continue receiving compensation, Basic insurance (and Options A and C) held as a compensationer are suspended and the insured obtains coverage as an employee. If the reemployed compensationer dies in service, OFEGLI would pay Basic insurance benefits based on whichever amount is higher: The suspended compensationer coverage or the coverage through reemployment. As with reemployed annuitants, Option B would remain with the individual's compensation, unless the employee elects to have it through reemployment. If a reemployed compensationer stops working and continues to receive compensation, he or she could continue the FEGLI acquired through reemployment if the individual meets the 5-year/all-opportunity requirement and has been reemployed for the length of time required for a reemployed annuitant to earn a supplemental annuity (1 year for full-time employment). These changes can be found in § 870.707.

(14) Public Law 106–522, 114 Stat. 2440, enacted November 22, 2000, changed the entitlement to Federal employee benefits for the District of Columbia (DC) Offender Supervision Trustee and employees of the Trustee. Previously these employees were treated as Federal employees for purposes of Federal employee retirement and insurance programs only if they transferred to the DC government within three days of separating from Federal service. Public Law 106–522 gave these employees retroactive entitlement to be treated as Federal employees on the date of their appointment or the date their sub-organizations transferred to the Trustee's office, whichever is later. We are reflecting this change in the regulations. These changes can be found in § 870.302(a)(3).

(15) Public Law 105–311, the Federal Employees Life Insurance Improvement Act, 112 Stat. 2950, enacted October 30, 1998, amended chapter 87 of title 5, U.S. Code, to allow retiring employees to elect either No Reduction or Full Reduction for their Option B and Option C coverage. This election was to be made at the time of retirement, the same as the election for Basic insurance. Implementing this provision required programming changes to the electronic records system for annuitants to allow for "mixed" elections, *i.e.,* electing reductions for some coverage, but not for other coverage. While these system changes were being made, annuitants were required to elect either No Reduction or Full Reduction for Option B and Option C coverage at the time of retirement. Then, shortly before the annuitant's 65th birthday, the insured was given a second opportunity to make another election, this time being allowed to choose No Reduction for some multiples and Full Reduction for others. We are eliminating the opportunity for a second election at age 65. There are several reasons for this change: (i) The law states the election must be made at the time of retirement; (ii) administering the second election opportunity at age 65 is an ongoing cost to the Program; (iii) the 2nd election may be confusing to some annuitants, since the election for the Basic insurance reduction is made at the time of retirement without a second opportunity at age 65; and (iv) the mailing itself is problematic with regard to individuals who are paying their

premiums directly, as described in § 870.405, and individuals who have assigned their coverage. Individuals who have retired since this statutory provision became effective (April 24, 1999) and who have not yet turned 65 will be given the opportunity to make their "final" election. These changes can be found in § 870.705(d).

(16) We are eliminating the requirement for designated beneficiaries of assignees to notify the appropriate employing office of any change in address, since we do not require any other designated beneficiaries to make such a notification. The requirement will still apply to assignees themselves. These changes can be found in § 870.910.

(17) The current regulations regarding reconsiderations require the insured individual to provide his or her Social Security Number when filing a request for reconsideration. We are eliminating this requirement. Annuitants and compensationers may be identified by their retirement or compensation claim numbers. Agencies are able to identify employees by their names, addresses, and dates of birth. These changes can be found in § 870.105.

(18) Beginning April 24, 1999 and continuing until April 24, 2002, eligible employees could elect portability for Option B coverage that would otherwise terminate. The 3-year portability demonstration project has expired and employees are no longer able to elect portability. We are removing subpart L and all references to portability from the regulations, including the definitions of "Portability Office" and "ported coverage" from § 870.101.

(19) The current regulations specify that only the insured individual may elect a living benefit and no one can elect a living benefit on his or her behalf. We are changing the regulations to allow another person with a power of attorney to apply for a living benefit on the insured individual's behalf. These changes can be found in § 870.1103.

Clarifications

(1) The regulations state that when incontestability (allowing erroneous coverage to remain in effect under certain conditions) applies, if the individual does not want the erroneous coverage, he or she may cancel the coverage on a prospective basis; there is no refund of premiums. We are clarifying the regulations to state that if the erroneous coverage is Option C, and there are no eligible family members, the cancellation is retroactive to the end of the pay period in which the individual last had any eligible family members. In this case, the revision also provides for a refund of the Option C premiums for this period of erroneous coverage. We are also clarifying the regulations to provide that an annuitant or compensationer cannot enroll for life insurance coverage after retirement and any erroneous enrollments must be corrected. These changes can be found in § 870.104.

(2) We are clarifying the regulations to better describe the "on or after" provision for the effective date of coverage. Most elections require that the employee be in pay and duty status before coverage can become effective. In these instances, the coverage becomes effective the day the employing office receives the election, if the employee is in pay and duty status on that date. If the employee is not in pay and duty status on the date the employing office receives the election, the coverage becomes effective the next date that the employee is in pay and duty status. These changes are found throughout the regulations where effective dates are discussed.

(3) We are clarifying the computation of premium pay and availability pay to state that the employee's annual rate of basic pay is multiplied by the applicable percentage factor to determine pay for FEGLI purposes. These changes can be found in § 870.204(g).

(4) We are adding some definitions for clarity, including definitions of "covered position," "beneficiary," "acquisition of an eligible child," and "accidental death and dismemberment." We are also clarifying the definition of "court order." These changes can be found in § 870.101.

(5) We are clarifying the requirements for continuing FEGLI during an extended period of non-pay for the special non-pay situations discussed in § 870.508 to require that all such elections for continuing coverage must be made in writing.

Corrections

(1) We are correcting the regulations to state that premiums are based on the amount of insurance last in force for an individual during the pay period, rather than the amount in force on the last day of the pay period. In most instances this is the same thing; however, if an individual dies or separates during a pay period, the amount of insurance in force on the last day of the pay period is $0. In these instances, the amount of withholding from the final pay must be based on the amount of insurance on the date of death or separation. This change can be found in § 870.401(b).

(2) In § 870.701(c), Eligibility for life insurance, there is an incorrect reference at the end to § 870.702(a)(2). That reference should be to § 870.703(a)(2). The regulations have been changed to reflect this correction.

(3) In § 870.707(e)(2), Reemployed annuitants and compensationers, there is an incorrect reference at the end to § 870.702. That reference should be to § 870.703. The regulations have been changed to reflect this correction.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only affects life insurance benefits of Federal employees and retirees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

U.S. Office of Personnel Management.

John Berry,

Director.

■ Accordingly, OPM is amending 5 CFR part 870 as follows:

PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

■ 1. The authority citation for 5 CFR part 870 is revised to read as follows:

Authority: 5 U.S.C. 8716; Subpart J also issued under section 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; Sec. 870.302(a)(3)(ii) also issued under section 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 870.302(a)(3) also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251, and section 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 870.302(a)(3) also issued under section 145 of Pub. L. 106–522, 114 Stat. 2472; Secs. 870.302(b)(8), 870.601(a), and 870.602(b) also issued under Pub. L. 110–279, 122 Stat. 2604; Subpart E also issued under 5 U.S.C. 8702(c); Sec. 870.601(d)(3) also issued under 5 U.S.C. 8706(d); Sec. 870.703(e)(1) also issued under section 502 of Pub. L. 110–177, 121 Stat. 2542; Sec. 870.705 also issued under 5 U.S.C. 8714b(c) and 8714c(c); Public Law 104–106, 110 Stat. 521;

Subpart A—Administration and General Provisions

■ 2. Section 870.101 is amended as follows:

■ a. Remove the definitions of "Portability Office" and "ported coverage";

■ b. Add the following definitions of "accidental death and dismemberment",

"acquisition of an eligible child", "beneficiary", and "covered position"; and

■ c. Revise the definition of "court order".

The additions and revision read as follows:

§ 870.101 Definitions.

Accidental death and dismemberment refers to the insured's death or loss of a hand, a foot, or vision in one eye that results directly from, and occurs within one year of, a bodily injury caused solely through violent, external, and accidental means.

Acquisition of an eligible child occurs when:

(1) A child is born to the insured;

(2) The insured adopts a child;

(3) The insured acquires a foster child;

(4) The insured's stepchild or recognized natural child moves in with the insured;

(5) An otherwise eligible child's marriage is dissolved by divorce or annulment, or his or her spouse dies;

(6) The insured gains custody of an eligible child.

* * * * *

Beneficiary means the individual, corporation, trust, or other entity that receives FEGLI benefits when an insured individual dies.

* * * * *

Court order means:

(1) A court decree of divorce, annulment, or legal separation; or

(2) A court-approved property settlement agreement relating to a court decree of divorce, annulment, or legal separation—that requires benefits to be paid to a specific person or persons and is received in the employing office before the insured dies.

Covered position means a position in which an employee is not excluded from FEGLI eligibility by law or regulation.

* * * * *

■ 3. Sections 870.104 and 870.105 are revised to read as follows:

§ 870.104 Incontestability.

(a) If an individual erroneously becomes insured, the coverage will remain in effect if at least 2 years pass before the error is discovered, and if the individual has paid applicable premiums during that time. This applies to errors discovered on or after October 30, 1998, and applies only to employees, not retirees or compensationers.

(b) If an employee is erroneously allowed to continue insurance into retirement or while receiving compensation, the coverage will remain in effect if at least 2 years pass before the error is discovered, and if the annuitant or compensationer has paid applicable premiums during that time. This applies to such errors discovered on or after October 30, 1998.

(c) If an individual is erroneously enrolled in life insurance on or after the date he or she retires or begins receiving compensation, the coverage cannot remain in effect even if 2 years pass and the individual paid applicable premiums.

(d) If an individual who is allowed to continue erroneous coverage under this section does not want the coverage, he or she may cancel the coverage on a prospective basis, effective at the end of the pay period in which the waiver is properly filed. There is no refund of premiums. *Exception:* If an employee obtained Option C erroneously and did not have any eligible family members, that coverage may be cancelled retroactively and the insured will obtain a refund of the erroneous Option C premiums.

§ 870.105 Initial decision and reconsideration.

(a) An individual may ask his or her agency or retirement system to reconsider its initial decision denying:

(1) Life insurance coverage;

(2) The opportunity to change coverage;

(3) The opportunity to designate a beneficiary; or

(4) The opportunity to assign insurance.

(b) An employing office's decision is an initial decision when the employing office gives it in writing and informs the individual of the right to an independent level of review (reconsideration) by the appropriate agency or retirement system.

(c) A request for reconsideration must be made in writing and must include the following:

(1) The employee's (or annuitant's) name, address, date of birth;

(2) The reason(s) for the request; and

(3) The retirement claim number (Civil Service Annuity Claim Number) or compensation number, if applicable.

(d) A request for reconsideration must be made within 31 calendar days from the date of the initial decision (60 calendar days if overseas). This time limit may be extended when the individual shows that he or she was not notified of the time limit and was not otherwise aware of it or that he or she was unable, due to reasons beyond the individual's control, to make the request within the time limit.

(e) The reconsideration must take place at or above the level at which the initial decision was made.

(f) After reconsideration, the agency or retirement system must issue a final decision to the insured individual. This decision must be in writing and must fully state the findings.

Subpart B—Types and Amounts of Insurance

■ 4. In § 870.202, paragraph (a)(1) is revised to read as follows:

§ 870.202 Basic insurance amount (BIA).

(a)(1) An employee's Basic insurance amount (BIA) is either:

(i) The employee's annual rate of basic pay, rounded to the next higher thousand, plus $2,000; or

(ii) $10,000; whichever is higher, unless the employee has elected a Living Benefit under subpart K of this part. Effective for pay periods beginning on or after October 30, 1998, there is no maximum BIA. **Note:** If an employee's pay is "capped" by law, the amount of the Basic insurance is based on the capped amount, which is the amount the employee is actually being paid. It is not based on the amount the employee's pay would have been without the pay cap.

* * * * *

■ 5. Section 870.203 is revised to read as follows:

§ 870.203 Post-election BIA.

(a) The BIA of an individual who elects a Living Benefit under subpart K of this part is the amount of insurance left after the effective date of the Living Benefit election. This amount is the individual's post-election BIA.

(1) The post-election BIA of an individual who elects a full Living Benefit is 0.

(2) If an employee elects a partial Living Benefit, the employee still has some Basic insurance. OFEGLI determines this amount by computing the BIA as of the date it receives the completed Living Benefit application and reducing the amount by a percentage. This percentage represents the amount of the employee's partial Living Benefit payment, compared to the amount the employee could have received if he or she had elected a full Living Benefit. The amount that is left is rounded up or down to the nearest multiple of $1,000. (If the amount is midway between multiples, it is rounded up to the next higher multiple.)

(b) The post-election BIA cannot change after the effective date of the Living Benefit election.

(c) If an employee elected a partial Living Benefit and that employee is

under age 45 at the time of death, OFEGLI will multiply the post-election BIA by the appropriate factor, as specified in § 870.202(c), in effect on the date 9 months after the date OFEGLI received the completed Living Benefit application.

■ 6. In § 870.204, paragraphs (a)(2)(x) and (g) are revised to read as follows:

§ 870.204 Annual rates of pay.

(a) * * *

(2) * * *

(x) Market pay for physicians and dentists of the Department of Veterans Affairs under 38 U.S.C. 7431; and

* * * * *

(g)(1) Except as provided in paragraphs (g)(2) and (3) of this section, if an employee legally serves in more than one position at the same time, and at least one of those positions entitles the employee to life insurance coverage, the annual pay for life insurance purposes is the sum of the annual rate of basic pay fixed by law or regulation for each position.

(2) Paragraph (g)(1) of this section does not apply to—

(i) An employee of the Postal Service who works on a part-time flexible schedule; or

(ii) A temporary, intermittent decennial census worker.

(3) If an employee's annual pay includes premium pay or availability pay under paragraphs (e), (f), or (g) of this section, the annual pay is determined by multiplying the employee's annual rate of basic pay by the applicable percentage factor.

■ 7. In section 870.205, paragraph (b)(1) is revised to read as follows:

§ 870.205 Amount of Optional insurance.

* * * * *

(b)(1) Option B coverage comes in 1, 2, 3, 4, or 5 multiples of an employee's annual pay (after the pay has been rounded to the next higher thousand, if not already an even thousand). Effective for pay periods beginning on or after October 30, 1998, there is no maximum amount for each multiple. **Note:** If an employee's pay is "capped" by law, the amount of the Option B insurance is based on the capped amount, which is the amount the employee is actually being paid. It is not based on the amount the employee's pay would have been without the pay cap.

* * * * *

■ 8. Section 870.206 is revised to read as follows:

§ 870.206 Accidental death and dismemberment.

(a)(1) Accidental death and dismemberment coverage is an automatic part of Basic and Option A insurance for employees.

(2) There is no accidental death and dismemberment coverage with Option B or Option C.

(3) Individuals who are insured as annuitants or compensationers do not have accidental death and dismemberment coverage.

(b)(1) Under Basic insurance, accidental death benefits are equal to the BIA, but without the age factor described in § 870.202(c).

(2) Under Option A, accidental death benefits are equal to the amount of Option A.

(c)(1) Under Basic insurance, accidental dismemberment benefits for the loss of a hand, foot, or the vision in one eye are equal to one-half the BIA. For loss of 2 or more of these in a single accident, benefits are equal to the BIA.

(2) Under Option A, accidental dismemberment benefits for the loss of a hand, foot, or the vision in one eye are equal to one-half the amount of Option A. For loss of 2 or more of these in a single accident, benefits are equal to the amount of Option A.

(3) Accidental dismemberment benefits are paid to the employee.

(4) Accidental death benefits are paid to the employee's beneficiaries.

Subpart C—Eligibility

■ 9. Section 870.302 is revised to read as follows:

§ 870.302 Exclusions.

(a) The following individuals are excluded from life insurance coverage by law:

(1) An employee of a corporation supervised by the Farm Credit Administration, if private interests elect or appoint a member of the board of directors.

(2) An individual who is not a citizen or national of the United States and whose permanent duty station is outside the United States. *Exception:* an individual who met the definition of *employee* on September 30, 1979, by service in an Executive agency, the United States Postal Service, or the Smithsonian Institution in the area which was then known as the Canal Zone.

(3) An individual first employed by the government of the District of Columbia on or after October 1, 1987. *Exceptions:*

(i) An employee of St. Elizabeths Hospital, who accepts employment with the District of Columbia government following Federal employment without a break in service, as provided in section 6 of Public Law 98–621 (98 Stat. 3379);

(ii) An employee of the District of Columbia Financial Responsibility and Management Assistance Authority (Authority), who makes an election under the Technical Corrections to Financial Responsibility and Management Assistance Act (section 153 of Pub. L. 104–134 (110 Stat. 1321)) to be considered a Federal employee for life insurance and other benefits purposes; employees of the Authority who are former Federal employees are subject to the provisions of §§ 870.503(d) and 870.705 of this part;

(iii) The Corrections Trustee or an employee of that Trustee who accepts employment with the District of Columbia government within 3 days after separating from the Federal Government.

(iv) The Pretrial Services, Parole, Adult Probation and Offender Supervision Trustee or an employee of that Trustee;

(v) Effective October 1, 1997, a judicial or nonjudicial employee of the District of Columbia Courts, as provided by Public Law 105–33 (111 Stat. 251); and

(vi) Effective April 1, 1999, an employee of the Public Defender Service of the District of Columbia, as provided by Public Law 105–274 (112 Stat. 2419).

(4) A teacher in a Department of Defense dependents school overseas, if employed by the Federal Government in a nonteaching position during the recess period between school years.

(b) The following employees are also excluded from life insurance coverage:

(1) An employee serving under an appointment limited to 1 year or less. *Exceptions:*

(i) An employee whose full-time or part-time temporary appointment has a regular tour of duty and follows employment in a position in which the employee was insured, with no break in service or with a break in service of no more than 3 days;

(ii) An acting postmaster;

(iii) A Presidential appointee appointed to fill an unexpired term; and

(iv) Certain employees who receive provisional appointments as defined in § 316.403 of this chapter.

(2) An employee who is employed for an uncertain or purely temporary period, who is employed for brief periods at intervals, or who is expected to work less than 6 months in each year. *Exception:* an employee who is employed under an OPM-approved career-related work-study program

under Schedule B lasting at least 1 year and who is expected to be in pay status for at least one-third of the total period of time from the date of the first appointment to the completion of the work-study program.

(3) An intermittent employee (a non-full-time employee without a regularly-scheduled tour of duty). *Exception:* an employee whose intermittent appointment follows, with no break in service or with a break in service of no more than 3 days, employment in a position in which he or she was insured and to which he or she is expected to return.

(4) An employee whose pay, on an annual basis, is $12 a year or less.

(5) A beneficiary or patient employee in a Government hospital or home.

(6) An employee paid on a contract or fee basis. *Exception:* an employee who is a United States citizen, who is appointed by a contract between the employee and the Federal employing authority which requires his or her personal service, and who is paid on the basis of units of time.

(7) An employee paid on a piecework basis. *Exception:* an employee whose work schedule provides for full-time or part-time service with a regularly-scheduled tour of duty.

(8) A Senate restaurant employee, except a former Senate restaurant employee who had life insurance coverage on the date of transfer to a private contractor on or after July 17, 2008, and who elected to continue such coverage and to continue coverage under either chapter 83 or 84 of title 5, United States Code.

(c) OPM makes the final determination regarding the applicability of the provisions of this section to a specific employee or group of employees.

Subpart D—Cost of Insurance

■ 10. In section 870.401, paragraph (b)(3) is revised to read as follows:

§ 870.401 Withholdings and contributions for Basic insurance.

* * * * *

(b) * * *

(3) The amount withheld from the pay of an insured employee whose BIA changes during a pay period is based on the BIA last in force during the pay period

* * *

■ 11. In section 870.404, paragraph (a) is revised to read as follows:

§ 870.404 Withholdings and contributions provisions that apply to both Basic and Optional insurance.

(a) Withholdings (and Government contributions, when applicable) are based on the amount of insurance last in force on an employee during the pay period.

* * * * *

■ 12. In section 870.405, paragraphs (c)(2), (g)(1), and (g)(5) are revised to read as follows:

§ 870.405 Direct premium payments.

* * * * *

(c) * * *

(2) Within 31 calendar days of receiving the notice (60 days for individuals living overseas), the insured individual (or assignee) must return the notice to the employing office or retirement system, choosing either to terminate some or all of the insurance or to make direct premium payments. An employee, annuitant, or compensationer is considered to receive a mailed notice 15 days after the date of the notice.

* * * * *

(g)(1) If an individual on direct pay fails to make the required premium payment on time, the employing office or retirement system must notify the individual. The individual must make the payment within 31 calendar days after receiving the notice (60 days if living overseas). An individual is considered to have received a mailed notice 15 days after the date of the notice, 30 days if living overseas.

* * * * *

(5) If, for reasons beyond his or her control, an insured individual is unable to pay within 30 days of receiving the past due notice (45 days if living overseas), he or she may request reinstatement of coverage by writing to the employing office or retirement system within 60 days from the date of cancellation. The individual must provide proof that the inability to pay within the time limit was for reasons beyond his or her control. The employing office or retirement system will decide if the individual is eligible for reinstatement of coverage. If the employing office or retirement system approves the request, the coverage is reinstated back to the date of cancellation, and the individual must pay the back premiums.

Subpart E—Coverage

■ 13. Sections 870.503 and 870.504 are revised to read as follows:

§ 870.503 Basic insurance: Canceling a waiver.

(a) An annuitant or compensationer who has filed a waiver of Basic insurance cannot cancel the waiver.

(b) An employee who has filed a waiver of Basic insurance may cancel the waiver and become insured if:

(1) The employee makes an election during an open enrollment period as described in § 870.507;

(2) At least 1 year has passed since the effective date of the waiver, and the employee provides satisfactory medical evidence of insurability; or

(3) The employee has a change in family circumstances (marriage or divorce, a spouse's death, or acquisition of an eligible child) and files an election as provided in paragraph (b)(3(i), (b)(3)(ii), or (b)(3)(iii) of this section. Except as provided in paragraph (b)(3)(iii), the effective date of Basic insurance elected under this paragraph (b)(3) is the 1st day the employee actually enters on duty in a pay status on or after the day the employing office receives the election.

(i) An employee must file an election under this paragraph with the employing office, in a manner designated by OPM, along with proof of the event, no later than 60 calendar days following the date of the change in family circumstances that permits the election; the employee may also file the election before the event and provide proof no later than 60 calendar days following the event.

(ii) An employee making an election under this paragraph based on acquisition of an eligible foster child must file the election with the employing office no later than 60 calendar days after completing the required certification.

(iii) Within 6 months after an employee becomes eligible to make an election of Basic insurance due to a change in family circumstances, an employing office may determine that the employee was unable, for reasons beyond his or her control, to elect Basic insurance within the time limit. In this case, the employee must elect Basic insurance within 60 calendar days after he or she is notified of the determination. The insurance is retroactive to the 1st day of the first pay period beginning after the date the individual became eligible, if the employee was in pay and duty status that day. If the employee was not in pay and duty status that day, the coverage becomes effective the 1st day after the date the employee returned to pay and duty status. The individual must pay the full cost of the Basic insurance from

that date for the time that he or she is in pay status.

(c) OFEGLI reviews the employee's request and determines whether the employee complied with paragraph (b)(2) of this section. If the employee complied, then OFEGLI approves the Request for Insurance. The Basic insurance is effective on the date of OFEGLI's approval if the employee is in pay and duty status on that date. If the employee is not in pay and duty status on the date of OFEGLI's approval, the Basic insurance is effective the first day the employee returns to pay and duty status, as long as it is within 60 calendar days after OFEGLI's approval. If the employee is not in pay and duty status within 60 calendar days after OFEGLI's approval, the approval is revoked automatically.

(d) When an employee who has been separated from service for at least 180 days is reinstated on or after April 1, 1981, a previous waiver of Basic insurance is automatically cancelled. Unless the employee files a new waiver, Basic insurance becomes effective on the 1st day he or she actually enters on duty in pay status in a position in which he or she is eligible for coverage. *Exception:* For employees who waived Basic insurance after February 28, 1981, separated, and returned to Federal service before December 9, 1983, the waiver remained in effect; these employees were permitted to elect Basic insurance by applying to their employing office before March 7, 1984.

(e)(1) An employee of the Department of Defense who is designated as an "emergency essential employee" under section 1580 of title 10, United States Code, may cancel a waiver of Basic insurance without providing satisfactory medical information.

(2) An election of Basic insurance under paragraph (e)(1) of this section must be made within 60 days of being designated "emergency essential." Basic insurance is effective on the date the employing office receives the election, if the employee is in pay and duty status on that date. If the employee is not in pay and duty status on the day the employing office receives the election, the coverage becomes effective on the date the employee returns to pay and duty status.

(f)(1) A civilian employee who is eligible for Basic insurance coverage and is deployed in support of a contingency operation as defined by section 101(a)(13) of title 10, United States Code, may cancel a waiver of Basic Insurance without providing satisfactory medical information.

(2) An election of Basic insurance under paragraph (f)(1) of this section must be made within 60 days after the date of notification of deployment in support of a contingency operation. Basic insurance is effective on the date the employing office receives the election, if the employee is in pay and duty status on that date. If the employee is not in pay and duty status on the day the employing office receives the election, the coverage becomes effective on the date the employee returns to pay and duty status.

§ 870.504 Optional insurance: Election.

(a)(1) Each employee must elect or waive Option A, Option B, and Option C coverage, in a manner designated by OPM, within 60 days after becoming eligible unless, during earlier employment, he or she filed an election or waiver that remains in effect. The 60-day time limit for Option B or Option C begins on the 1st day after February 28, 1981, on which an individual is an *employee* as defined in § 870.101.

(2) An employee of the District of Columbia Financial Responsibility and Management Assistance Authority who elects to be considered a Federal employee under section 153 of Public Law 104–134 (110 Stat. 1321) must elect or waive Option A, Option B, and Option C coverage within 31 days after the later of:

(i) The date his or her employment with the Authority begins, or

(ii) The date the Authority receives his or her election to be considered a Federal employee.

(3) Within 6 months after an employee becomes eligible, an employing office may determine that the employee was unable, for reasons beyond his or her control, to elect any type of Optional insurance within the time limit. In this case, the employee must elect or waive that type of Optional insurance within 60 days after being notified of the determination. The insurance is retroactive to the 1st day of the 1st pay period beginning after the date the individual became eligible (or after April 1, 1981, whichever is later), if the employee was in pay and duty status that day. If the employee was not in pay and duty status that day, the coverage becomes effective the 1st day after the date the employee returned to pay and duty status. The individual must pay the full cost of the Optional insurance from that date for the time that he or she is in pay status (or retired or receiving compensation with unreduced Optional insurance).

(b) Any employee who does not file a Life Insurance Election with his or her employing office, in a manner designated by OPM, specifically electing any type of Optional insurance, is considered to have waived it and does not have that type of Optional insurance.

(c) For the purpose of having Option A as an employee, an election of this insurance filed on or before February 28, 1981, is considered to have been cancelled effective at the end of the pay period which included March 31, 1981, unless the employee did not actually enter on duty in pay status during the 1st pay period that began on or after April 1, 1981. In that case, the election is considered to have been cancelled on the 1st day after the end of the next pay period in which the employee actually entered on duty in pay status. In order to have Option A as an employee after the date of this cancellation, an employee must specifically elect the coverage by filing the Life Insurance Election with his or her employing office, subject to § 870.504(a) or 870.506(b).

(d) Optional insurance is effective the 1st day an employee actually enters on duty in pay status on or after the day the employing office receives the election. If the employee is not in pay and duty status on the date the employing office receives the election, the coverage becomes effective the next date that the employee is in pay and duty status.

(e) For an employee whose Optional insurance stopped for a reason other than a waiver, the insurance is reinstated on the 1st day he or she actually enters on duty in pay status in a position in which he or she again becomes eligible.

■ 14. Sections 870.506, 870.507, and 870.508 are revised to read as follows:

§ 870.506 Optional insurance: Canceling a waiver.

(a) *When there is a change in family circumstances* (*see* § 870.503(b)(3)). (1) An employee may cancel a waiver of Options A, B, and C due to a change in family circumstances as provided in paragraphs (a)(2) through (6) of this section.

(2) An employee who has waived Options A and B coverage may elect coverage, and an employee who has fewer than 5 multiples of Option B may increase the number of multiples, upon his or her marriage or divorce, upon a spouse's death, or upon acquisition of an eligible child.

(3) An employee electing or increasing Option B coverage may elect any number of multiples, as long as the total number of multiples does not exceed 5.

(4)(i) An employee who has waived Option C coverage may elect it, and an employee who has fewer than 5 multiples of Option C may increase the

number of multiples, upon his or her marriage or acquisition of an eligible child. An employee may also elect or increase Option C coverage upon divorce or death of a spouse, if the employee has any eligible children.

(ii) An employee electing or increasing Option C coverage may elect any number of multiples, as long as the total number of multiples does not exceed 5.

(5)(i) Except as stated in paragraph (a)(5)(iii) of this section, the employee must file an election under paragraph (a)(2) or (a)(4) of this section with the employing office, in a manner designated by OPM, along with proof of the event, no later than 60 calendar days following the date of the event that permits the election; the employee may also file the election before the event and provide proof no later than 60 calendar days following the event.

(ii) An employee making an election under paragraph (a)(4)(i) of this section following the acquisition of an eligible foster child must file the election with the employing office no later than 60 calendar days after completing the required certification.

(iii) In the case of an employee who had a change in family circumstances between October 30, 1998, and April 23, 1999, an election under this section must have been made on or before June 23, 1999.

(iv) Within 6 months after an employee becomes eligible to make an election due to a change in family circumstances, an employing office may determine that the employee was unable, for reasons beyond his or her control, to elect or increase Optional insurance within the time limit. In this case, the employee must elect or increase Optional insurance within 60 calendar days after he or she is notified of the determination. The insurance is retroactive to the 1st day of the first pay period beginning after the date the individual became eligible if the employee was in pay and duty status that day. If the employee was not in pay and duty status that day, the coverage becomes effective the 1st day after that date the employee returned to pay and duty status. The individual must pay the full cost of the Optional insurance from that date for the time that he or she is in pay status.

(6)(i) The effective date of Options A and B insurance elected under paragraph (a)(1) of this section is the 1st day the employee actually enters on duty in pay status on or after the day the employing office receives the election.

(ii) Except as provided in paragraphs (a)(5)(iii) and (a)(6)(iv) of this section, the effective date of Option C coverage elected because of marriage, divorce, death of a spouse, or acquisition of an eligible child is the day the employing office receives the election, or the date of the event, whichever is later. *Exception:* Coverage elected under paragraph (a)(5)(iii) of this section was effective April 24, 1999.

(iii) The effective date of Option C coverage elected because of the acquisition of a foster child is the date the employing office receives the election or the date the employee completes the certification, whichever is later.

(iv) If the employee does not elect Basic insurance and Option C together (and did not have Basic insurance before), then Option C becomes effective the same day as his or her Basic insurance becomes effective.

(b) *When there is no change in family circumstances.* (1) An employee who has waived Option A or Option B coverage may cancel the waiver and elect coverage if:

(i) The employee makes an election during an open enrollment period; or

(ii) At least 1 year has passed since the effective date of the waiver, and the employee provides satisfactory medical evidence of insurability.

(2) An employee who has Option B coverage of fewer than five multiples of annual pay may increase the number of multiples if at least 1 year has passed since the effective date of his or her last election of fewer than five multiples (including a reduction in the number of multiples), and the employee provides satisfactory medical evidence of insurability.

(3) A waiver of Option C may be cancelled only if there is a change in family circumstances or during an open enrollment period.

(c) OFEGLI reviews the employee's request and determines whether the employee complied with paragraphs (b)(1)(ii) and (b)(2) of this section. If the employee complied, then OFEGLI approves the Request for Insurance. The Option A and B insurance is effective on the date of OFEGLI's approval, if the employee is in pay and duty status on that date. If the employee is not in pay and duty status on the date of OFEGLI's approval, the insurance is effective the first day the employee returns to pay and duty status, as long as it is within 60 calendar days of OFEGLI's approval. If the employee is not in pay and duty status within 60 calendar days after OFEGLI's approval, the approval is revoked automatically.

(d) If an employee waived Option A insurance on or before February 28, 1981, the waiver was automatically cancelled effective on the 1st day the employee entered on duty in pay status on or after April 1, 1981. Option A coverage was effective on the date of the waiver's cancellation, if the employee filed an election of Option A during the March 1, 1981, through March 31, 1981, open enrollment period. If the employee did not file the election with his or her employing office during the March 1981 open enrollment period, the employee is considered to have waived Option A on March 31, 1981.

(e) When an employee who has been separated from service for at least 180 days is reinstated on or after April 1, 1981, a previous waiver of Optional insurance is automatically cancelled, as follows:

(1) An employee who returned to service between April 1, 1981, and December 8, 1983, after a 180-day break in service was permitted to elect any form of Optional insurance by applying to his or her employing office before March 7, 1984.

(2) An employee who returns to service after December 8, 1983, following a 180-day break in service may elect any form of Optional insurance by applying to his or her employing office within 60 calendar days after reinstatement. Coverage is effective on the 1st day the employee actually enters on duty in pay status in a position in which he or she is eligible for insurance on or after the date the employing office receives the election. If the employee does not file a Life Insurance Election in a manner designated by OPM within the 60-day period, the employee has whatever Optional insurance coverage he or she had immediately before separating from Federal service and is considered to have waived any other Optional insurance. However, an employee who fails to file an election during the 60-day period due to reasons beyond his or her control may enroll belatedly under the conditions stated in § 870.504(a)(3).

(f)(1) An employee of the Department of Defense who is designated as "emergency essential" under section 1580 of title 10, United States Code, may cancel a waiver of Option A and Option B insurance.

(2) An election of Option A or Option B insurance under paragraph (f)(1) must be made within 60 days of being designated "emergency essential." Optional insurance is effective on the date the employing office receives the election, if the employee is in pay and duty status on that date. If the employee is not in pay and duty status on the day the employing office receives the election, the coverage becomes effective on the date the employee returns to pay and duty status.

(g)(1) A civilian employee who is eligible for life insurance coverage and who is deployed in support of a contingency operation as defined by section 101(a)(13) of title 10, United States Code, may cancel a waiver of Option A and/or Option B insurance.

(2) An election of Optional insurance under paragraph (g)(1) of this section must be made within 60 days after the date of notification of deployment in support of a contingency operation. Optional insurance is effective on the date the employing office receives the election, if the employee is in pay and duty status on that date. If the employee is not in pay and duty status on the day the employing office receives the election, the coverage becomes effective on the date the employee returns to pay and duty status.

(h) An annuitant or compensationer is not eligible to cancel a waiver of any type of Optional insurance or to increase multiples of Option B under this section.

§ 870.507 Open enrollment periods.

(a) There are no regularly scheduled open enrollment periods for life insurance. Open enrollment periods are held only when specifically scheduled by OPM.

(b) During an open enrollment period, unless OPM announces otherwise, eligible employees may cancel their existing waivers of Basic and/or Optional insurance by electing the insurance in a manner designated by OPM.

(c)(1) OPM sets the effective date for all insurance elected during an open enrollment period. The newly elected insurance is effective on the 1st day of the 1st pay period that begins on or after the OPM-established date and that follows a pay period during which the employee was in pay and duty status for at least 32 hours, unless OPM announces otherwise.

(2) A part-time employee must be in pay and duty status for one-half the regularly-scheduled tour of duty shown on his or her current Standard Form 50 for newly-elected coverage to become effective, unless OPM announces otherwise.

(3) An employee who has no regularly-scheduled tour of duty or who is employed on an intermittent basis must be in pay and duty status for one-half the hours customarily worked before newly-elected coverage can become effective, unless OPM announces otherwise. For the purpose of this paragraph, an employing office may determine the number of hours customarily worked by averaging the number of hours worked in the most recent calendar year quarter prior to the start of the open enrollment period.

(d) Within 6 months after an open enrollment period ends, an employing office may determine that an employee was unable, for reasons beyond his or her control, to cancel an existing waiver by electing to be insured during the open enrollment period. An election under this paragraph must be submitted within 60 days after being notified of the determination. Coverage is retroactive to the first pay period that begins on or after the effective date set by OPM and that follows a pay period during which the employee was in pay and duty status for at least 32 hours, unless OPM announces otherwise. If the employee does not file an election within this 60-day time limit, he or she will be considered to have waived coverage.

§ 870.508 Nonpay status.

(a) An employee who is in nonpay status is entitled to continue life insurance for up to 12 months. No premium payments are required, unless the employee is receiving compensation.

(b) If an insured employee who is entitled to free insurance while in nonpay status accepts a temporary appointment to a position in which he or she would normally be excluded from insurance coverage, the insurance continues. The amount of Basic insurance (and Option B coverage if the employee has it) is based on the combined salaries of the two positions. Withholdings are made from the employee's pay in the temporary position.

(c) If an insured employee goes on leave without pay (LWOP) to serve as a full-time officer or employee of an employee organization, he or she may elect in writing to continue life insurance within 60 days after the beginning of the LWOP. The insurance continues for the length of the appointment, even if the LWOP lasts longer than 12 months. The employee must pay to the employing office the full cost of Basic and Optional insurance starting with the beginning of the nonpay status; the employee is not entitled to 12 months of free coverage. There is no Government contribution for these employees.

(d) If an insured employee goes on LWOP while assigned to a State government, local government, or institution of higher education, the employee may elect in writing to continue the life insurance for the length of the assignment, even if the LWOP lasts longer than 12 months. The employee must pay his or her premiums to the Federal agency on a current basis starting with the beginning of the nonpay status; the employee is not entitled to 12 months of free coverage. The agency must continue to pay its contribution as long as the employee makes his or her payments.

Subpart F—Termination and Conversion

15. Sections 870.601, 870.602, and 870.603 are revised to read as follows:

§ 870.601 Termination of Basic insurance.

(a) Except as otherwise provided in this section or § 870.701, the Basic insurance of an insured employee stops on the date the employee separates from service, subject to a 31-day extension of coverage. *Exception:* If the employee was employed by the Architect of the Capitol as a Senate Restaurants employee the day before the food services operations of the Senate Restaurants were transferred to a private business concern and the employee accepted employment by the business concern and elected to continue his or her Federal retirement benefits and FEGLI coverage, the employee continues to be eligible for FEGLI coverage as long as he or she remains employed by the business concern or its successor.

(b) The Basic insurance of an employee who separates from service after meeting the requirement for an immediate annuity under § 842.204(a)(1) of this chapter and who postpones receiving the annuity, as provided by § 842.204(c) of this chapter (an MRA+10 annuity), stops on the date he or she separates from service, subject to a 31-day extension of coverage.

(c) The Basic insurance of an insured employee who moves without a break in service to a position in which he or she is excluded from life insurance stops on the last day of employment in the former position, subject to a 31-day extension of coverage. *Exception:* If the position is excluded by regulation (not by law), and the employee does not have a break in service of more than three days, the Basic insurance continues.

(d)(1) Except as provided in § 870.701, the Basic insurance of an insured employee who is in nonpay status stops on the date the employee completes 12 months in nonpay status, subject to a 31-day extension of coverage. The 12 months' nonpay status may be broken by periods of less than 4 consecutive months in pay status. If an employee has at least 4 consecutive months in pay status after a period of nonpay status, he or she is entitled to begin the 12 months' continuation of Basic insurance

again. If an employee has used up his or her 12 months' continuation in nonpay status and returns to duty for less than 4 consecutive months, his or her Basic insurance stops on the 32nd day after the last day of the last pay period in pay status.

(2) For the purpose of paragraph (d)(1) of this section, 4 consecutive months in pay status means any 4-month period during which the employee is in pay status for at least part of each pay period.

(3)(i) For the purpose of paragraph (d)(1) of this section, an individual who is entitled to benefits under part 353 of this chapter (USERRA—Uniformed Services Employment and Reemployment Act of 1994), who separates to go on military duty instead of going into a nonpay status, is treated as an employee in nonpay status for life insurance purposes.

(ii) Basic insurance continues free for 12 months or until 90 days after military service ends, whichever comes first.

(iii) Effective January 28, 2008, an employee who enters on active duty, or active duty for training in one of the uniformed services for more than 30 days, may continue enrollment for an additional 12 months, for a total of up to 24 months.

(A) Each agency must notify its employees of the opportunity to elect to continue coverage for the additional 12 months.

(B) An employee wanting coverage for the additional 12 months must elect it prior to the end of the first 12 months in nonpay status, in a manner designated by the employing agency.

(C) Insurance continues free for the first 12 months; however, an employee must pay both the employee and agency share of premiums to the agency on a current basis for Basic coverage, and must pay the entire cost (there is no agency share) for any Optional insurance for the additional 12 months of coverage elected.

(D) For an employee who does not elect to continue coverage for an additional 12 months, coverage terminates at the end of the first 12 months in nonpay status subject to the 31-day extension of coverage and conversion rights as provided in § 870.603 of this part.

(e) Except for employees, annuitants, and compensationers who elect direct payment as provided in § 870.405 of this part, Basic insurance stops, subject to a 31-day extension of coverage, at the end of the pay period in which the employing office or retirement system determines that an individual's periodic pay, annuity, or compensation, after all other deductions, is not enough to cover the full cost of Basic insurance.

§ 870.602 Termination of Optional insurance.

(a) The Optional insurance of an insured employee stops when his or her Basic insurance stops, subject to the same 31-day extension of coverage.

(b) The Optional insurance of an employee who separates from service after meeting the requirement for an immediate annuity under § 842.204(a)(1) of this chapter and who postpones receiving the annuity, as provided by § 842.204(c) of this chapter (an MRA+10 annuity), stops on the date he or she separates from service, subject to a 31-day extension of coverage. *Exception:* If the employee was employed by the Architect of the Capitol as a Senate Restaurants employee the day before the food services operations of the Senate Restaurants were transferred to a private business concern and the employee accepted employment with the business concern and elected to continue his or her Federal retirement benefits and FEGLI coverage, the employee continues to be eligible for FEGLI coverage as long as he or she remains employed by the business concern or its successor.

(c)(1) If an insured employee is not eligible to continue Optional coverage as an annuitant or compensationer as provided by § 870.701, the Optional insurance stops on the date that his or her Basic insurance is continued or reinstated under § 870.701, subject to a 31-day extension of coverage.

(d) If, at the time of an individual's election of Basic insurance during receipt of annuity or compensation, he or she elects no Basic life insurance as provided by § 870.702(a)(1), the Optional insurance stops at the end of the month in which the election is received in OPM, subject to a 31-day extension of coverage.

(e) Except for employees, annuitants, and compensationers who elect direct payment as provided in § 870.405, Optional insurance stops, subject to a 31-day extension of coverage, at the end of the pay period in which the employing office or retirement system determines that an individual's periodic pay, annuity, or compensation, after all other deductions, is not enough to cover the full cost of the Optional insurance. If an individual has more than one type of Optional insurance and his or her pay, annuity, or compensation is sufficient to cover some but not all of the insurance, the multiples of Option C terminate first, followed by Option A, and then the multiples of Option B.

§ 870.603 Conversion of Basic and Optional insurance.

(a)(1) When group coverage terminates for any reason other than voluntary cancellation, an employee may apply to convert all or any part of his or her Basic and Optional insurance to an individual policy; no medical examination is required. The premiums for the individual policy are based on the employee's age and class of risk. An employee is eligible to convert the policy only if he or she does not return, within 3 calendar days from the terminating event, to a position covered under the group plan. *Exception:* If an employee is unable to convert, a person having power of attorney for that employee may convert on his or her behalf. If insurance has been assigned under subpart I of this part, it is the assignee(s), not the employee, who has (have) the right to convert.

(2) The employing agency must notify the employee/assignee(s) of the loss of coverage and the right to convert to an individual policy either before or immediately after the event causing the loss of coverage.

(3) The employee/assignee(s) must submit the request for conversion information to OFEGLI. OFEGLI must receive the request for conversion within 31 calendar days of the date on the conversion notification the employee receives from the employing agency (60 days if overseas) or within 60 calendar days after the date of the terminating event (90 days, if overseas), whichever is earlier.

(4) If the employee does not request conversion information within the specified time period as described in paragraph (a)(3) of this section, the employee is considered to have refused coverage unless OFEGLI determines the failure was for reasons beyond the employee's control, as described in paragraph (a)(5) of this section.

(5) When an agency fails to provide the notification required in paragraph (a)(2) of this section, or the employee/assignee fails to request conversion information within the time limit set in paragraph (a)(3) of this section for reasons beyond his or her control, the employee may make a belated request by writing to OFEGLI. The employee/assignee must make the request within 6 months after becoming eligible to convert the insurance. The employee/assignee must show that he or she was not notified of the loss of coverage and the right to convert and was not otherwise aware of it or that he or she was unable to convert to an individual policy for reasons beyond his or her control. OFEGLI will determine if the employee/assignee is eligible to convert.

If the request is approved, the employee must convert within 31 calendar days of that determination.

(b) The individual conversion policy is effective the day after the group coverage ends. The employee/assignee must pay the premiums for any period retroactive to that date.

(c) The 31-day extension of coverage provided under this subpart does not depend upon timely notification of the right to convert to an individual policy. The extension cannot be continued beyond 31 days.

(d) Family members may convert Option C coverage (and name beneficiaries of their choice) if:

(1) The employee dies; or

(2) The insurance stops under circumstances that allow the employee to convert Option C coverage but the employee does not convert.

(e) If an employee with Option C coverage dies, the employing office must send a conversion notice to the family members at the employee's last address on file.

(f) Family members must submit the request for conversion information to OFEGLI. OFEGLI must receive the request for conversion within 31 calendar days of the date on the conversion notification the employee receives from his or her employing agency (60 days if overseas) or within 60 calendar days after the date of the terminating event (90 days, if overseas), whichever is earlier. There is no extension to these time limits. Family members are considered to have refused coverage if they do not request conversion within these time limits.

(g) The family members' conversion policy is effective at the end of the employee's 31-day extension of coverage.

Subpart G—Annuitants and Compensationers

■ 16. Section 870.701(c) is revised to read as follows:

§ 870.701 Eligibility for life insurance.

* * * * *

(c) An individual who meets the requirements of paragraph (a) or (b) of this section or § 870.706 for continuation or reinstatement of life insurance must complete an election, in a manner designated by OPM, at the time entitlement is established. For the election to be valid, OPM must receive the election before OPM has made a final decision on the individual's application for annuity or supplemental annuity or an individual's request to continue life insurance as a compensationer. If there is no valid election, OPM considers the individual to have chosen the option described in § 870.703(a)(2).

■ 17. Section 870.702(b)(2) is revised to read as follows:

§ 870.702 Amount of Basic insurance.

* * * * *

(b) * * *

(2)(i) For an annuitant or compensationer who elected a partial Living Benefit as an employee, the amount of Basic insurance he or she can continue is the post-election BIA, as described in § 870.203(a)(2).

(ii) If an employee elected a partial Living Benefit and that employee is under age 45 at the time of death, OFEGLI will multiply the post-election BIA by the appropriate factor, as specified in § 870.202(c), that was in effect on the date that is nine months after the date OFEGLI received the completed Living Benefit application.

■ 18. Section 870.703 is revised to read as follows:

§ 870.703 Election of Basic insurance.

(a) An individual who makes an election under § 870.701(c) and who has not elected a Living Benefit must select one of the options in paragraphs (a)(1) through (4) of this section. No one else can make this election on the individual's behalf.

(1) *Termination of the insurance.* The individual's insurance stops upon conversion to an individual policy as provided under § 870.603. If the individual does not convert to an individual policy, insurance stops at the end of the month in which OPM or the employing office receives the election;

(2) *Continuation or reinstatement of Basic insurance with a maximum reduction of 75 percent during retirement.* Premiums are withheld from annuity or compensation (except as provided under § 870.401(d)(1)). The amount of Basic Life insurance in force reduces by 2 percent of the BIA each month until the maximum reduction is reached. This reduction starts at the beginning of the 2nd month after the date the insurance would otherwise have stopped or the date of the insured's 65th birthday, whichever is later;

(3) *Continuation or reinstatement of Basic insurance with a maximum reduction of 50 percent during retirement.* Premiums are withheld from annuity or compensation. The amount of Basic insurance in force reduces by 1 percent of the BIA each month until the maximum reduction is reached. This reduction starts at the beginning of the 2nd month after the date the insurance would otherwise have stopped or the date of the insured's 65th birthday, whichever is later; or

(4) *Continuation or reinstatement of Basic insurance with no reduction after age 65.* Premiums are withheld from annuity or compensation.

(b)(1) Unless an employee has elected a partial Living Benefit under subpart K of this part or an individual has assigned the insurance under subpart I of this part, an insured individual may cancel an election under paragraph (a)(3) or (a)(4) of this section at any time. The amount of Basic insurance automatically switches to the amount that would have been in force if the individual had originally elected the 75 percent reduction. This revised amount is effective at the end of the month in which OPM receives the request to cancel the previous election. There is no refund of premiums.

(2) If an individual files a waiver of insurance, the coverage stops without a 31-day extension of coverage or conversion right. Coverage ceases at the end of the month in which OPM received the waiver.

(c) Unless he/she chooses to terminate his/her insurance, an employee who has elected a partial Living Benefit must choose the no reduction election under paragraph (a)(4) of this section. The employee cannot later change to the 75 percent reduction.

(d) If an employee has assigned his or her insurance, he/she cannot cancel an election under paragraph (a)(3) or (a)(4) of this section. Only the assignee(s) may cancel this election. Exception: If the employee elected a partial Living Benefit before assigning the remainder of his or her insurance, the assignee(s) cannot cancel the election under paragraph (a)(4) of this section.

(e)(1) For purposes of this part, a judge who retires under one of the following provisions is considered to be an employee after retirement:

(i) 28 U.S.C. 371(a) or (b);

(ii) 28 U.S.C. 372(a);

(iii) 28 U.S.C. 377;

(iv) 26 U.S.C. 7447;

(v) 11 DC Code 776;

(vi) Section 7447 of the Internal Revenue Code;

(2) The insurance of a judge described in paragraph (e)(1) of this section does not reduce after age 65. Basic insurance continues without interruption or reduction. *Exception:* If the insured is a judge eligible for compensation, and chooses to receive compensation instead of annuity, he or she must select an option described in paragraph (a) of this section.

■ 19. Sections 870.704 and 870.705 are revised to read as follows:

§ 870.704 Amount of Option A.

(a) The amount of Option A coverage an annuitant or compensationer can continue is $10,000.

(b) An annuitant's or compensationer's Option A coverage reduces by 2 percent of the original amount each month up to a maximum reduction of 75 percent. This reduction starts at the beginning of the 2nd month after the date the insurance would otherwise have stopped or the beginning of the 2nd month after the date of the insured's 65th birthday, whichever is later.

(c) Paragraph (b) of this section does not apply to a judge who retires under one of the provisions listed in § 870.703(e)(1). For purposes of this part, such a judge is considered to be an employee after retirement, and Option A insurance continues without interruption or reduction. *Exception:* If the judge is eligible for compensation and chooses to receive compensation instead of annuity, paragraph (b) of this section applies.

§ 870.705 Amount and election of Option B and Option C.

(a) The number of multiples of Option B and Option C coverage an annuitant or compensationer can continue is the highest number of multiples in force during the applicable period of service required to continue Option B and Option C.

(b)(1)(i) At the time an employee retires or becomes insured as a compensationer, he or she must elect the number of allowable multiples he or she wishes to continue during retirement or while receiving compensation.

(ii) An employee who elects to continue fewer multiples than the number for which he or she is eligible is considered to have cancelled the multiples that are not continued.

(iii) An employee separating for retirement and an employee becoming insured as a compensationer on or after April 24, 1999, must choose the level of post-age-65 reduction he or she wants. There are two choices: Full Reduction and No Reduction. The election may be made only by the employee and must be made in the manner that OPM designates. The employee may make different elections for Option B and for Option C. He or she may choose Full Reduction for some multiples of an Option and No Reduction for other multiples of the same Option. Failure to make an election for Option B or for Option C will be considered to be an election of Full Reduction for all multiples of that Option.

(iv) For purposes of this part, a judge who retires under one of the provisions listed in § 870.703(e)(1) is considered to be an employee after retirement. The insurance of such a judge does not reduce after age 65. *Exception:* If the judge is eligible for compensation and chooses to receive compensation instead of annuity, the post-65 reductions and elections apply.

(2)(i) Prior to reaching age 65, an annuitant or compensationer can change from No Reduction to Full Reduction at any time. *Exception:* If the individual has assigned his or her insurance as provided in subpart I of this part, only the assignee can change from No Reduction to Full Reduction for the Option B coverage.

(3)(i) After reaching age 65, an annuitant or compensationer can change from No Reduction to Full Reduction at any time. *Exception:* If the individual has assigned his or her insurance as provided in subpart I of this part, only the assignee can change from No Reduction to Full Reduction for the Option B coverage. If an individual age 65 or over changes to Full Reduction, the amount of insurance in force is computed as if he or she had elected Full Reduction initially. There is no refund of premiums.

(ii) After reaching age 65, an annuitant or compensationer cannot change from Full Reduction to No Reduction.

(c)(1) For each multiple of Option B and/or Option C for which an individual elects Full Reduction, the coverage reduces by 2 percent of the original amount each month. This reduction starts at the beginning of the 2nd month after the date the insurance would otherwise have stopped or the beginning of the 2nd month after the insured's 65th birthday, whichever is later. At 12:00 noon on the day before the 50th reduction, the insurance stops, with no extension of coverage or conversion right.

(2) For each multiple of Option B and/or Option C for which an individual elects No Reduction, the coverage in force does not reduce. After age 65 the annuitant or compensationer continues to pay premiums appropriate to his or her age.

(d)(1) An employee who was already retired or insured as a compensationer on April 24, 1999, and who had Option B, was given an opportunity to make an election for Option B.

(i) Each such annuitant or compensationer who was under age 65 on April 24, 1999, was notified of the option to elect No Reduction. The retirement system will send the individual an election notice before his or her 65th birthday.

(ii) Each such annuitant or compensationer who was age 65 or older on April 24, 1999, and who still had some Option B coverage remaining, was given the opportunity to stop further reductions. The individual had until October 24, 1999, to make the No Reduction election. The amount of Option B coverage retained was the amount in effect on April 24, 1999. Each annuitant or compensationer who elected No Reduction was required to pay premiums retroactive to April 24, 1999.

(2) An employee who was already retired or insured as a compensationer on April 24, 1999, could not elect No Reduction for Option C.

■ 20. Section 870.707 is revised to read as follows:

§ 870.707 Reemployed annuitants and compensationers.

(a)(1) If an insured annuitant or compensationer is appointed to a position in which he or she is eligible for insurance, the amount of his or her Basic life insurance as a annuitant or compensationer (and any applicable withholdings) is suspended on the day before the 1st day in pay status under the appointment, unless the reemployed annuitant or compensationer waives all insurance coverage as an employee. The Basic insurance benefit payable upon the death of a reemployed annuitant or compensationer who has Basic insurance in force as an employee, cannot be less than the benefit that would have been payable if the individual had not been reemployed.

(2) Except as provided in paragraph (b) of this section, the Basic insurance obtained as an employee stops with no 31-day extension of coverage or conversion right, on the date reemployment terminates. Any suspended Basic insurance (and any applicable withholdings) is reinstated on the day following termination of the reemployment.

(b) Basic insurance obtained during reemployment can be continued after the reemployment terminates if the individual:

(1) Qualifies for a supplemental annuity or receives a new retirement right (or if a compensationer, he or she worked an amount of time equivalent to that required for an annuitant to qualify for a supplemental annuity);

(2) Has had Basic insurance as an employee for at least 5 years of service immediately before separation from reemployment or for the full period(s) during which such coverage was

available to the individual, whichever is less; and

(3) Does not convert to nongroup insurance when Basic insurance as an employee would otherwise terminate.

(c) If the Basic insurance obtained during reemployment is continued as provided in paragraph (b) of this section, any suspended Basic life insurance stops, with no 31-day extension of coverage or conversion right.

(d)(1) An annuitant or compensationer appointed to a position in which he or she is eligible for Basic insurance is also eligible for Optional insurance as an employee, unless he or she has on file an uncancelled waiver of Basic or Optional insurance.

(2) If the individual has Option A or C as an annuitant, that insurance (and applicable withholdings) is suspended on the day before his or her 1st day in pay status under the appointment. Unless he or she waives Option A or C (or waives Basic insurance), the individual obtains Option A or C as an employee.

(3) If the individual has Option B as an annuitant or compensationer, that insurance (and applicable withholdings) continues as if the individual were not reemployed, unless:

(i) The individual files with his/her employing office an election of Option B, in a manner designated by OPM, within 60 calendar days after the date of reemployment. In this case Option B (and applicable withholdings) as an annuitant or compensationer is suspended on the date that Option B as an employee becomes effective; or

(ii) The individual waives Basic insurance.

(4) The Option B benefit payable upon the death of a reemployed annuitant or compensationer is the amount in effect as an annuitant or compensationer, unless the individual elected to have Option B as an employee.

(5) Except as provided in paragraph (e) of this section, the Optional insurance obtained as an employee stops, with no 31-day extension or conversion right, on the date reemployment terminates. The amount of suspended Optional insurance that remains in force after applicable monthly reductions after age 65 (and corresponding withholdings) is reinstated on the day after reemployment terminates.

(e) Optional life insurance obtained during reemployment may be continued after the reemployment terminates if the annuitant:

(1) Qualifies for a supplemental annuity or receives a new retirement right (or if a compensationer, he or she worked an amount of time equivalent to that required for an annuitant to qualify for a supplemental annuity);

(2) Continues Basic life insurance under § 870.703(a)(2), (3), or (4); and

(3) Has had Optional insurance as an employee for at least the 5 years of service immediately before separation from reemployment or for the full period(s) of service during which it was available to him or her, whichever is less.

(f) If Optional insurance obtained during reemployment is continued as provided in paragraph (e) of this section, any suspended Optional insurance stops, with no 31-day extension of coverage or conversion right.

(g) If a reemployed annuitant or compensationer waives life insurance as an employee, the waiver also cancels his or her life insurance as an annuitant or compensationer.

Subpart H—Order of Precedence and Designation of Beneficiary

■ 21. Section 870.801(a) and (d) are revised to read as follows:

§ 870.801 Order of precedence and payment of benefits.

(a) Except as provided in paragraph (d) of this section and § 870.802(g)(2), benefits are paid according to the order of precedence stated in 5 U.S.C. 8705(a), as follows:

(1) To the designated beneficiary (or beneficiaries);

(2) If none, to the widow(er);

(3) If none, to the child, or children in equal shares, with the share of any deceased child going to his or her children;

(4) If none, to the parents in equal shares or the entire amount to the surviving parent;

(5) If none, to the executor or administrator of the estate;

(6) If none, to the next of kin according to the laws of the State in which the insured individual legally resided.

* * * * *

(d)(1) If there is a court order in effect naming a specific person or persons to receive life insurance benefits upon the death of an insured individual, Basic insurance and Option A and Option B insurance will be paid to the person or persons named in the court order, instead of according to the order of precedence.

(2) To qualify a person for such payment, a certified copy of the court order must be received by the appropriate office on or after July 22, 1998, and before the death of the insured.

(3)(i) For an employee, the appropriate office is the employing agency.

(ii) For an annuitant, the appropriate office is OPM.

(iii) For a compensationer during the first 12 months of nonpay status, the appropriate office is the employing agency.

(iv) For a compensationer after separation or the completion of 12 months in nonpay status, the appropriate office is OPM.

(4) If, within the applicable time frames, the appropriate office receives conflicting court orders entitling different persons to the same insurance, benefits will be paid based on whichever court order was issued first.

* * * * *

■ 22. Section 870.802(b) and (g)(1) are revised to read as follows:

§ 870.802 Designation of beneficiary.

* * * * *

(b) A designation of beneficiary must be in writing, signed by the insured individual, and witnessed and signed by 2 people. The completed designation of beneficiary form may be submitted to the appropriate office via appropriate methods approved by the employing office. The appropriate office must receive the designation before the death of the insured.

(1) For an employee, the appropriate office is the employing office.

(2) For an annuitant or compensationer, the appropriate office is OPM.

* * * * *

(g)(1) A designation of beneficiary is automatically cancelled 31 days after the individual stops being insured.

* * * * *

Subpart I—Assignments of Life Insurance

■ 23. Section 870.902 is revised to read as follows:

§ 870.902 Making an assignment.

(a) To assign insurance, an insured individual must complete an approved assignment form. Only the insured individual may make an assignment; no one may assign insurance on behalf of an insured individual.

(b) The assignment form must be in writing, signed by the insured individual, and witnessed and signed by 2 people. The completed assignment form, indicating the intent to irrevocably assign all ownership of the insurance, must be received by the appropriate office.

(1) For an employee, the appropriate office is the employing office.

(2) For an annuitant or compensationer, the appropriate office is OPM.

■ 24. Section 870.907(c) is revised to read as follows:

§ 870.907 Termination and conversion.

* * * * *

(c) An assignment terminates 31 days after the insurance terminates, unless the insured individual is reemployed in or returns to a position in which he or she is entitled to coverage under this part within 31 days after the insurance terminates. If the individual returns to Federal service, Basic insurance and any Option A and/or Option B insurance acquired through returning to service is subject to the existing assignment.

■ 25. Section 870.910 is revised to read as follows:

§ 870.910 Notification of current addresses.

Each assignee must keep the office where the assignment is filed informed of his/her current address.

Subpart K—Living Benefits

■ 26. Section 870.1103 is revised to read as follows:

§ 870.1103 Election procedures.

(a) The insured individual must request information on Living Benefits and an application form directly from OFEGLI.

(b)(1) The insured individual must complete the first part of the application and have his or her physician complete the second part. The completed application must be submitted directly to OFEGLI.

(2) Another person may apply for a Living Benefit on the insured individual's behalf if all of the following conditions are met:

(i) The insured's physician must certify that the insured individual is physically or mentally incapable of making an election;

(ii) The applicant must have power of attorney or a court order authorizing him or her to elect a Living Benefit on the insured individual's behalf;

(iii) The applicant must place his or her own signature on the application and attach it to a true and correct copy of the power of attorney or court order authorizing the applicant to make the election on the insured individual's behalf; and

(iv) The applicant must either be the insured individual's sole beneficiary or attach a true and correct copy of each beneficiary's written and signed consent.

(c)(1) OFEGLI reviews the application, obtains certification from the insured's employing office regarding the amount of insurance and the absence of an assignment, and determines whether the individual meets the requirements to elect a Living Benefit.

(2) If OFEGLI needs additional information, it will contact the insured or the insured's physician.

(3) Under certain circumstances, OFEGLI may require a medical examination before making a decision. In these cases, OFEGLI is financially responsible for the cost of the medical examination.

(d)(1) If the application is approved, OFEGLI sends the insured a check or makes an electronic funds transfer to the insured's account for the Living Benefit payment and an explanation of benefits.

(i) Until the check has been cashed or deposited, or before the electronic funds transfer has been received, the individual may change his or her mind about electing a Living Benefit; if this happens, the individual must mark the check "void" and return it to OFEGLI.

(ii) Once the insured individual has cashed or deposited the payment, the Living Benefit election becomes effective and cannot be revoked; OFEGLI then sends explanations of benefits to the insured's employing office, so it can make the necessary changes in withholdings and deductions.

(2) If the application is not approved, OFEGLI will notify the insured individual and the employing office. The decision is not subject to administrative review; however, the individual may submit additional medical information or reapply at a later date if future circumstances warrant.

Subpart L [Removed and Reserved]

■ 27. Subpart L, consisting of §§ 870.1201 through 870.1208, is removed and reserved.

[FR Doc. 2010–24493 Filed 9–30–10; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. APHIS–2010–0097]

Tuberculosis in Cattle and Bison; State and Zone Designations; Minnesota

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the bovine tuberculosis regulations regarding State and zone classifications by reclassifying the two zones in Minnesota. We have determined that the zone consisting of an area in the northwest corner of the State meets the criteria for designation as a modified accredited advanced zone, and the zone comprising the remainder of the State meets the criteria for designation as an accredited-free zone. This action relieves certain restrictions on the interstate movement of cattle and bison from Minnesota.

DATES: This interim rule is effective October 1, 2010. We will consider all comments that we receive on or before November 30, 2010.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0097* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2010–0097, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2010–0097.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Alecia Naugle, Coordinator, National Tuberculosis Eradication Program, Veterinary Services, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737; (301) 734–6954.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is a contagious and infectious granulomatous disease caused by the bacterium *Mycobacterium bovis.* Although commonly defined as a chronic debilitating disease, bovine tuberculosis can occasionally assume an acute, rapidly progressive course. While

any body tissue can be affected, lesions are most frequently observed in the lymph nodes, lungs, intestines, liver, spleen, pleura, and peritoneum. Although cattle are considered to be the true hosts of *M. bovis,* the disease has been reported in several other species of both domestic and nondomestic animals, as well as in humans.

At the beginning of the past century, tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment in the United States of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for tuberculosis in livestock.

In carrying out the national eradication program, the Animal and Plant Health Inspection Service (APHIS) issues and enforces regulations. The regulations require the testing of cattle and bison for tuberculosis, define the Federal tuberculosis status levels for States or zones (accredited-free, modified accredited advanced, modified accredited, accreditation preparatory, and nonaccredited), provide the criteria for attaining and maintaining those status levels, and contain testing and movement requirements for cattle and bison leaving States or zones of a particular status level. These regulations are contained in 9 CFR part 77 and in the Bovine Tuberculosis Eradication Uniform Methods and Rules, 1999 (UMR), which is incorporated by reference into the regulations.

The status of a State or zone is based on its prevalence of tuberculosis in cattle and bison, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with standards for cattle and bison contained in the UMR. In addition, the regulations allow that a State may request split-State status via partitioning into specific geographic regions or zones with different status designations if bovine tuberculosis is detected in a portion of a State and the State demonstrates that it meets certain criteria with regard to zone classification.

Requests for Advancement of Modified Accredited Advanced Zone and Advancement of Modified Accredited Zone

In an interim rule effective and published in the **Federal Register** on October 10, 2008 (73 FR 60099–60102, Docket No. APHIS–2008–0117), we amended the tuberculosis regulations for cattle and bison by dividing Minnesota into two zones for tuberculosis. We added an area in the northwest corner of the State to the list of modified accredited zones, and added the remainder of the State to the list of modified accredited advanced zones. The modified accredited zone, which was the smaller of the two zones, consisted of portions of the Minnesota counties of Lake of the Woods, Roseau, Marshall, and Beltrami. This action was taken after we received from the State of Minnesota a request for zone classification for tuberculosis and conducted a risk assessment and program review to evaluate that request.

We have received from the State of Minnesota applications to upgrade the designations of both the modified accredited advanced and modified accredited zones. Based on our review of the applications and the findings of a review of the tuberculosis eradication program in Minnesota conducted in November 2009, APHIS has determined that both zones meet the criteria for advancement of status contained in the regulations.

State animal health officials in Minnesota have demonstrated that the State enforces and complies with the provisions of the UMR. The State of Minnesota has demonstrated that the modified accredited advanced zone has zero percent prevalence of cattle and bison herds affected with tuberculosis, and has had no findings of tuberculosis in any cattle or bison in the zone since it was established in October 2008. Therefore, Minnesota has demonstrated that the zone within the State previously classified as modified accredited advanced meets the criteria as set forth in the definition of *accredited-free State or zone* in § 77.5 of the regulations.

Similarly, with respect to the current modified accredited zone in the northwest corner of the State, Minnesota has demonstrated that tuberculosis has been prevalent in less than 0.01 percent of the total number of herds of cattle and bison in the zone for the past 2 years. Therefore, Minnesota has shown that the zone within the State previously classified as modified accredited meets the criteria as set forth in the definition of *modified accredited advanced State or zone* in § 77.5 of the regulations.

Based on our evaluation of Minnesota's request in light of the criteria set forth in the regulations, we are classifying the two zones in Minnesota as follows:

- The modified accredited zone, consisting of portions of the Minnesota counties of Lake of the Woods, Roseau, Marshall, and Beltrami, is removed from the list of modified accredited zones in § 77.11(b)(2) and added to the list of modified accredited advanced zones in § 77.9(b)(2). A complete description of the boundaries of this zone is contained in the regulatory text at the end of this document.
- All of the State of Minnesota except for the zone described above is removed from the list of modified accredited advanced zones in § 77.9(b)(2) and added to the list of accredited-free zones in § 77.7(b) as paragraph (b)(3).

Immediate Action

Immediate action is warranted to relieve restrictions on the interstate movement of cattle and bison from the newly classified modified accredited advanced zone in Minnesota. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. The full analysis may be viewed on the Regulations.gov Web site (*see* **ADDRESSES** above for instructions for accessing Regulations.gov) or obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Advancing the status of the two zones in Minnesota will reduce the interstate movement restrictions for cattle and bison originating from that State. Herd owners will benefit from time savings and reduced costs associated with tuberculosis testing. However, the cost savings will be relatively small; those testing costs are small relative to the value of the cattle, and relatively few producers—less than 1 percent of all cattle producers in the State—will be affected. Total annual cost savings to producers are likely to be under $200,000.

The reclassified accredited free zone will include about 99 percent of all

cattle herds in the State. The elevation of an area from modified accredited advanced to accredited free status eliminates all remaining interstate movement restrictions for cattle and bison originating from this zone.

The reclassified modified accredited advanced zone will include 267 cattle herds, 17 of which are dairy herds. The elevation to modified accredited advanced status from modified accredited status removes both individual animal and whole herd testing requirements for producers within this zone. Tuberculosis testing, including veterinary fees, costs about $10 to $15 per head. Based on state-wide estimates of interstate movement, annual cost savings associated with reduced testing of feeder cattle moving out of State from this zone could total between $10,000 and $15,000. Annual cost savings associated with the removal of whole herd testing for non-accredited beef herds engaged in interstate movement of breeding cattle and for all dairy herds in this zone could be between about $120,000 and $180,000.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

■ Accordingly, we are amending 9 CFR part 77 as follows:

PART 77—TUBERCULOSIS

■ 1. The authority citation for part 77 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 77.7, a new paragraph (b)(3) is added to read as follows:

§ 77.7 Accredited-free States or zones.

* * * * *

(b) * * *

(3) All of the State of Minnesota except for the zones that comprise those counties or portions of counties in Minnesota described in § 77.9(b)(2).

* * * * *

■ 3. In § 77.9, paragraph (b)(2) is revised to read as follows:

§ 77.9 Modified accredited advanced States or zones.

* * * * *

(b) * * *

(2) Those portions of the Minnesota counties of Lake of the Woods, Roseau, Marshall, and Beltrami bounded by a line as follows: Beginning in Lake of the Woods County at the intersection of the U.S./Canadian border and the western shoreline of Lake of the Woods; then west along the U.S./Canadian border (crossing into Roseau County) to Roseau County Road 115; then south along Roseau County Road 115 to State Highway 11; then southwest along State Highway 11 to State Highway 32; then south along State Highway 32 (crossing into Marshall County) to Marshall County Road 47/124; then east along Marshall County Road 47/124 to 210th Avenue Northeast; then south along 210th Avenue Northeast and southwest to where the name changes to 200th Avenue Northeast; then south along 200th Avenue Northeast to County Road 121; then south along the western boundary of Agassiz National Wildlife Reserve and along the western boundary of the Elm Lake State Wildlife Management Area to the southwest corner of sec. 21 in T. 155 N., R. 42 W. of the Fifth Prime Meridian; then east along the southern boundary of secs. 21, 22, 23, and 24 in T. 155 N., R. 42 W. and secs. 19 and 20 in T. 155 N., R. 41 W.; then south along the western boundary of secs. 28 and 33 in T. 155 N., R. 41 W.; then continuing south along Marshall County Road 52 to the southern boundary of Marshall County; then east along the southern boundary of Marshall County to the western boundary of Beltrami County (also the boundary of the Red Lake Indian Reservation); then north along the Beltrami County boundary (also the boundary of the Red Lake Indian Reservation) to the northern boundary of the Red Lake Indian Reservation; then east along the northern boundary of the Red Lake Indian Reservation to the southeast corner of sec. 36 in T. 155 N., R. 34 W.; then north along the eastern boundary of Townships 155, 156, 157 (crossing into Lake of the Woods County), 158, 159, 160, and 161 N., R. 34 W., to State Highway 11; then northwest and north along State Highway 11 to County Road 74; then east along County Road 74 to Main Avenue Northeast; then north along Main Avenue Northeast to the northern city limits of Warroad; then east along the Warroad city limits to the shore of Lake of the Woods; then along the shore of Lake of the Woods to the point of beginning.

* * * * *

§ 77.11 [Amended]

■ 4. Section 77.11 is amended by removing and reserving paragraph (b)(2).

Done in Washington, DC, this 27th day of September 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–24667 Filed 9–30–10; 8:45 am]

BILLING CODE 3410–34–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

[SBA–2010–0010]

RIN 3245–AG00

Immediate Disaster Assistance Program

AGENCY: Small Business Administration (SBA).

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule implements the provision in the Food, Conservation and Energy Act of 2008 (the Farm Act) which requires SBA to establish a guaranteed disaster loan program to provide interim loans to businesses affected by a disaster. Under that authority, this rule establishes the Immediate Disaster Assistance Program (IDAP), including the requirements for carrying out the program. SBA will provide an 85 percent guarantee on IDAP loans made by participating lenders for up to $25,000. These loans are intended to provide immediate relief to a small business that meets the basic eligibility standards for a disaster loan authorized under section 7(b) of the Small Business Act while the business'

application for a direct disaster loan is pending with SBA.

DATES: *Effective Date:* October 1, 2010.

Applicability Date: This rule is applicable for disasters declared on or after October 1, 2010.

Comment Date: Comments must be received on or before November 30, 2010.

ADDRESSES: You may submit comments, identified by docket number [SBA–2010–0010] by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Grady Hedgespeth, Director of Financial Assistance, U.S. Small Business Administration, 409 3rd Street, SW., 8th floor, Washington, DC 20416.
- *Hand Delivery/Courier:* Grady Hedgespeth, Director of Financial Assistance, U.S. Small Business Administration, 409 3rd Street, SW., 8th floor, Washington, DC 20416.

All comments will be posted on *http://www.Regulations.gov*. If you wish to include within your comment, confidential business information (CBI) as defined in the Privacy and Use Notice/User Notice at *http://www.Regulations.gov* and you do not want that information disclosed, you must submit the comment by either Mail or Hand Delivery and you must address the comment to the attention of Grady Hedgespeth, Director of Financial Assistance, U.S. Small Business Administration, 409 3rd Street, SW., 8th Floor, Washington, DC 20416. In the submission, you must highlight the information that you consider is CBI and explain why you believe this information should be held confidential. SBA will make a final determination, in its sole discretion, of whether the information is CBI and, therefore, will be published or not.

FOR FURTHER INFORMATION CONTACT: Grady Hedgespeth, Director of Financial Assistance, at (202) 205–7562 or *Grady.Hedgespeth@sba.gov*.

SUPPLEMENTARY INFORMATION:

I. Background Information

The Farm Act, Public Law 110–246, enacted June 18, 2008, amended the Small Business Act (the Act) and authorized changes to make SBA's disaster assistance program more accessible to disaster victims. One provision included in the Farm Act requires SBA to implement an Immediate Disaster Assistance Program (IDAP) to provide interim loans to businesses affected by a disaster that meet the basic eligibility standards for a disaster loan authorized under section 7(b) of the Act. The provision authorizes SBA to provide an 85 percent guarantee on loans made by participating lenders for up to $25,000. The intent of the IDAP loan program is to provide bridge financing as quickly and as prudently as possible following a declared disaster while the business is awaiting approval for permanent financing through a direct disaster loan from SBA.

The IDAP loan program is a guaranteed loan program. Prior to implementation of the IDAP loan program, SBA disaster assistance consisted of direct loans to disaster victims. Although SBA has experience in making guaranteed small business loans, called 7(a) loans because they are authorized under section 7(a) of the Act, SBA's disaster loan programs have always been direct lending programs. Therefore, SBA decided to implement the IDAP loan program first on a smaller scale in order to test the program. Using a modest amount of appropriated funds, SBA plans to fund approximately 934 IDAP loans. In this introductory phase of the program, IDAP loans will only be made available for specific disasters. SBA plans to focus this introductory phase of the IDAP loan program in the Gulf Coast region and is actively recruiting lenders in that region to participate in the program so that IDAP loans will be available as quickly as possible following an IDAP-Eligible Disaster Declaration. SBA will notify the public when a disaster declaration is an IDAP-Eligible Disaster Declaration.

SBA anticipates that it may revise this Interim Final Rule based on its experience in administering the introductory phase of the program. In addition, SBA welcomes comments from all interested parties regarding the parameters of the IDAP loan program as outlined in this rule, as well as suggested changes applicable to further expansion of the program beyond specific identified disasters.

In order to implement the introductory phase of this new loan program, SBA is revising certain existing disaster assistance regulations in subpart A of 13 CFR part 123 and adding a new subpart H to describe the requirements of the new IDAP loan program.

II. Section by Section Analysis

Section 123.1—What do these rules cover?

SBA is updating the citations to the Act to reflect the most current authority for the disaster assistance programs.

Section 123.2—What are disaster loans and disaster declarations?

SBA is revising section 123.2 to add a sentence that describes IDAP loans.

Section 123.4—What is a disaster area and why is it important?

Section 123.4 describes disaster areas and the different types of disaster assistance available depending on the type of disaster declaration and the location of the disaster victim. SBA is revising section 123.4 to add references to IDAP loans. In major disasters, IDAP loans may be made for victims in contiguous counties or other political subdivisions, but for major disasters which authorize public assistance only, IDAP loans are not available in counties contiguous to the disaster area. IDAP loans may also be available in contiguous counties for disaster declarations issued by the Administrator of SBA. Additional information regarding the types of disaster declarations for which IDAP loans are available is set forth in new Subpart H.

Section 123.5—What kinds of loans are available?

SBA is revising section 123.5 to distinguish between the disaster loans authorized under Section 7(b) of the Act and IDAP loans, which are authorized under Section 42 of the Act. As described in paragraph (a), loans authorized under Section 7(b) include physical disaster home loans, physical disaster business loans, economic injury disaster business loans, and Military Reservist EIDL loans. SBA also has authority under Section 7(b) to make disaster loans in participation with financial institutions, although SBA does not currently have funding for this purpose. In such cases, the existing language of section 123.5 provides that SBA's share in the disaster loan may not exceed 90 percent. For clarity, SBA added paragraph (b) to describe IDAP loans. Section 123.5(b) states that IDAP loans are authorized by Section 42 of the Act, made only in participation with financial institutions, and that SBA's share in an IDAP loan is equal to 85 percent.

Section 123.8—Does SBA charge any fees for obtaining a disaster loan?

SBA is revising section 123.8 to clarify which provisions are applicable only to disaster loans authorized under Section 7(b). SBA also added a sentence to provide that SBA will not charge lenders a guarantee fee for IDAP loans.

Section 123.9—What happens if I don't use loan proceeds for the intended purpose?

SBA is revising section 123.9 to clarify that the statutory penalty equal to one and one-half times the disbursed amount for any wrongful misapplication of loan proceeds contained in this provision is applicable only to loans made under Section 7(b) of the Act. This statutory penalty does not apply to IDAP loans which are made under Section 42 of the Act. SBA is also adding paragraph (c) to clarify that borrowers who misapply loan proceeds of any disaster loan under Part 123, including loans made under Section 7(b) of the Act and IDAP loans, may face criminal prosecution or other civil or administrative action.

Section 123.11—Does SBA require collateral for any of its disaster loans?

SBA is adding paragraph (c) to this section, which states that the collateral policies for IDAP loans will be set forth in the new Subpart H.

Section 123.13—What happens if my loan application is denied?

This provision outlines the notification, reconsideration, and appeal procedures for applicants whose request for a disaster loan is declined. SBA is adding a new paragraph (g) at the end of the provision to clarify that it does not apply to IDAP loans. Notification procedures for applicants whose request for an IDAP loan is declined are located in section 123.701. SBA has decided not to provide reconsideration or appeal procedures for the IDAP loan program due to the delay this would add to the IDAP loan approval process. Applicants whose request for an IDAP loan is declined are still eligible to apply directly to SBA for a disaster loan authorized under Section 7(b).

Section 123.14—How does the Federal Debt Collection Procedures Act of 1990 apply?

Section 123.14 provides that debtors who own property which is subject to outstanding judgment liens for debts owed to the United States are generally not eligible to receive disaster loans. The regulation provides that in certain circumstances, however, SBA may waive this restriction. SBA has revised this waiver provision to state that it does not apply to IDAP loans due to the delay this would add to the IDAP loan approval process. A business that is ineligible for an IDAP loan under section 123.14 may still apply directly to SBA for a disaster loan authorized under Section 7(b).

Section 123.15—What if I change my mind?

Because the IDAP loan program is only available for businesses, SBA is adding a sentence at the end of this provision to clarify that it does not apply to IDAP loans.

Section 123.16—How are loans administered and serviced?

SBA is revising the last sentence to paragraph (a) to add that the rules on servicing are found in new Subpart H as well as part 120 of this chapter.

Section 123.700—What is the Immediate Disaster Assistance Program?

Sections 123.700(a) and (b) set forth the purpose of the Immediate Disaster Assistance Program (IDAP) and define the terms used in the regulation applicable to IDAP loans. IDAP loans are intended to provide immediate relief to small businesses that have suffered physical damage or economic injury due to a disaster, provided that those small businesses meet the basic eligibility standards for disaster loans authorized by Section 7(b). IDAP loans are interim loans of no more than $25,000 made by participating lenders and guaranteed by SBA. Paragraph (b) provides definitions of terms used in the new Subpart H. These terms include: Contiguous Counties, Credit Elsewhere, Declared Disaster, Declared Disaster Area, Disaster Loan, IDAP Borrower, IDAP Lender, IDAP Loan Program Requirements, IDAP-Eligible Disaster Declaration, Initial Period, Major Disaster Declaration, Other Recoveries, Primary Counties, SBA Administrative Disaster Declaration, SBA EIDL-Only Disaster Declaration, Substantial Economic Injury, and Term Period. There is significant overlap between the requirements of the IDAP loan program and those of SBA's existing direct disaster loan programs; therefore some of the terms defined in this section may be found in other provisions outside of Subpart H. SBA has included these definitions in section 123.700(b) so that IDAP loan program participants can easily access both those terms that are specific to the IDAP loan program and common terms as they apply to the IDAP loan program.

Section 123.701—What is the application procedure for an IDAP loan?

Section 123.701 provides that a prospective IDAP Borrower must apply to an IDAP Lender for an IDAP loan within the application period established by SBA in the IDAP-Eligible Disaster Declaration. As described in section 123.3, SBA publishes a notice of disaster declaration in the **Federal Register** for every disaster for which SBA disaster assistance is available. SBA has decided to limit the availability of IDAP loans to three types of disaster declarations: Major Disaster Declarations under section 123.3(a)(1), SBA Administrative Disaster Declarations under section 123.3(a)(3), and SBA EIDL-Only Disaster Declarations under section 123.3(a)(5). Thus, an IDAP-Eligible Disaster Declaration is defined as one of these three types of disaster declarations. Additionally, in the introductory phase of the IDAP loan program, SBA is limiting the availability of IDAP loans to disasters occurring in the specific geographic regions. Thus, SBA has also limited the definition of IDAP-Eligible Disaster Declaration to those in which SBA has stated that IDAP loans are available.

IDAP loans are not available for the following types of disaster declarations: Major disasters limited to public assistance (section 123.3(a)(2)); economic injury disaster declarations made in response to a disaster declaration by the Secretary of Agriculture (section 123.3(a)(4)); fishery resource disasters under section 308(b) of the Interjurisdictional Fisheries Act of 1986 ("Fisheries Act"); and Military Reservist economic injury disasters (§ 123.500 *et seq.*). Disaster declarations under section 123.3(a)(2) make SBA disaster assistance available only to private nonprofit organizations (PNPs). By statute, PNPs are not eligible for IDAP loans; therefore IDAP loans cannot be made pursuant to such declarations. Historically, SBA has received relatively few disaster loan applications in response to disaster declarations under section 123.3(a)(4) and disaster declarations under the Fisheries Act. Making IDAP loans available for these types of disaster declarations would further complicate the IDAP loan program while providing relief to a very small number of disaster victims. Therefore, SBA has decided not to include disaster declarations under section 123.3(a)(4) and the Fisheries Act as IDAP-Eligible Disaster Declarations. The Military Reservist economic injury disaster loan (MREIDL) program is a specialized disaster loan program for businesses that employ military reservists who are called-up to active military duty. SBA has decided not to allow IDAP loans for Military Reservist economic injury disasters declarations due to the additional eligibility requirements and specialized nature of the MREIDL program.

The IDAP-Eligible Disaster Declaration will include the deadline by

which a prospective IDAP Borrower must submit an application to an IDAP Lender. SBA will publish a list of IDAP Lenders on SBA's Web site. If the IDAP Lender declines the application, the IDAP Lender will provide the applicant with the reasons for the decline. If the IDAP Lender approves the application, it will submit a request for IDAP loan approval to SBA. The IDAP-Eligible Disaster Declaration will also include the deadline by which the IDAP Lender must submit the IDAP loan approval request to SBA. As required by statute, SBA will issue an approval or decline of the IDAP Lender's request within 36 hours of receipt by SBA. The IDAP Lender will then notify the prospective IDAP Borrower whether the application was approved. If SBA declines the IDAP loan approval request, the IDAP Lender will provide the applicant with the reasons given by SBA for decline. If the application is approved, the IDAP Lender will issue a loan authorization.

Section 123.702—What are the eligibility requirements for an IDAP loan?

Section 123.702(a) provides the requirements an IDAP Borrower must meet to be eligible for an IDAP loan; section 123.702(b) lists types of businesses that are ineligible for IDAP loans; and section 123.702(c) describes the character requirements for IDAP Borrowers. By statute, an IDAP Borrower must meet the basic eligibility standards for a Disaster Loan in order to be eligible for an IDAP loan. SBA has incorporated the basic Disaster Loan eligibility standards into this section. In certain instances, where basic Disaster Loan eligibility standards require an analysis with a level of complexity that would delay processing of an interim loan, SBA has determined that such loans should be processed as direct Disaster Loans and are ineligible for IDAP loan processing.

Sections 123.702(a)(1) and (2) provide that IDAP Borrowers must be located within a Declared Disaster Area and have sustained eligible disaster losses. The regulation further details the type of disaster losses required depending on the specific disaster declaration. As described above, IDAP loans will be available for victims of a disaster event for which an IDAP-Eligible Disaster Declaration is issued. The eligible disaster losses described in section 123.702(a)(2) are derived from the existing statutory and regulatory provisions governing each IDAP-Eligible Disaster Declaration.

Sections 123.702(a)(3) and (4) provide that IDAP Borrowers must be small businesses that do not have Credit Elsewhere. In order to carry out the statutory intent of the IDAP loan program and to encourage lender participation, SBA has confined the eligibility for IDAP loans to small businesses that do not have Credit Elsewhere. An IDAP–Eligible Disaster Declaration authorizes SBA to make the following types of Disaster Loans to businesses harmed in the disaster event: Physical disaster business loans under section 123.200, economic injury disaster loans under section 123.300, or a combination of both types of loans. Under the physical disaster business loan program, SBA makes loans to both small and large businesses and to businesses that have Credit Elsewhere. In contrast, the Act limits the economic injury disaster loan program to small businesses that do not have Credit Elsewhere. In order to simplify the IDAP loan program for lenders, SBA is limiting the IDAP loan program to small businesses that do not have Credit Elsewhere (as defined in section 123.700(b)(2)). Since IDAP Lenders are 7(a) Lenders (*see* section 123.706(a)), they are familiar with these concepts because these are the basic eligibility requirements for the 7(a) loan program. Although large businesses and businesses that have Credit Elsewhere are not eligible for interim financing under the IDAP loan program, they may still apply directly to SBA for a physical disaster business loan. SBA believes that limiting the IDAP loan program to small businesses that do not have Credit Elsewhere will simplify the IDAP loan program and encourage lender participation, thereby increasing the availability of IDAP loans to disaster victims.

Since IDAP loans are interim loans, section 123.702(a)(5) provides that an IDAP Borrower also must apply to SBA for a Disaster Loan for permanent financing within the applicable deadline and before disbursement of the IDAP loan. As described above, IDAP Borrowers must apply to SBA for an economic injury disaster loan, a physical disaster business loan, or a combination of both types of loans. SBA will publish the application deadlines for each type of loan in the IDAP-Eligible Disaster Declaration.

Section 123.702(a)(6) provides that an IDAP Borrower must be creditworthy and demonstrate reasonable assurance of repayment of the IDAP loan. This requirement is consistent with the prudent lending standards SBA requires for all of its loan programs. SBA will provide further guidance on creditworthiness and what is required to demonstrate repayment ability in the procedural guidance developed to administer the introductory phase of the IDAP loan program.

Section 123.702(b) lists the types of businesses that are not eligible for IDAP loans. SBA has restricted these types of businesses from participating in the IDAP loan program because such businesses would not be eligible for a Disaster Loan from SBA or because an application for these types of businesses involves a complex analysis which is not appropriate for an interim delegated-authority guaranteed loan program. The types of businesses ineligible for IDAP loans listed in sections 123.702(b)(1) through (14) and in section 123.702(b)(20) are also ineligible for 7(a) loans. Therefore, SBA anticipates that most IDAP Lenders will be familiar with these restrictions through their experiences with the 7(a) loan program.

Sections 123.702(b)(15) and (16) describe restrictions on businesses eligible for IDAP loans that are similar to restrictions in the 7(a) program. Section 123.702(b)(15) provides that a business engaged in lending, multi-level sales distribution, speculation, or investment is ineligible for an IDAP loan; however, businesses engaged in real estate investment that hold rental property, *i.e.,* landlords, are eligible for IDAP loans. Although the general prohibition on loans to businesses engaged in lending, multi-level sales distribution, speculation, or investment applies to both the IDAP and 7(a) loan programs, the exception for businesses that hold rental property does not exist in the 7(a) loan program. Owners of commercial or residential rental property are eligible for SBA Disaster Loans; therefore they are eligible for interim financing under the IDAP loan program.

Section 123.702(b)(16) provides that a business that is delinquent on any Federal obligation, including Federal loans, contracts, grants, student loans or taxes, or has a judgment lien for a Federal debt against its property is not eligible for an IDAP loan. A similar but slightly less restrictive provision in the 7(a) program provides that businesses that have previously defaulted on a Federal obligation and caused the Federal government to sustain a loss are not eligible for SBA assistance. Because SBA will generally not approve a Disaster Loan to applicants who are delinquent on any Federal debt or have a judgment lien against their property, except under certain specific circumstances, the complex analysis of whether such an applicant is eligible is not appropriate for expedited IDAP loan processing. These applicants may instead apply for a direct Disaster Loan.

The majority of the remaining ineligible types of businesses described in sections 123.702(b)(17) through (25) are restrictions that do not exist in the 7(a) loan program, and instead are restrictions specific to the Disaster Loan program. Sections 123.702(b)(17) and (18) provide that a business located in a Special Flood Hazard Area (SFHA) that has not maintained required flood insurance on its business property or a business located in a SFHA within a non-participating community or a community under sanction is not eligible for an IDAP loan. SBA is prohibited by statute from providing disaster assistance, including SBA guaranteed IDAP loans, to these types of businesses. Similarly, SBA is prohibited from providing disaster assistance to a business located in a building that was newly constructed or substantially improved on or after February 9, 1989, and is currently located seaward of mean high tide or entirely in or over water, as described in section 123.702(b)(19).

Sections 123.702(b)(21) and (22) provide that a business that had a substantial change of ownership after the Declared Disaster or a business that was established after the Declared Disaster is not eligible for a an IDAP loan. In addition, section 123.702(b)(23) provides that a business relocating out of the Declared Disaster Area is not eligible for an IDAP loan. SBA's disaster assistance programs are intended to help a business harmed in a disaster event return to the same physical and economic state it was in prior to the disaster event. Therefore, SBA only allows an IDAP loan to be made to a business that existed prior to the Declared Disaster and will continue to operate in the same location and under the same ownership, unless a contract of sale existed prior to the Declared Disaster. Under special circumstances, a business that must relocate due to uncontrollable or compelling reasons may be eligible for a Disaster Loan from SBA. In order to simplify the IDAP loan program for IDAP Lenders, SBA has decided not to allow IDAP Lenders to make an IDAP loan to a business that relocates out of the Declared Disaster Area. However, such businesses may still apply directly to SBA for a Disaster Loan.

SBA is prohibited by statute from providing disaster assistance, including SBA guaranteed IDAP loans, to the types of businesses described in sections 123.702(b)(24) and (25). Section 123.702(b)(24) describes the prohibition on IDAP loans to agricultural entities, which includes businesses primarily engaged in the production of food and fiber, ranching and raising of livestock, aquaculture and all other farming and agriculture-related industries. The regulation provides exceptions for a nursery that derives less than 50 percent of annual receipts from the production and sale of nursery products and for a small agricultural or producer cooperative. This exception is consistent with existing SBA Disaster Loan policy. Section 123.702(b)(25) describes the statutory prohibition under 18 U.S.C. 431 on certain types of disaster assistance, including IDAP loans, to certain types of businesses in which a Member of Congress has an ownership interest. These ineligible businesses include sole proprietorships, unincorporated associations, partnerships and limited liability companies in which a Member of Congress (or a household member) has an ownership interest.

The Associates (as defined in section 120.10) of a prospective IDAP Borrower must also meet the character requirements provided in section 123.702(c). These requirements track the basic eligibility standards for Disaster Loan. Under sections 123.702(c)(1) and (2), an applicant business is not eligible for an IDAP loan if any Associate is presently under indictment, on parole or probation, or has ever been charged with, arrested for, convicted, placed on pretrial diversion, and/or placed on any form of probation (including adjudication withheld pending probation) for any criminal offense other than a minor motor vehicle violation (including offenses which have been dismissed, discharged, or not prosecuted). It is not in the public interest for SBA to extend financial assistance to individuals who are not of good character. In certain circumstances, however, some such applicants may be eligible for a Disaster Loan directly from SBA following the submission of additional information and a character evaluation by SBA. SBA has decided not to provide a similar in-depth character evaluation for IDAP loan applicants due to the delay this would add to the IDAP loan approval process. The IDAP loan program is intended to provide emergency financing to businesses as quickly and as prudently as possible following a Declared Disaster; therefore SBA is attempting to streamline the IDAP loan application process as much as possible. A business that is ineligible for an IDAP loan under section 123.702(c)(1) or (2) may still apply directly to SBA for a Disaster Loan.

Section 123.702(c)(3) provides that an applicant business is not eligible for an IDAP loan if any Associate owning 50 percent or more of the applicant business is more than 60 days delinquent on any obligation to pay child support arising under an administrative order, court order, repayment agreement between the holder and a custodial parent, or repayment agreement between the holder and a state agency providing child support enforcement services. SBA is prohibited by statute from providing any financial assistance, including IDAP loans, to such applicants.

Section 123.702(c)(4) provides that an applicant business is not eligible for an IDAP loan if any of its Associates is an undocumented (illegal) alien. SBA is prohibited by statute from providing any financial assistance, including IDAP loans, to such applicants.

Section 123.702(c)(5) provides that an applicant business is not eligible for an IDAP loan if any Associate of the applicant business is delinquent on any Federal obligation, including Federal loans, contracts, grants, student loans or taxes, or has a judgment lien for a Federal debt against its property. This restriction on the Associates of a business applying for an IDAP loan is identical to the restriction in section 123.702(b)(16), which applies to an applicant business itself. In certain circumstances, however, some such applicants may be eligible for a Disaster Loan directly from SBA following the submission of additional information and further evaluation by SBA. SBA has decided not to provide a similar waiver provision for IDAP loan applicants due to the delay this would add to the IDAP loan approval process. Instead, the business is ineligible for an IDAP loan. A business that is ineligible for an IDAP loan under section 123.702(b)(16) or section 123.703(c)(5) may still apply directly to SBA for a Disaster Loan and go through the waiver process.

Section 123.703—What are the terms of an IDAP loan?

Section 123.703 establishes basic loan terms for IDAP loans. Paragraph (a) provides that SBA will guarantee 85 percent of each IDAP loan. Paragraph (b) establishes the maximum size of an IDAP loan. If the amount of an IDAP Borrower's disaster losses is $25,000 or less, the principal amount of an IDAP loan must not exceed the amount of disaster losses minus Other Recoveries received by the IDAP Borrower. If the amount of an IDAP Borrower's disaster losses is more than $25,000, the principal amount of an IDAP loan must not exceed $25,000 minus Other Recoveries received by the IDAP Borrower. SBA cannot provide disaster

assistance, including SBA guaranteed loans under the IDAP loan program, for disaster losses that have already been compensated. Thus, if an IDAP Borrower's disaster losses have been compensated by Other Recoveries, the amount of the IDAP loan must be reduced.

Section 123.703(c) provides that the disbursement period for an IDAP loan is up to 30 days from the date of SBA approval of the IDAP loan. SBA determined that a disbursement period longer than 30 days would be inconsistent with the statutory intent to provide immediate disaster relief. If the IDAP Lender is notified before disbursement of the IDAP loan that the IDAP Borrower has received Other Recoveries, the IDAP Lender must decrease the approved amount of the IDAP loan by the amount of the Other Recoveries. Because there is a possibility that the IDAP Borrower's direct Disaster Loan could be approved and disbursed before full disbursement of the interim IDAP loan, this subsection provides that SBA will contact the IDAP Lender when SBA is ready to disburse the IDAP Borrower's approved Disaster Loan. Upon receipt of such notification by SBA, the IDAP Lender must cancel any remaining undisbursed amount of the IDAP loan. The IDAP Borrower's uncompensated disaster losses will instead be covered by the permanent financing provided by the Disaster Loan.

Section 123.703(d) describes the repayment of an IDAP loan. During the Initial Period, an IDAP Borrower will pay interest only on the disbursed principal balance of the IDAP loan. Additionally, during the Initial Period, in accordance with section 123.703(h), the IDAP Borrower must remit the proceeds of Other Recoveries to the IDAP Lender and the IDAP Lender must then apply the Other Recoveries to the IDAP loan balance. The Initial Period ends upon (i) full repayment of the IDAP loan from the proceeds of the IDAP Borrower's Disaster Loan; (ii) SBA notice to the IDAP Lender of decline of the IDAP Borrower's Disaster Loan Application; or (iii) receipt by the IDAP Lender of partial repayment of the IDAP loan from the proceeds of the Disaster Loan; provided that if the IDAP loan has not been fully disbursed at such time, the Initial Period shall not end until the IDAP loan is fully disbursed. If SBA approves an IDAP Borrower's Disaster Loan application, SBA will require, in accordance with the statute, that the Disaster Loan proceeds be applied first to repay the IDAP loan. An IDAP loan is intended to be an interim loan and the statute requires the IDAP Borrower to apply for a Disaster Loan from SBA and to repay the IDAP loan with Disaster Loan proceeds. Thus, if an IDAP Borrower withdraws an application for a Disaster Loan, fails to close on an approved Disaster Loan, or if the approved Disaster Loan is cancelled, the IDAP loan is immediately due and payable by the IDAP Borrower.

Although SBA anticipates that most IDAP loans will be repaid with the proceeds of Disaster Loans, it is likely that some IDAP Borrowers will not be approved for a Disaster Loan or that the amount of the Disaster Loan will be insufficient to repay the entire IDAP loan. In those cases, the IDAP loan enters the Term Period. During the Term Period, the IDAP Borrower must pay principal and interest on the IDAP loan, with the IDAP loan balance to be fully amortized over a period that is at least 10 years from the date of final disbursement of the IDAP loan, but no more than 25 years from the date of final disbursement. The Term Period begins in the first month following SBA notice to the IDAP Lender of decline of the IDAP Borrower's Disaster Loan application, receipt by the IDAP Lender of partial repayment of the IDAP loan from the proceeds of the Disaster Loan, or final disbursement of the IDAP loan, whichever is later. Balloon payments are not permitted, and the IDAP Borrower may prepay any portion of the principal without penalty. Additionally, during the Term Period, in accordance with section 123.703(h), the IDAP Borrower must remit the proceeds of Other Recoveries to the IDAP Lender and the IDAP Lender must then apply the Other Recoveries to the IDAP loan balance.

Section 123.703(e) describes the interest rate on IDAP loans. During the Initial Period, the maximum interest rate will be a fixed rate. If an IDAP loan enters the Term Period, the IDAP Lender may charge either a fixed or a variable interest rate on the balance of the IDAP loan after all proceeds from any approved Disaster Loan have been applied. SBA will publish the maximum allowable interest rates for the Initial and Term Periods in the **Federal Register** from time to time.

Section 123.703(f) provides that no small business, including affiliates, may obtain more than one IDAP loan per Declared Disaster. This provision is intended to prevent IDAP Borrowers from receiving more than $25,000 in interim loan assistance under the IDAP loan program per Declared Disaster. The regulation also clarifies that the provisions of section 120.151 of this chapter, which provide the maximum aggregate amount of 7(a) loans allowed per borrower, do not apply to the IDAP loan program. The IDAP loan program is authorized under section 42 of the Act; therefore it is not subject to the same lending limits applicable to programs authorized under section 7(a).

Section 123.703(g) provides that holders of at least a 20 percent ownership interest in the IDAP Borrower must guarantee the IDAP loan. This requirement is consistent with SBA's personal guaranty requirements in its existing lending programs.

Finally, section 123.703(h) establishes what an IDAP Lender should do if an IDAP Borrower receives Other Recoveries. As provided in section 123.700(b), Other Recoveries are other compensation for disaster losses, including proceeds of policies of insurance or other indemnifications; grants or other reimbursement (including loans) from government agencies or private organizations; claims for civil liability against other individuals organizations or governmental entities; gifts; condemnation awards; and salvage (including any sale or re-use) of items of disaster-damaged property. Additionally, if an IDAP Borrower has voluntarily repaid insurance recoveries to a recorded lienholder, the amount paid is considered to be Other Recoveries. Because an IDAP Borrower's eligibility for a Disaster Loan will be reduced to the extent that the IDAP Borrower is compensated for the disaster losses by Other Recoveries, the IDAP Borrower must promptly notify the IDAP Lender of any receipt of Other Recoveries and must remit the proceeds of Other Recoveries to the IDAP Lender. The IDAP Lender must then apply the Other Recoveries to the IDAP loan balance. No additional collateral is required for IDAP loans.

Section 123.704—Are there restrictions on how IDAP loan funds may be used?

Section 123.704 describes the purposes for which an IDAP Borrower may use IDAP loan proceeds. As provided in section 123.704(a), the allowable uses of IDAP loan proceeds vary depending upon the type of Declared Disaster (Major Disaster Declaration, SBA Administrative Disaster Declaration, or SBA EIDL-Only Disaster Declaration) and the IDAP Borrower's location (Primary County or Contiguous County). In general, IDAP loan proceeds may only be used to restore or replace the IDAP Borrower's real or business personal property to its condition before the Declared Disaster occurred, and/or for working capital necessary to carry the IDAP Borrower until resumption of normal operations

and for expenditures necessary to alleviate the specific economic injury, but not to exceed that which the IDAP Borrower could have provided had the injury not occurred. Section 123.704(b) details specific ineligible uses of IDAP loan proceeds. These restrictions on uses of IDAP loan proceeds are consistent with the use of proceeds requirements for Disaster Loans or are prohibited because they involve an additional level of complexity that would delay processing of the IDAP loan. For example, section 123.704(b)(6) prohibits the use of IDAP loan proceeds for making repairs to a condominium unit owned by the IDAP Borrower. Although Disaster Loan proceeds may be used to repair condominium units, SBA requires additional analysis due to the potential overlap of the individual unit owner's damage with that of the association owned portions of the property. SBA has determined that such complex analysis will delay processing of an IDAP loan and should be reserved for direct Disaster Loan processing.

Section 123.705—Are there any fees associated with IDAP loans?

Section 123.705(a) provides that an IDAP Lender may not charge an IDAP Borrower any fees or direct costs except for the reasonable direct costs of liquidation, a late payment fee not to exceed 5 percent of the scheduled IDAP loan payment, and an application fee not to exceed $250. SBA decided to allow an optional application fee of no more than $250 so that an IDAP Lender may recoup some of its loan processing costs. The application fee is optional; therefore an IDAP Lender may choose not to collect an application fee from an IDAP Borrower. The provisions on late payment fees and reasonable direct costs of liquidation are consistent with permissible fees in SBA's 7(a) guaranteed loan program. If an undisbursed IDAP loan is cancelled pursuant to § 123.703(c), the IDAP Lender may retain the application fee.

An IDAP Lender is not required to execute a compensation agreement for collecting an application fee. Under 13 CFR 103.5, SBA typically requires lenders, Agents, and loan packagers to execute and submit to SBA a compensation agreement that governs the compensation charged for services rendered or to be rendered to an applicant or lender in any matter involving SBA assistance. This requirement is intended to prevent lenders, Agents, and loan packagers from charging inappropriate or unreasonable fees to applicants or lenders. This type of risk does not apply to the IDAP loan program, because the only allowable fee is an application fee with a defined maximum amount. Therefore, SBA has decided not to require a compensation agreement for the IDAP loan program. However, consistent with the requirements of Section 13 of the Act, both the IDAP Borrower and the IDAP Lender must disclose in the IDAP loan application materials whether an application fee was paid and the amount of the application fee.

Section 123.705(b) provides that SBA will not impose any guarantee fees on an IDAP Lender making an IDAP loan.

Section 123.705(c) prohibits the use of paid loan packagers, referral agents or brokers in the IDAP loan program. Other than the application fee set forth in Section 123.705(a)(3), no IDAP Lender or third party may charge an IDAP Borrower a fee to assist in the preparation of an IDAP loan application or application materials, nor may a third party charge an IDAP Borrower or an IDAP Lender a referral fee or broker's fee in connection with an IDAP loan. SBA believes that the costs of the program should be kept as low as possible to aid the disaster victim.

Section 123.706—What are the requirements for IDAP lenders?

Section 123.706 details the requirements for lenders participating in the IDAP loan program. Section 123.706(a) provides that an IDAP Lender must be a 7(a) Lender (as defined in section 120.10 of this chapter). Section 120.10 defines a 7(a) Lender as an institution that has executed a participation agreement with SBA under the guaranteed loan program. Notwithstanding the provisions of section 120.470(a), a Small Business Lending Company (SBLC) that is a 7(a) Lender may make IDAP loans.

The regulation also provides that IDAP Lenders are subject to IDAP Loan Program Requirements, which include requirements imposed upon IDAP Lenders by statute, SBA regulations, any agreement the IDAP Lender has executed with SBA, SBA Standard Operating Procedures, SBA procedural guidance, official SBA notices and forms applicable to the IDAP loan program, and loan authorizations, as such requirements are issued and revised by SBA from time to time.

In addition, IDAP Lenders are subject to certain provisions in Part 120 that are applicable to all lenders that participate in SBA guaranteed loan programs. Section 120.140, *What ethical requirements apply to participants?,* describes the ethical requirements of lenders participating in SBA programs and any associates of such lenders. Section 120.197, *Notifying SBA's Office of Inspector General of suspected fraud,* requires lenders to notify the SBA Office of Inspector General of any information which indicates that fraud may have occurred in connection with an IDAP loan. Sections 120.400, 120.410, 120.411, 120.412, and 120.413 provide the participation criteria for lenders participating in SBA programs. Section 120.400, *Loan Guarantee Agreements,* provides that the existence of a loan guarantee agreement does not obligate SBA to participate in any specific proposed loan that a lender may submit, and does not limit SBA's rights to deny a specific loan or establish general policies. Section 120.410, *Requirements for all participating Lenders,* includes requirements relating to a lender's continuing ability to make, service, and liquidate SBA guaranteed loans. Section 120.411, *Preferences,* provides that a participation agreement between SBA and a lender does not establish any preferences in favor of the lender, for example, a preferred position compared to SBA relating to the making, servicing, or liquidation of a loan. Section 120.412, *Other services Lenders may provide Borrowers,* provides that lenders and associates of lenders may provide services to and contract for goods with a borrower only after full disbursement of the SBA-guaranteed loan. Section 120.413, *Advertisement of relationship with SBA,* describes how a lender may refer to SBA in its advertising.

Section 123.706(b) provides that the IDAP loan program is an entirely delegated loan program. SBA determined that a fully delegated program is the most effective way to provide immediate interim financing to disaster damaged businesses. The regulation requires an IDAP Lender to process, service and liquidate its IDAP loans under its delegated authority provided by the supplemental Loan Guarantee Agreement for the IDAP loan program, and states that the IDAP Lender is responsible for confirming that all loan decisions are in accordance with IDAP Loan Program Requirements. The regulation also requires that an IDAP Lender use its existing practices and procedures for its non-SBA guaranteed commercial loans of a similar size in determining creditworthiness for IDAP loans. These practices must be appropriate, generally accepted, proven and prudent credit evaluation processes and procedures and may include credit scoring. In disbursing the IDAP loan, the IDAP Lender must use the same disbursement procedures and documentation as it

uses for its similarly sized non-SBA guaranteed commercial loans.

Section 123.706(c) provides that an IDAP Lender must report on its IDAP loans in accordance with requirements established by SBA from time to time. SBA will provide further guidance on IDAP loan reporting in the procedural guidance developed to administer the introductory phase of the IDAP loan program.

Sections 123.706(d) and (e) provide that an IDAP Lender must service and liquidate its IDAP loans in accordance with the practices and procedures that the IDAP Lender uses for its non-SBA guaranteed commercial loans. The practices must be commercially reasonable and consistent with prudent lending standards and in accordance with IDAP Loan Program Requirements. SBA will provide additional guidance on how IDAP Lenders must service and liquidate IDAP loans in the procedural guidance developed to administer the introductory phase of the IDAP loan program.

Section 123.706(f) provides that an IDAP Lender may request SBA to purchase the guaranteed portion of an IDAP loan when there has been an uncured payment default exceeding 60 days or when the IDAP Borrower has declared bankruptcy. The regulation also provides that IDAP loans are subject to the 7(a) loan program requirements of sections 120.520 through 120.524 and sections 120.542 and 120.546. SBA will provide further guidance on how IDAP Lenders must request purchase of an IDAP loan in the procedural guidance developed to administer the introductory phase of the IDAP loan program.

Section 123.706(g) provides that an IDAP Lender may not sell the guaranteed portion of an IDAP loan in the secondary market, securitize the unguaranteed portion of an IDAP loan, participate any portion of an IDAP loan with another lender, or sell all of its interest in an IDAP loan. SBA is imposing these restrictions because it is implementing the IDAP loan program on an introductory basis.

Section 123.706(h) provides that an IDAP Lender may pledge an IDAP loan subject to the 7(a) loan program requirements of sections 120.434 and 120.435 of this chapter.

Section 123.706(i) provides that an IDAP Lender is subject to the supervision and enforcement provisions in Sections 120.1000 through 120.1600. These provisions detail SBA's risk-based lender oversight program, including off-site reviews and monitoring, on-site reviews, and potential enforcement actions. The subsection also provides that an IDAP Lender that is an SBA Supervised Lender (as defined in section 120.10) is subject to the requirements of section 120.460 through 120.490, as applicable. SBA will provide further guidance on its oversight of IDAP Lenders in the procedural guidance developed to administer the introductory phase of the IDAP loan program.

III. Justification for Interim Final Rule

In general, SBA publishes a rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act, 5 U.S.C. 553 and SBA regulations at 13 CFR 101.108. The Administrative Procedure Act provides an exception to this standard rulemaking process, however, where an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b)(3)(B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. Under such circumstances, an agency may publish an interim final rule without soliciting public comment.

In enacting the good cause exception to standard rulemaking procedures, Congress recognized that emergency situations arise where an agency must issue a rule without public participation. As detailed above, SBA plans to limit the introductory phase of the IDAP loan program to disasters occurring in the Gulf Coast region. According to the Climate Prediction Center at the National Oceanic and Atmospheric Administration (NOAA), an active to extremely active hurricane season is expected for the Atlantic Basin this year, which includes the Gulf Coast region. Furthermore, many areas of the Gulf Coast region are still recovering from the devastating effects of hurricanes Katrina, Rita, and Wilma and, most recently, the Deepwater BP Oil Spill. SBA finds that good cause exists to publish this rule as an interim final rule due to the potential for an increased number of disasters this hurricane season that would cause harm to businesses in areas that are still economically fragile. Advance solicitation of comments for this rulemaking would be impracticable and contrary to the public interest, as it would delay the delivery of the IDAP loan program until after the 2010 hurricane season. Any such delay could be extremely prejudicial to businesses and their communities as they struggle to recover from a disaster.

SBA invites comments from all interested members of the public. These comments must be received on or before the close of the comment period noted in the DATES section of this interim final rule. SBA may then consider these comments in making any necessary revisions to these regulations.

IV. Justification for Immediate Effective Date

The APA requires that "publication or service of a substantive rule shall be made not less than 30 days before its effective date, except as * * * otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). The purpose of this provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect.

The IDAP loan program is designed to provide immediate relief to small businesses that meet the basic eligibility requirements for a disaster loan authorized under section 7(b) of the Act while the businesses are awaiting approval of a direct disaster loan by SBA. During the introductory phase, SBA intends to limit the IDAP loan program to disasters occurring in the Gulf Coast region. The Gulf Coast is expected to experience a particularly active hurricane season this year, and as we enter the peak of the hurricane season, the need increases to have the IDAP loan program in place in the event of a disaster. This is especially important for a region that is still recovering from the devastating effects of hurricanes Katrina, Rita and Wilma and the Deepwater BP Oil Spill. Lenders making IDAP loans might need time to make system adjustments; however, delaying implementation would necessarily have an adverse impact on small business disaster victims in the Gulf Coast since they would not have access to the immediacy of the IDAP loans.

In light of the urgent need to assist small business disaster victims in the Gulf Coast, SBA finds that there is good cause for making this rule effective immediately instead of observing the 30-day period between publication and effective date. While this rule is effective immediately upon publication, the SBA is inviting public comment on the rule during a 60-day period and will consider comments in developing a final rule.

Compliance with Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 USC, Ch. 35) Executive Order 12866:

The Office of Management and Budget has determined that this rule constitutes a "significant regulatory action" under Executive Order 12866, thus requiring a

Regulatory Impact Analysis, as set forth below.

A. Regulatory Objective of the Proposal

Under the Immediate Disaster Assistance Program (IDAP), SBA will provide an 85 percent guarantee on loans made by participating lenders for up to $25,000. An IDAP loan is intended to provide immediate relief to a business that meets the basic eligibility standards for a disaster loan authorized under section 7(b) of the Act while the application for a disaster loan is pending with SBA.

B. Benefits and Costs of the Rule

The direct benefits of the Immediate Disaster Assistance Program will accrue to the small business borrowers that receive these interim loans. In monetary terms, these direct benefits total $18,687,469, based on the current subsidy appropriations available. However, these small firms also gain certain indirect benefits from being better equipped to continue their ongoing operations, thus avoiding revenue disruptions. These continued (or prevented disruption in) revenue streams will indirectly benefit the local economy. Recipient firms will be better able to maintain their pre-disaster employment level and payments. Hence, employees, lenders and suppliers of these small businesses will benefit from their continued operation. Local governments will also benefit from continued taxation of these firms.

The bulk of the costs accrue to the U.S. taxpayers primarily due to the $352,357 in current subsidy appropriations. The SBA, and indirectly U.S. taxpayers, will incur certain costs associated with launching and operating the introductory phase of the program. Congress has currently appropriated $1.31 million in administrative expenses for disaster guaranteed loan programs, a portion of which will be used to fund the system development and lender support aspects of the introductory phase of the IDAP loan program and to lay the groundwork for expansion of the program.

In monetary terms, the immediate costs of the introductory phase of the program are $352,357, plus the IDAP program's share of the $1.31 million in administrative expenses. The immediate benefit is the value to the IDAP loan recipients of receiving $18,687,469 in disaster loans earlier than would be the case under the traditional disaster loan program. While SBA cannot quantify the exact value to IDAP recipients of getting their loans sooner, it believes that, given the economic uncertainties and shocks that generally accompany a disaster, the additional benefits to the recipient (and its community) of quickly receiving assistance are greater than the costs of the program. Also, the program does incur certain indirect costs and produces certain indirect benefits not quantified in this analysis.

C. Alternatives

Given that the program is the result of a Congressional mandate, the Agency had little leeway in providing alternatives to the mandates. However, the SBA did consider methods for delivering these mandates to the American public. SBA considered allowing non-delegated processing of IDAP loans, but determined that such processing would be more expensive and result in unnecessary delays. SBA considered allowing large businesses and businesses with Credit Elsewhere to be eligible for the program, but determined that simpler eligibility requirements would increase lender participation and IDAP loan availability. SBA considered specific processing, closing, servicing and liquidation requirements, but determined that, to the extent possible, lenders should use their own forms and procedures in order to simplify the program requirements, lower the cost and encourage lender participation. Having considered these options, the Agency concluded that the program as set forth in this rule is the SBA's best available means of meeting the above-mentioned Congressional mandate. SBA will test this program as it is rolled out and will continue to consider alternatives which will make this program more effective in delivering financial assistance to disaster victims.

Executive Order 12988

For the purposes of Executive Order 12988, Civil Justice Reform, SBA has determined that this rule is crafted, to the extent practicable, in accordance with the standards set forth in §§ 3(a) and 3(b)(2), to minimize litigation, eliminate ambiguity, and reduce burden. This rule does not have retroactive or pre-emptive effect.

Executive Order 13132

For the purposes of Executive Order 13132, the SBA determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) requires administrative agencies to consider the economic impact of their actions on small entities, which includes small businesses, small non-profit businesses, and small local governments. The RFA requires agencies to prepare a regulatory flexibility analysis, which describes the economic impact that the rule will have on small entities, or certify that the rule will not have a significant economic impact on a substantial number of small entities. However, the RFA requires such analysis only where notice and comment rulemaking are required. Rules are exempt from the APA notice and comment requirements when the agency for good cause finds that notice and public procedure thereon is impracticable, unnecessary, or contrary to the public interest. As detailed above, SBA has determined that there is good cause to adopt this rule without prior public participation; therefore, the rule is also exempt from the RFA requirements. SBA invites comments on this determination.

Paperwork Reduction Act

SBA has determined that this rule imposes new reporting and recordkeeping requirements on certain disaster victims under the Paperwork Reduction Act, 44 U.S.C. chapter 35. This new information collection requires IDAP applicants and lender to submit three forms described below, which are necessary to process applications for assistance under the IDAP loan program. In addition to the application information, IDAP lenders will be required to report loan status information to SBA on a monthly basis. SBA is submitting these two sets of information collections as described below to OMB for review together with the interim final rule. As stated above, IDAP applicants must also submit an application for an SBA direct disaster business loan. The burden associated with the direct loan application is currently part of the reported burden for that application. However, we are also including that burden here to fully inform the IDAP applicants. Therefore, in addition to the burden listed below specifically for the IDAP loan application, applicants for such loans will also be required to spend an additional 3.5 hours to complete the SBA Form 5, Disaster Business Loan Application (OMB Control #3245–0017) and SBA Form 413 (OMB Control #3245–0188). There will be no additional burden on IDAP lenders because they are not part of the direct loan process.

A. Title and Description of Information Collection

SBA Form 2410: Immediate Disaster Assistance Program (IDAP) Borrower Information Form.

Purpose: The information collected on this form is modeled on two currently approved information collections: OMB Control number 3245–0016, SBA's 7(a) loan application, and OMB Control number 3245–0178, Statement of Personal History, which is used to collect personal information on the individuals associated with the small business loan applicant. Those two collections of information will not be discontinued; they will continue to be used for their approved purposes. The information requested includes identifying information regarding the applicant and its Associates, including indebtedness; current or previous government financing; suspension or debarment history; and certain other disclosures regarding Associates' criminal history.

OMB Control Number: New collection.

Description of, and Estimated Number of Respondents: This information will be collected from the small business concerns that are applying for financial assistance under the IDAP loan program. SBA estimates 934 small businesses will submit applications over the course of a year.

Estimated Number of Responses: Each small business concern can submit only one application under the IDAP loan program per disaster; therefore the estimated number of responses is 934.

Estimated Response Time: 10 minutes.

Total Estimated Annual Hour Burden: 155 hours.

B. Title and Description

SBA Form 2411: Immediate Disaster Assistance Program (IDAP) Lender's Application (Part I).

Purpose: This information collection is submitted by delegated lenders seeking SBA's guarantee on an IDAP loan.

OMB Control Number: New collection.

Description of, and Estimated Number of Respondents: 50 delegated lenders submitting this information electronically through e-tran (SBA's electronic loan application submission system).

Estimated Number of Responses: 934.

Estimated Response Time: 15 minutes per response.

Estimated Annual Hour Burden: 233 hours.

C. Title and Description

SBA Form 2412: Immediate Disaster Assistance Program (IDAP) Lender's Application (Part II)—Eligibility Information.

Purpose: The information will be used to determine whether the loan application meets the eligibility criteria for an IDAP loan, as stated in this regulation.

OMB Control Number: New collection.

Description of, and Estimated Number of Respondents: This form is to be completed by all lenders participating in the SBA's IDAP loan program. We estimate that a total of 50 lenders will submit this information collection.

Estimated Number of Responses: 934.

Estimated Response Time: 10 minutes.

Total Estimated Annual Hour Burden: 155 hours.

D. Title and Description

Immediate Disaster Assistance Program (IDAP) Payment Reporting

Purpose: The information collected will allow SBA to monitor loan payment information on IDAP loan portfolios. SBA requires its lender participants to provide monthly updates on the payment status of disbursed loans. This monthly reporting process mirrors the payment cycle of the underlying loans, allowing SBA to readily determine the financial risk borne by the Agency from its participants.

OMB Control Number: New collection.

Description of, and Estimated Number of Respondents: We expect that approximately 467 of the 934 projected loans will be subject to monthly reporting at any one time. Annually, we estimate IDAP Lenders will file 12 reports.

Estimated Number of Responses: 5604.

Estimated Response Time: 5 minutes.

Total Estimated Annual Hour Burden: 467 hours.

SBA invites comments on the IDAP information collections, particularly on: (1) Whether the proposed collection of information is necessary for the proper performance of the program, including whether the information will have a practical utility; (2) the accuracy of SBA's estimate of the burden of the proposed collections of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Please send comments by the closing date for comment for this interim final rule to SBA Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503 and to Grady B. Hedgespeth, Office of Financial Assistance, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

■ For the reasons stated in the preamble, SBA amends 13 CFR part 123 as follows:

PART 123—DISASTER LOAN PROGRAM

■ 1. The authority citation for part 123 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(b), 636(d), 657n; Pub. L. 102–395, 106 Stat. 1828, 1864; and Pub. L. 103–75, 107 Stat. 739; and Pub. L. 106–50, 113 Stat. 245.

■ 2. In § 123.1, revise the first sentence to read as follows:

§ 123.1 What do these rules cover?

This part covers the disaster loan programs authorized under the Small Business Act, 15 U.S.C. 636(b), (d), and (f); and 15 U.S.C. 657n. * * *

■ 3. Amend § 123.2 by adding a new third sentence to read as follows:

§ 123.2 What are disaster loans and disaster declarations?

* * * SBA also offers interim guaranteed disaster loans, in participation with financial institutions, to affected small businesses ("IDAP loans").* * *

■ 4. Revise the fourth and fifth sentences of § 123.4 to read as follows:

§ 123.4 What is a disaster area and why is it important?

* * * In major disasters, economic injury disaster loans and IDAP loans may be made for victims in contiguous counties or other political subdivisions, provided, however that with respect to major disasters which authorize public assistance only, SBA shall not make economic injury disaster or IDAP loans in counties contiguous to the disaster area. Disaster declarations issued by the Administrator of SBA include contiguous counties for both physical, economic injury and, in some cases, IDAP assistance. * * *

■ 5. Revise § 123.5 to read as follows:

§ 123.5 What kinds of loans are available?

(a) *Disaster loans authorized under Section 7(b).* SBA offers four kinds of disaster loans as authorized by Section 7(b) of the Small Business Act: Physical disaster home loans, physical disaster business loans, economic injury disaster business loans, and Military Reservist EIDL loans. SBA makes these loans directly or in participation with a financial institution. If a disaster loan authorized under Section 7(b) is made in participation with a financial

institution, SBA's share in that loan may not exceed 90 percent.

(b) *IDAP loans.* SBA also offers IDAP loans as authorized by Section 42 of the Small Business Act. SBA makes these interim guaranteed disaster loans to small businesses only in participation with a financial institution. SBA's share in an IDAP loan is equal to 85 percent.

■ 6. Revise § 123.8 to read as follows:

§ 123.8 Does SBA charge any fees for obtaining a disaster loan?

SBA does not charge points, closing, or servicing fees on any disaster loan authorized under Section 7(b). You will be responsible for payment of any closing costs owed to third parties on these loans, such as recording fees and title insurance premiums. If your loan is made under Section 7(b) in participation with a financial institution, SBA will charge a guarantee fee to the financial institution, which then may recover the guarantee fee from you. SBA does not charge a guarantee fee for an IDAP loan made under Section 42.

■ 7. In § 123.9, revise the first and second sentences of paragraph (a), paragraph (b), and adding paragraph (c) to read as follows:

§ 123.9 What happens if I don't use loan proceeds for the intended purpose?

(a) For disaster loans authorized under Section 7(b), when SBA approves each application, it issues a loan authorization which specifies the amount of the loan, repayment terms, any collateral requirements, and the permitted use of loan proceeds. If you wrongfully misapply the proceeds of a disaster loan authorized under Section 7(b), you will be liable to SBA for one and one-half times the proceeds disbursed to you as of the date SBA learns of your wrongful misapplication. * * *

(b) If SBA learns that you may have misapplied your loan proceeds from a disaster loan authorized under Section 7(b), SBA will notify you at your last known address, by certified mail, return receipt requested. You will be given at least 30 days to submit to SBA evidence that you have not misapplied the loan proceeds or that you have corrected any such misapplication. Any failure to respond in time will be considered an admission that you misapplied the proceeds. If SBA finds a wrongful misapplication, it will cancel any undisbursed loan proceeds, call the loan, and begin collection measures to collect your outstanding loan balance and the civil penalty.

(c) If you misapply loan proceeds of any disaster loan under this Part, including an IDAP loan, you may face criminal prosecution or civil or administrative action.

■ 8. Amend § 123.11 by adding a new paragraph (c) to read as follows:

§ 123.11 Does SBA require collateral for any of its disaster loans?

* * * * *

(c) Collateral requirements for IDAP loans are set forth in Subpart H of this part.

■ 9. Amend § 123.13 by adding a new paragraph (g) to read as follows:

§ 123.13 What happens if my loan application is denied?

* * * * *

(g) This section does not apply to IDAP loans.

■ 10. Amend § 123.14 by revising the first and second sentences of paragraph (a) introductory text to read as follows:

§ 123.14 How does the Federal Debt Collection Procedures Act of 1990 apply?

(a) Under the Federal Debt Collection Procedures Act of 1990 (28 U.S.C. 3201(e)), a debtor who owns property which is subject to an outstanding judgment lien for a debt owed to the United States generally is not eligible to receive a disaster loan. The SBA Associate Administrator for Disaster Assistance, or designee, may waive this restriction as to disaster loans (except IDAP loans) upon a demonstration of good cause. * * *

* * * * *

■ 11. In § 123.15, add a sentence at the end of the paragraph to read as follows:

§ 123.15 What if I change my mind?

* * * This provision does not apply to IDAP loans.

■ 12. Amend § 123.16 by revising the last sentence of paragraph (a) to read as follows:

§ 123.16 How are loans administered and serviced?

(a) * * * The SBA rules on servicing are found in Subpart H of this part and part 120 of this chapter.

* * * * *

■ 13. Add subpart H to part 123 to read as follows:

Subpart H—Immediate Disaster Assistance Program

Sec.

Subpart H—Immediate Disaster Assistance Program

§ 123.700 What is the Immediate Disaster Assistance Program?

(a) The Immediate Disaster Assistance Program (IDAP) is a guaranteed disaster loan program for small businesses that have suffered physical damage or economic injury due to a Declared Disaster. An IDAP loan is an interim loan in an amount not to exceed $25,000 made by an IDAP Lender to meet the immediate business needs of an IDAP Borrower while approval of long-term financing from a Disaster Loan is pending with SBA.

(b) *Definitions.* As used in this subpart, the terms below are defined as follows:

Contiguous Counties means the counties or other political subdivisions identified in the IDAP-Eligible Disaster Declaration as abutting the Primary Counties.

Credit Elsewhere means that the IDAP Borrower is able to address disaster losses using available personal or business resources or access to nonfederal lending sources at reasonable rates and terms.

Declared Disaster is a disaster event for which an IDAP-Eligible Disaster Declaration has been issued.

Declared Disaster Area means the Primary Counties and the Contiguous Counties identified for a particular Declared Disaster.

Disaster Loan means a disaster loan authorized by Section 7(b) of the Small Business Act.

IDAP Borrower is the obligor of an IDAP loan.

IDAP Lender is a financial institution participating in the IDAP loan program, subject to the requirements of this subpart.

IDAP Loan Program Requirements are requirements imposed upon an IDAP Lender by statute, SBA regulations, any agreement the IDAP Lender has executed with SBA, SBA SOPs, SBA procedural guidance, official SBA notices and forms applicable to the IDAP loan program, and loan authorizations, as such requirements are issued and revised by SBA from time to time.

IDAP-Eligible Disaster Declaration means a Major Disaster Declaration, SBA Administrative Disaster Declaration or SBA EIDL-Only Disaster Declaration in which SBA has indicated that IDAP loans are available.

Initial Period is the IDAP loan repayment period that begins upon the initial disbursement of an IDAP loan and ends upon (i) full repayment of the IDAP loan from the proceeds of the IDAP Borrower's Disaster Loan; (ii) SBA notice to the IDAP Lender of decline of the IDAP Borrower's Disaster Loan Application; or (iii) receipt by the IDAP Lender of partial repayment of the IDAP loan from the proceeds of the Disaster Loan; provided that if the IDAP loan has not been fully disbursed at such time, the Initial Period shall not end until the IDAP loan is fully disbursed.

Major Disaster Declaration means a disaster declaration issued under § 123.3(a)(1) of this part.

Other Recoveries are other compensation for disaster losses and include, but are not limited to: Proceeds of policies of insurance or other indemnifications; grants or other reimbursement (including loans) from government agencies or private organizations; claims for civil liability against other individuals, organizations or governmental entities; gifts; condemnation awards; and salvage (including any sale or re-use) of items of disaster-damaged property. If an IDAP Borrower has voluntarily paid insurance recoveries to a recorded lienholder, the amount paid is considered to be Other Recoveries.

Primary Counties means the counties or other political subdivisions identified in the IDAP-Eligible Disaster Declaration as having been adversely affected by the disaster.

SBA Administrative Disaster Declaration means a disaster declaration issued under § 123.3(a)(3) of this part.

SBA EIDL-Only Disaster Declaration means a disaster declaration issued under § 123.3(a)(5) of this part.

Substantial Economic Injury exists when a business concern is unable to meet its obligations as they mature or to pay its ordinary and necessary operating expenses. Loss of anticipated profits or a drop in sales is not considered substantial economic injury.

Term Period is the repayment period that begins following:

(i) SBA notice to the IDAP Lender of decline of the IDAP Borrower's Disaster Loan application;

(ii) Receipt by the IDAP Lender of partial repayment of the IDAP loan from the proceeds of the Disaster Loan; or

(iii) Final disbursement of the IDAP loan, whichever is later, and ends when the IDAP loan is repaid in full.

§ 123.701 What is the application procedure for an IDAP loan?

A prospective IDAP Borrower must apply to an IDAP Lender for an IDAP loan by the application deadline for prospective IDAP Borrowers established by SBA in the IDAP-Eligible Disaster Declaration. If the IDAP Lender approves the application, it must submit a request for IDAP loan approval to SBA by the application deadline for IDAP Lenders established by SBA in the IDAP-Eligible Disaster Declaration. SBA will issue an approval or a decline of the IDAP Lender's request within 36 hours of receipt by SBA. A prospective IDAP Borrower will receive notice of approval or decline of its loan application from the IDAP Lender. Notice of decline will include the reasons. If an IDAP loan is approved, a loan authorization will be issued.

§ 123.702 What are the eligibility requirements for an IDAP loan?

(a) *Eligible IDAP applicants.* To be eligible for an IDAP loan, an applicant business must meet all of the requirements set forth below. The applicant business must:

(1) Be located within a Declared Disaster Area;

(2) Have eligible disaster losses as follows:

(i) For a Major Disaster Declaration, if located in a Primary County, have sustained damage to real or business personal property in the Declared Disaster or, if located in a Primary or Contiguous County, have sustained Substantial Economic Injury as a direct result of the Declared Disaster; or

(ii) For an SBA Administrative Disaster Declaration, have sustained damage to real or business personal property in the Declared Disaster or sustained Substantial Economic Injury as a direct result of the Declared Disaster; or

(iii) For an SBA EIDL-Only Disaster Declaration, have sustained Substantial Economic Injury as a direct result of the Declared Disaster;

(3) Have been a small business concern under the size requirements applicable to disaster loan assistance under part 121 of this chapter (including affiliates) when the Declared Disaster commenced;

(4) Together with affiliates and principal owners, not have Credit Elsewhere;

(5) Apply to SBA for a Disaster Loan within the applicable deadline and before any disbursement of the IDAP loan; and

(6) Be creditworthy and demonstrate reasonable assurance of repayment of the IDAP loan.

(b) *Ineligible IDAP applicants.* An applicant business is not eligible for an IDAP loan if it is:

(1) A non-profit or charitable concern;

(2) A business that was not a small business concern under the size requirements of part 121 of this chapter (including affiliates) when the Declared Disaster commenced;

(3) A consumer or marketing cooperative;

(4) Deriving more than one-third of gross annual revenue from legal gambling activities or a business whose purpose for being is gambling regardless of its ability to meet the one-third criteria established for otherwise eligible concerns;

(5) A loan packager which earns more than one-third of its gross annual revenue from packaging SBA loans;

(6) Principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious beliefs, whether in a religious or secular setting;

(7) Primarily engaged in political or lobbying activities;

(8) A private club or business that limits the number of memberships for reasons other than capacity;

(9) Presents live performances of a prurient sexual nature or derives directly or indirectly more than *de minimis* gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature;

(10) Engaged in the production or distribution of any product or service that has been determined to be obscene by a court;

(11) Engaged in any illegal activity;

(12) A government owned entity (except for a business owned or controlled by a Native American tribe);

(13) A business in which the IDAP Lender or any of its Associates (as defined in § 120.10) owns an equity interest;

(14) Primarily engaged in subdividing real property into lots and developing it for resale on its own account;

(15) Engaged in lending, multi-level sales distribution, speculation, or investment (except for real estate investment with property held for rental when the Declared Disaster occurred);

(16) Delinquent on any Federal obligation, including but not limited to any Federal loans, contracts, grants, student loans or taxes, or has a judgment lien for a Federal debt against its property;

(17) Located in a Special Flood Hazard Area (SFHA), as designated by the Federal Emergency Management Agency, and has not maintained required flood insurance on its business property (regardless of the type of disaster);

(18) Located in a SFHA within a non-participating community or a community under sanction;

(19) Located in a building that was newly constructed or substantially improved on or after February 9, 1989, and is currently located seaward of mean high tide or entirely in or over water;

(20) Located in a Coastal Barrier Resource Area (COBRA);

(21) A business that had a substantial change of ownership (more than 50 percent) after the Declared Disaster and no contract of sale existed prior to that time;

(22) A business that was established after the Declared Disaster;

(23) Relocating out of the Declared Disaster Area;

(24) Primarily engaged in the production of food and fiber, ranching and raising of livestock, aquaculture and all other farming and agriculture-related industries (except for a nursery deriving less than 50 percent of annual receipts from the production and sale of ornamental plants and other nursery products, a small agricultural cooperative or a small producer cooperative); or

(25) A sole proprietorship, unincorporated association, partnership or limited liability company in which a Member of Congress (or a household member) has an ownership interest.

(c) *Character requirements.* An applicant business is not eligible for an IDAP loan if any Associate (as defined in § 120.10) of the applicant business:

(1) Is presently under indictment, on parole or probation;

(2) Has ever been charged with, arrested for, convicted, placed on pretrial diversion, and/or placed on any form of probation (including adjudication withheld pending probation) for any criminal offense other than a minor motor vehicle violation (including offenses which have been dismissed, discharged, or not prosecuted);

(3) Is at least a 50 percent or more owner of applicant business, and is more than 60 days delinquent on any obligation to pay child support arising under an administrative order, court order, repayment agreement between the holder and a custodial parent, or repayment agreement between the holder and a state agency providing child support enforcement services;

(4) Is an undocumented (illegal) alien; or

(5) Is delinquent on any Federal obligation, including but not limited to any Federal loans, contracts, grants, student loans or taxes.

§ 123.703 What are the terms of an IDAP loan?

(a) *Guaranty percentage.* The SBA guaranteed share of an IDAP loan is 85%.

(b) *Maximum loan size.*

(1) If the amount of an IDAP Borrower's disaster losses is $25,000 or less, the principal amount of an IDAP loan must not exceed the amount of disaster losses minus Other Recoveries.

(2) If the amount of an IDAP Borrower's disaster losses is more than $25,000, the principal amount of an IDAP loan must not exceed $25,000 minus Other Recoveries.

(c) *Disbursement.* The disbursement period for an IDAP loan is generally up to 30 days from the date of SBA approval of the IDAP loan. If the IDAP Lender is notified before disbursement of the IDAP loan that the IDAP Borrower has received Other Recoveries, the IDAP Lender must decrease the approved amount of the IDAP loan by the amount of the Other Recoveries. If the IDAP Borrower's Disaster Loan is approved, SBA will contact the IDAP Lender when SBA is ready to disburse the Disaster Loan. Upon receipt of such notification by SBA, the IDAP Lender must cancel any remaining undisbursed amount of the IDAP loan.

(d) *Repayment.*

(1) *Initial Period.* During the Initial Period, an IDAP Borrower will pay interest only on the disbursed principal balance of the IDAP loan. If SBA approves the IDAP Borrower's Disaster Loan application, SBA will require that the IDAP loan be repaid first from the proceeds of the Disaster Loan. If the IDAP Borrower receives Other Recoveries during the Initial Period, the IDAP Borrower must, in accordance with § 123.703(h), remit the Other Recoveries to the IDAP Lender, and the IDAP Lender will apply the Other Recoveries to the IDAP loan. If the IDAP Borrower's Disaster Loan application is declined or if the amount of the approved Disaster Loan is insufficient to repay the IDAP loan in full, the remaining balance of the IDAP loan will be repaid during the Term Period as described in paragraph (2). The Initial Period ends upon (i) full repayment of the IDAP loan from the proceeds of the IDAP Borrower's Disaster Loan; (ii) SBA notice to the IDAP Lender of decline of the IDAP Borrower's Disaster Loan Application; or (iii) receipt by the IDAP Lender of partial repayment of the IDAP loan from the proceeds of the Disaster Loan; provided that if the IDAP loan has not been fully disbursed at such time, the Initial Period shall not end until the IDAP loan is fully disbursed. If an IDAP Borrower withdraws an application for a Disaster Loan, fails to close on an approved Disaster Loan or if the approved Disaster Loan is cancelled, the IDAP loan is immediately due and payable by the IDAP Borrower.

(2) *Term Period.* If SBA declines the IDAP Borrower's Disaster Loan application or the approved amount of the Disaster Loan is insufficient to repay the IDAP loan in full, the IDAP Borrower must pay principal and interest on the IDAP loan, with the IDAP loan balance to be fully amortized over a period that is at least 10 years from the date of final disbursement of the IDAP loan, but no more than 25 years from the date of final disbursement. The Term Period begins in the first month following SBA notice to the IDAP Lender of decline of the IDAP Borrower's Disaster Loan application, receipt by the IDAP Lender of partial repayment of the IDAP loan from the proceeds of the Disaster Loan, or final disbursement of the IDAP loan, whichever is later. Balloon payments are not permitted. The IDAP Borrower may prepay all or a portion of the principal during the life of the loan without penalty. If the IDAP Borrower receives Other Recoveries during the Term Period, the IDAP Borrower must, in accordance with § 123.703(h), remit the Other Recoveries to the IDAP Lender, and the IDAP Lender will apply the Other Recoveries to the IDAP loan.

(e) *Interest rate.*

(1) *Initial Period.* The maximum interest rate an IDAP Lender may charge an IDAP Borrower during the Initial Period will be published by SBA in the **Federal Register** from time to time. This rate must be a fixed rate.

(2) *Term Period.* The maximum interest rate an IDAP Lender may charge an IDAP Borrower during the Term Period will be published in the **Federal Register** from time to time. The IDAP Lender may charge either a fixed or a variable rate during the Term Period.

(f) *Number of IDAP loans per small business.* No small business (including affiliates) may obtain more than one IDAP loan per Declared Disaster. The provisions of § 120.151 do not apply to IDAP loans.

(g) *Personal guarantees.* Holders of at least a 20 percent ownership interest in the IDAP Borrower must guarantee the IDAP loan.

(h) *Agreement to remit Other Recoveries.* IDAP Borrowers must promptly notify the IDAP Lender of the receipt of Other Recoveries, and must promptly remit the proceeds of Other Recoveries to the IDAP Lender. The IDAP Lender must apply the Other Recoveries to the IDAP loan balance.

SBA does not require any additional collateral for IDAP loans.

§ 123.704 Are there restrictions on how IDAP loan funds may be used?

(a) IDAP loan proceeds may only be used for the following purposes:

(1) For a Major Disaster Declaration:

(i) If the IDAP Borrower is located in a Primary County, to restore or replace the IDAP Borrower's real or business personal property to its condition before the Declared Disaster occurred and/or for working capital necessary to carry the IDAP Borrower until resumption of normal operations and for expenditures necessary to alleviate the specific economic injury, but not to exceed that which the IDAP Borrower could have provided had the injury not occurred; or

(ii) If the IDAP Borrower is located in a Contiguous County, for working capital necessary to carry the IDAP Borrower until resumption of normal operations and for expenditures necessary to alleviate the specific economic injury, but not to exceed that which the IDAP Borrower could have provided had the injury not occurred.

(2) For an SBA Administrative Disaster Declaration, if the IDAP Borrower is located in either a Primary County or a Contiguous County, to restore or replace the IDAP Borrower's real or business personal property to its condition before the Declared Disaster occurred and/or for working capital necessary to carry the IDAP Borrower until resumption of normal operations and for expenditures necessary to alleviate the specific economic injury, but not to exceed that which the IDAP Borrower could have provided had the injury not occurred.

(3) For an SBA EIDL-Only Disaster Declaration, if the IDAP Borrower is located in either a Primary County or a Contiguous County, for working capital necessary to carry the IDAP Borrower until resumption of normal operations and for expenditures necessary to alleviate the specific economic injury, but not to exceed that which the IDAP Borrower could have provided had the injury not occurred.

(b) IDAP loan proceeds may not be used to:

(1) Refinance or repay indebtedness incurred prior to the Declared Disaster (other than regularly due installments);

(2) Make payments on loans owned by another federal agency (including SBA) or a Small Business Investment Company licensed under the Small Business Investment Act;

(3) Pay, directly or indirectly, any obligations resulting from a federal, state or local tax penalty as a result of negligence or fraud, or any non-tax criminal fine, civil fine, or penalty for non-compliance with a law, regulation, or order of a federal, state, regional, or local agency or similar matter;

(4) Pay dividends, bonuses or other disbursements to owners, partners, officers or stockholders, except for reasonable remuneration directly related to their performance of services for the business;

(5) Make repairs on a building rented by the IDAP Borrower if the IDAP Borrower's lease does not require the IDAP Borrower to make such repairs;

(6) Make repairs to a condominium unit owned by the IDAP Borrower;

(7) Replace landscaping in excess of $5,000 unless the disaster damaged landscaping fulfilled a functional need or contributed toward the generation of business;

(8) Repair or replace property not located within the Declared Disaster Area at the time of the Declared Disaster;

(9) Repay stockholder/Associate loans, except where the funds were injected on an interim basis as a result of the Declared Disaster and non-repayment would cause undue hardship to the stockholder/Associate;

(10) Expand facilities or acquire fixed assets, except for replacement of disaster-damaged fixed assets;

(11) Pay for contractor malfeasance;

(12) Replace damaged property that consists of cash or securities;

(13) Replace damaged property if the replacement value is extraordinarily high and not easily verified, such as the value of antiques, artworks or hobby collections; or

(14) Repair or replace damaged property where the IDAP Borrower's only interest is in the form of a security interest, mortgage or deed of trust.

§ 123.705 Are there any fees associated with IDAP loans?

(a) *IDAP Lender Fees.* An IDAP Lender must not impose any fees or direct costs on an IDAP Borrower, except for the following allowed fees or direct costs:

(1) The reasonable direct costs of liquidation;

(2) A late payment fee not to exceed 5 percent of the scheduled IDAP loan payment; and

(3) An application fee not to exceed $250. Notwithstanding the provisions of 13 CFR 103.5, no compensation agreement is required for the application fee. If an undisbursed IDAP loan is cancelled pursuant to § 123.703(c), the IDAP Lender may retain the application fee.

(b) *SBA Fees.* SBA will not impose any guarantee fees on an IDAP Lender making an IDAP loan.

(c) *Prohibition on paid loan packagers, referral agents or brokers.* Other than the application fee set forth in (a)(3) of this section, no IDAP Lender or third party may charge an IDAP Borrower a fee to assist in the preparation of an IDAP loan application or application materials. No third party may charge an IDAP Borrower or an IDAP Lender a referral fee or broker's fee in connection with an IDAP loan.

§ 123.706 What are the requirements for IDAP Lenders?

(a) *IDAP Lenders.* An IDAP Lender must be a 7(a) Lender (as defined in § 120.10). Notwithstanding the provisions of § 120.470(a), a Small Business Lending Company (SBLC) that is a 7(a) Lender may make IDAP loans. An IDAP Lender must sign a supplemental Loan Guarantee Agreement for the IDAP loan program. An IDAP Lender must comply and maintain familiarity with the IDAP Loan Program Requirements, as such requirements are revised from time to time. IDAP Loan Program Requirements in effect at the time that an IDAP Lender takes an action in connection with a particular IDAP loan govern that specific action. With respect to their activities in the IDAP loan program, IDAP Lenders are subject to the requirements of §§ 120.140 (What ethical requirements apply to participants?), 120.197 (Notifying SBA's Office of Inspector General of suspected fraud), 120.400 (Loan Guarantee Agreements), 120.410 (Requirements for all participating Lenders), 120.411 (Preferences), 120.412 (Other services Lenders may provide Borrowers), and 120.413 (Advertisement of relationship with SBA) of this chapter. An IDAP Lender and its contractor(s) are independent contractors that are responsible for their own actions with respect to an IDAP loan. SBA has no responsibility or liability for any claim by an IDAP Borrower, guarantor or other party alleging injury as a result of any allegedly wrongful action taken by an IDAP Lender or an employee, agent or contractor of an IDAP Lender.

(b) *Delegated authority.* An IDAP loan must be processed, serviced and liquidated under an IDAP Lender's delegated authority provided by the supplemental Loan Guarantee Agreement for the IDAP loan program. Non-delegated processing is not available for the IDAP loan program. An IDAP Lender is responsible for all IDAP loan decisions regarding eligibility (including size) and creditworthiness. In determining creditworthiness, an IDAP Lender must use the existing practices and procedures that the IDAP Lender

uses for its non-SBA guaranteed commercial loans of a similar size. The IDAP Lender's existing practices and procedures must be appropriate and generally accepted, proven and prudent credit evaluation processes and procedures, which may include credit scoring, and must ensure that there is reasonable assurance of repayment. In disbursing the IDAP loan, the IDAP Lender must use the same disbursement procedures and documentation as it uses for its similarly sized non-SBA guaranteed commercial loans. An IDAP Lender is also responsible for confirming that all IDAP loan processing, closing, servicing and liquidation decisions are correct and that all IDAP Loan Program Requirements have been followed.

(c) *IDAP Lender reporting.* An IDAP Lender must report on its IDAP loans in accordance with requirements established by SBA from time to time.

(d) *Servicing.* Each IDAP Lender must service all of its IDAP loans in accordance with the existing practices and procedures that the IDAP Lender uses for its non-SBA guaranteed commercial loans. In all circumstances, such practices and procedures must be commercially reasonable and consistent with prudent lending standards and in accordance with IDAP Loan Program Requirements. SBA's prior written consent is required for servicing actions that may have significant exposure implications for SBA. SBA may require written notice of other servicing actions it considers necessary for portfolio management purposes.

(e) *Liquidations.* Each IDAP Lender must be responsible for liquidating its defaulted IDAP loans. IDAP loans will be liquidated in accordance with the existing practices and procedures that the IDAP Lender uses for its non-SBA guaranteed commercial loans. In all circumstances, such practices and procedures must be commercially reasonable and consistent with prudent lending standards and in accordance with IDAP Loan Program Requirements. IDAP loans with *de minimis* value may, at the IDAP Lender's request and with SBA's approval, be liquidated by SBA or its agent(s). Significant liquidation actions taken on IDAP loans must be documented. The reimbursement of IDAP Lender liquidation expenses is limited to the amount of the recovery on the IDAP loan.

(f) *Purchase requests.* An IDAP Lender may request SBA to purchase the guaranteed portion of an IDAP loan when there has been an uncured payment default exceeding 60 days or when the IDAP Borrower has declared bankruptcy. IDAP loans are subject to the 7(a) loan program requirements of §§ 120.520 (Purchase of 7(a) loan guarantees), 120.521 (What interest rate applies after SBA purchases its guaranteed portion?), 120.522 (Payment of accrued interest to the Lender or Registered Holder when SBA purchases the guaranteed portion), 120.523 (What is the "earliest uncured payment default"?), 120.524 (When is SBA released from liability on its guarantee?), 120.542 (Payment by SBA of legal fees and other expenses) and 120.546 (Loan asset sales) of this chapter.

(g) *Prohibition on secondary market sales, securitizations, loan participations and loan sales.* An IDAP Lender may not sell the guaranteed portion of an IDAP loan in the secondary market, securitize the unguaranteed portion of an IDAP loan, participate any portion of an IDAP loan with another lender, or sell all of its interest in an IDAP loan.

(h) *Loan pledges.* An IDAP Lender may pledge an IDAP loan subject to the 7(a) loan program requirements of §§ 120.434 and 120.435 of this chapter.

(i) *Oversight.* All IDAP Lenders are subject to the supervision and enforcement provisions applicable to 7(a) Lenders in part 120, subpart I of this chapter (§§ 120.1000 through 120.1600). In addition, an IDAP Lender that is an SBA Supervised Lender (as defined in § 120.10) is subject to the requirements of §§ 120.460 through 120.490, as applicable.

Dated: September 15, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–24189 Filed 9–29–10; 11:15 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0384; Directorate Identifier 2010–NM–003–AD; Amendment 39–16449; AD 2010–20–14]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Corporation Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes. This AD requires installing an in-line fuse in certain float level switches and sleeving the wires between the fuel tank and the in-line fuse. For certain airplanes, this AD also requires installing an in-line fuse in certain fuel pump pressure switches. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent fuel tank explosions and consequent loss of the airplane.

DATES: This AD is effective November 5, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 5, 2010.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Philip Kush, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5263; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Model DC–10–10, DC–10–10F,

DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes. That NPRM was published in the **Federal Register** on April 21, 2010 (75 FR 20790). That NPRM proposed to require installing an in-line fuse in certain float level switches and sleeving the wires between the fuel tank and the in-line fuse. For certain airplanes, that NPRM also proposed to require installing an in-line fuse in certain fuel pump pressure switches.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Reference Information Notices or Revise Service Bulletin

FedEx requested that Boeing Service Bulletin Information Notices (IN) MD11–28–132 IN 01, dated December 3, 2008; MD11–28–132 IN 02, dated March 18, 2010; and MD11–28–132 IN 03, dated March 25, 2010; be referenced in the NPRM as an approved deviation from Boeing Service Bulletin MD11–28–132, dated November 25, 2008, or that Boeing revise that service bulletin to incorporate the changes outlined in those INs. FedEx stated that, as the NPRM is written, the compliance requirements will prevent FedEx from complying with the NPRM unless an alternative method of compliance (AMOC) is granted.

We partially agree. Since the issuance of the NPRM, Boeing has issued Service Bulletin MD11–28–132, Revision 1, dated July 6, 2010, to incorporate the changes outlined in Boeing Service Bulletin INs MD11–28–132 IN 01, dated December 3, 2008; MD11–28–132 IN 02, dated March 18, 2010; and MD11–28–132 IN 03, dated March 25, 2010. The revised service bulletin has only editorial changes with no additional work required. We have changed this AD to reference Boeing Service Bulletin MD11–28–132, Revision 1, dated July 6, 2010, in paragraphs (c)(2) and (g)(2) of this AD.

We have also added paragraph (i) to this AD to give credit for actions done before the effective date of this AD in accordance with Boeing Service Bulletin MD11–28–132, dated November 25, 2008.

Additional Change Made to This AD

We have revised paragraph (g)(1) of this AD to refer to Boeing Service Bulletin DC10–28–252, Revision 1, dated January 6, 2010, which describes editorial changes, but no new actions. We have added paragraph (h) to this AD to give credit for actions done before the effective date of this AD in accordance with Boeing Service Bulletin DC10–28–252, dated November 25, 2008.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 281 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Installation/ Sleeving.	Between 64 and 136[1].	$85	Between $3,139 and $5,598[1].	Between $8,579 and $17,158.	281	Between $2,410,699 and $4,821,398.

[1] Depending on airplane configuration.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2010–20–14 McDonnell Douglas Corporation: Amendment 39–16449. Docket No. FAA–2010–0384; Directorate Identifier 2010–NM–003–AD.

Effective Date

(a) This airworthiness directive (AD) is effective November 5, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) McDonnell Douglas Corporation Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes; certificated in any category; as identified in Boeing Service Bulletin DC10–28–252, Revision 1, dated January 6, 2010.

(2) McDonnell Douglas Corporation Model MD–11 and MD–11F airplanes; certificated in any category; as identified in Boeing Service Bulletin MD11–28–132, Revision 1, dated July 6, 2010.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Unsafe Condition

(e) This AD results from fuel system reviews conducted by the manufacturer. The Federal Aviation Administration is issuing this AD to prevent fuel tank explosions and consequent loss of the airplane.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Installation

(g) Within 60 months after the effective date of this AD do the actions specified in paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) For Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes: Install an in-line fuse in each float level switch and pressure switch, including sleeving the wires between the fuel tank and the in-line fuse, in fuel tanks 1, 2, and 3; upper and lower auxiliary fuel tanks; forward and aft auxiliary fuel tanks; and center wing fuel tanks; as applicable; in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC10–28–252, Revision 1, dated January 6, 2010.

(2) For Model MD–11 and MD–11F airplanes: Install an in-line fuse in each float level switch, including sleeving the wires between the fuel tank and the in-line fuse, in fuel tanks 1, 2, and 3; upper and lower auxiliary fuel tanks; forward auxiliary fuel tank; center wing fuel tanks; and tail fuel tank; as applicable; in accordance with the Accomplishment Instructions of Boeing Service Bulletin MD11–28–132, Revision 1, dated July 6, 2010.

Installation According to Previous Issues of Service Bulletins

(h) Installing an in-line fuse in each float level switch and pressure switch, including sleeving the wires between the fuel tank and the in-line fuse, in fuel tanks 1, 2, and 3; upper and lower auxiliary fuel tanks; forward and aft auxiliary fuel tanks; and center wing fuel tanks; as applicable; is also acceptable for compliance with the corresponding requirements of paragraph (g)(1) of this AD, if done before the effective date of this AD, in accordance with Boeing Service Bulletin DC10–28–252, dated November 25, 2008.

(i) Installing an in-line fuse in each float level switch, including sleeving the wires between the fuel tank and the in-line fuse, in fuel tanks 1, 2, and 3; upper and lower auxiliary fuel tanks; forward auxiliary fuel tank; center wing fuel tanks; and tail fuel tank; as applicable; is also acceptable for compliance with the corresponding requirements of paragraph (g)(2) of this AD if done before the effective date of this AD, in accordance with Boeing Service Bulletin MD11–28–132, dated November 25, 2008.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Philip Kush, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5263; fax (562) 627–5210.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Material Incorporated by Reference

(k) You must use Boeing Service Bulletin DC10–28–252, Revision 1, dated January 6, 2010; or Boeing Service Bulletin MD11–28–132, Revision 1, dated July 6, 2010; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on September 16, 2010.

Robert D. Breneman,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–24172 Filed 9–30–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0550; Directorate Identifier 2009–NM–124–AD; Amendment 39–16454; AD 2010–20–19]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes; Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) Airplanes; Model CL–600–2D15 (Regional Jet Series 705) Airplanes; and Model CL–600–2D24 (Regional Jet Series 900) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Two cases of a crack on a "dry" ADG [air driven generator] (Hamilton Sundstrand part number in the 761339 series), in the aft area of the strut and generator housing assembly, have been reported on CL–600–2B19 aircraft. The same part is also installed on CL–600–2C10, –2D15 and –2D24 aircraft. Investigation determined that the crack was in an area of the strut where the wall thickness of the casting was below specification, due to a manufacturing anomaly in a specific batch of ADGs. Structural failure and departure of the ADG during deployment could possibly result in damage to the aircraft structure. If deployment was activated by a dual engine shutdown, ADG structural failure would also result in loss of hydraulics for the flight controls.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective November 5, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 5, 2010.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Craig Yates, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7355; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 18, 2010 (75 FR 34657). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Two cases of a crack on a "dry" ADG [air driven generator] (Hamilton Sundstrand part number in the 761339 series), in the aft area of the strut and generator housing assembly, have been reported on CL–600–2B19 aircraft. The same part is also installed on CL–600–2C10, –2D15 and –2D24 aircraft. Investigation determined that the crack was in an area of the strut where the wall thickness of the casting was below specification, due to a manufacturing anomaly in a specific batch of ADGs. Structural failure and departure of the ADG during deployment could possibly result in damage to the aircraft structure. If deployment was activated by a dual engine shutdown, ADG structural failure would also result in loss of hydraulics for the flight controls.
>
> This [Transport Canada Civil Aviation (TCCA)] directive gives instructions to check the part number of the installed ADG and, for ADGs with a part number in the 761339 series, the serial numbers of the ADG and strut and generator housing assembly are also to be checked. If these serial numbers are within specified ranges * * *, a one-time fluorescent penetrant inspection of the ADG strut is required [and replacement of the ADG if necessary].
>
> **Note:** For ADGs with serial numbers in the * * * specified ranges, subsequent fluorescent penetrant inspections are required after each scheduled in-flight or on-ground functional check of the ADG and also after each unscheduled in-flight ADG deployment. These inspection requirements are not mandated in this [TCCA] directive but are specified in the approved maintenance program.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. Air Line Pilots Association, International supports the NPRM.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 1,073 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $91,205, or $85 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2010–20–19 Bombardier, Inc.: Amendment 39–16454. Docket No. FAA–2010–0550; Directorate Identifier 2009–NM–124–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 5, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7305 through 8051 inclusive; Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers 10003 through 10260 inclusive; and Model CL–600–2D15 (Regional Jet Series 705) airplanes and Model CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 through 15106 inclusive; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 24: Electrical Power.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Two cases of a crack on a "dry" ADG [air driven generator] (Hamilton Sundstrand part number in the 761339 series), in the aft area of the strut and generator housing assembly, have been reported on CL–600–2B19 aircraft. The same part is also installed on CL–600–2C10, –2D15 and–2D24 aircraft. Investigation determined that the crack was in an area of the strut where the wall thickness of the casting was below specification, due to a manufacturing anomaly in a specific batch of ADGs. Structural failure and departure of the ADG during deployment could possibly result in damage to the aircraft structure. If deployment was activated by a dual engine shutdown, ADG structural failure would also result in loss of hydraulics for the flight controls.

This [Transport Canada Civil Aviation (TCCA)] directive gives instructions to check the part number of the installed ADG and, for ADGs with a part number in the 761339 series, the serial numbers of the ADG and strut and generator housing assembly are also to be checked. If these serial numbers are within specified ranges * * *, a one-time fluorescent penetrant inspection of the ADG strut is required [and replacement of the ADG if necessary].

Note: For ADGs with serial numbers in the * * * specified ranges, subsequent fluorescent penetrant inspections are required after each scheduled in-flight or on-ground functional check of the ADG and also after each unscheduled in-flight ADG deployment. These inspection requirements are not mandated in this [TCCA] directive but are specified in the approved maintenance program.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Actions

(g) Do the following actions.

(1) Within 1,000 flight hours after the effective date of this AD or before the first scheduled ADG functional test after the effective date of this AD, whichever occurs first, inspect to determine the part number of the installed ADG. A review of the airplane maintenance records is acceptable in lieu of this inspection if the part number can be conclusively determined from that review.

(i) If a Hamilton Sundstrand ADG having part number 1711405 is installed, the strut thickness is within specification and no further action is required by this AD.

(ii) If a Hamilton Sundstrand ADG having a part number in the 761339 series is installed, within 1,000 flight hours after the effective date of this AD or before the first scheduled ADG functional test after the effective date of this AD, whichever occurs first, inspect to determine the serial number of the ADG. A review of the airplane maintenance records is acceptable in lieu of this inspection if the serial number can be conclusively determined from that review.

(A) If the serial number of the ADG is 2000 or higher, the strut wall thickness is within specification and no further action is required by this AD.

(B) If the serial number of the ADG is in the range 0101 through 1999 and symbol "24–3" is marked in the serial number block of the identification plate, the strut wall thickness is within specification, no further action is required by this AD.

(C) If the serial number of the ADG is in the range 0101 through 1999 and the symbol "24–3" is not marked in the serial block of the identification plate, within 1,000 flight hours after the effective date of this AD or before the first scheduled ADG functional test after the effective date of this AD, whichever occurs first, inspect to determine the serial number of the strut and generator housing assembly. A review of the airplane maintenance records is acceptable in lieu of this inspection if the serial number can be conclusively determined from that review.

(*1*) If the serial number of the strut and generator housing assembly is in the range 0001 through 2503, do a fluorescent penetrant inspection in accordance with paragraph (g)(2) of this AD at the times specified in paragraph (g)(2) of this AD.

(*2*) If the serial number of the strut and generator housing assembly is 2504 or higher, the strut wall thickness is within specification and no further action is required by this AD.

(*3*) If the serial number of the strut and generator housing assembly is not inspected or it is not possible to determine the serial number, do a fluorescent penetrant inspection in accordance with paragraph (g)(2) of this AD at the times specified in paragraph (g)(2) of this AD.

(2) For ADGs having a strut and generator assembly identified in paragraph (g)(1)(ii)(C)(*1*) or (g)(1)(ii)(C)(*3*) of this AD: Within 1,000 flight hours after the effective date of this AD or before the first scheduled ADG functional test after the effective date of this AD, whichever occurs first, do a fluorescent penetrant inspection for cracking of the ADG strut, and if any crack is found, before further flight, replace the ADG with a serviceable ADG, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–24–120, Revision C, dated April 20, 2009 (for Model CL–600–2B19 airplanes); or Bombardier Alert Service Bulletin A670BA–24–020, Revision C, dated April 20, 2009 (for Model CL–600–2C10, CL–600–2D15, and CL–600–2D24 airplanes).

(3) Fluorescent penetrant inspections accomplished before the effective date of this AD in accordance with any applicable service bulletin specified in Table 1 of this AD are considered acceptable for compliance with the corresponding fluorescent penetrant inspection specified in this AD.

TABLE 1—CREDIT SERVICE BULLETINS

Bombardier, Inc. model—	Service Bulletin—	Revision—	Date—
CL–600–2B19 airplanes	Bombardier Alert Service Bulletin A601R–24–120.	Original	April 20, 2005.
CL–600–2B19 airplanes	Bombardier Alert Service Bulletin A601R–24–120.	A	December 1, 2005.
CL–600–2B19 airplanes	Bombardier Alert Service Bulletin A601R–24–120.	B	December 7, 2006.
CL–600–2C10 airplanes and CL–600–2D24 airplanes.	Bombardier Alert Service Bulletin A670BA–24–020.	Original	April 20, 2005.
CL–600–2C10 airplanes; and CL–600–2D15 and CL–600–2D24 airplanes.	Bombardier Alert Service Bulletin A670BA–24–020.	A	May 17, 2005.
CL–600–2C10 airplanes; and CL–600–2D15 and CL–600–2D24 airplanes.	Bombardier Alert Service Bulletin A670BA–24–020.	B	December 7, 2006.

TABLE 1—CREDIT SERVICE BULLETINS—Continued

Bombardier, Inc. model—	Service Bulletin—	Revision—	Date—
CL–600–2B19 airplanes; CL–600–2C10 airplanes; and CL–600–2D15 and CL–600–2D24 airplanes.	Hamilton Sundstrand Service Bulletin ERPS10AG–24–3.	Original	April 14, 2005.
CL–600–2B19 airplanes; CL–600–2C10 airplanes; and CL–600–2D15 and CL–600–2D24 airplanes.	Hamilton Sundstrand Service Bulletin ERPS10AG–24–3.	1	April 19, 2005.
CL–600–2B19 airplanes; CL–600–2C10 airplanes; and CL–600–2D15 and CL–600–2D24 airplanes.	Hamilton Sundstrand Service Bulletin ERPS10AG–24–3.	2	November 14, 2006.
Bombardier, Inc. CL–600–2B19 airplanes; CL–600–2C10 airplanes; and CL–600–2D15 and CL–600–2D24 airplanes.	Hamilton Sundstrand Service Bulletin ERPS10AG–24–3.	3	March 12, 2009.

Note 1: Additional guidance on the ADGs specified in paragraphs (g)(1)(ii)(C)(*1*)and (g)(1)(ii)(C)(*3*) of this AD and the repetitive fluorescent penetrant inspections specified as part of the periodic ADG functional check procedure may be found in the applicable tasks identified in Table 2 of this AD. These tasks can be found in Part 2—Airworthiness Limitations, Appendix A—Certification Maintenance Requirements (CMR), of the Bombardier CL–600–2C10, CL–600–2D15, and CL–600–2D24 Maintenance Requirements Manual; and the Canadair CRJ Series Regional Jet Aircraft Maintenance Manual (AMM); as applicable.

TABLE 2—GUIDANCE FOR THE PERIODIC ADG FUNCTIONAL CHECK PROCEDURE

Bombardier, Inc. Model—	Task number—
CL–600–2B19 airplanes	CMR Task C24–20–129–01 and AMM Task 24–23–01–720–803
CL–600–2C10 airplanes	CMR Task 24–23–00–102 and AMM Task 24–23–01–720–802
CL–600–2D15 and CL–600–2D24 airplanes	CMR Task 24–23–00–102 and AMM Task 24–23–01–720–802

Note 2: Additional guidance on the ADGs specified in paragraph (g)(1)(ii)(C)(*1*), and the fluorescent penetrant inspection necessary following each future unscheduled in-flight ADG deployment can be found in the tasks specified in Table 3 of this AD.

TABLE 3—GUIDANCE FOR INSPECTION FOLLOWING UNSCHEDULED IN-FLIGHT ADG DEPLOYMENT

Bombardier, Inc. Model—	AMM task—
CL-600–2B19 airplanes, serial numbers 7305 through 8051 inclusive	05–51–19–210–801
CL–600–2C10 airplanes, serial numbers 10003 through 10260 inclusive	05–51–19–210–801
CL-600-2D15 and CL–600–2D24 airplanes, serial numbers 15001 through 15106 inclusive	05–51–19–210–801

Note 3: In Hamilton Sundstrand Service Bulletin ERPS10AG–24–3, the fluorescent penetrant inspection is referred to as a "Penetrant Check.".

FAA AD Differences

Note 4: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(h) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

(4) Special Flight Permits: Special flight permits, as described in section 21.197 and section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

Related Information

(i) Refer to MCAI Canadian Airworthiness Directive CF–2009–27, dated June 8, 2009; Bombardier Alert Service Bulletin A601R–24–120, Revision C, dated April 20, 2009; and Bombardier Alert Service Bulletin A670BA–24–020, Revision C, dated April 20, 2009; for related information.

Material Incorporated by Reference

(j) You must use Bombardier Alert Service Bulletin A601R–24–120, Revision C, dated April 20, 2009; or Bombardier Alert Service Bulletin A670BA–24–020, Revision C, dated April 20, 2009; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the

availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on September 21, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–24482 Filed 9–30–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0438; Directorate Identifier 2009–NM–265–AD; Amendment 39–16450; AD 2010–20–15]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) Airplanes, Model CL–600–2D15 (Regional Jet Series 705) Airplanes, and Model CL–600–2D24 (Regional Jet Series 900) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

The heating capability of several AOA [angle of attack] transducer heating elements removed from in-service aircraft has been found to be below the minimum requirement. Also, it was discovered that a large number of AOA transducers repaired in an approved maintenance facility were not calibrated accurately.

Inaccurate calibration of the AOA transducer and/or degraded AOA transducer heating elements can result in early or late activation of the stall warning, stick shaker and stick pusher by the Stall Protection Computer (SPC).

* * * * *

Inaccurate calibration of the AOA transducers and/or degraded AOA transducer heating elements could result in an ineffective response to an aerodynamic stall and reduced controllability of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective November 5, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 5, 2010.

On November 13, 2009 (74 FR 55767, October 29, 2009), the Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wing Chan, Aerospace Engineer, Avionics and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7311; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 10, 2010 (75 FR 25791), and proposed to supersede AD 2009–22–12, Amendment 39–16065 (74 FR 55767, October 29, 2009). That NPRM proposed to correct an unsafe condition for the specified products.

When we issued AD 2009–22–12, we stated that we did not include certain actions (the inspection to determine if certain transducers are installed and replaced if necessary in paragraph (h) of this AD) because the planned compliance time was not enough to give notice as AD 2009–22–12 was issued as an immediately adopted rule. We now have determined that further rulemaking is indeed necessary, and this AD follows from that determination. You may obtain further information by examining the MCAI in the AD docket.

Since we issued the NPRM we have reviewed Bombardier Service Bulletin 670BA–27–053, Revision B, dated January 12, 2010. We referred to Bombardier Service Bulletin 670BA–27–053, Revision A, dated July 7, 2009, as the appropriate source of service information for doing certain actions specified in the NPRM. Bombardier Service Bulletin 670BA–27–053, Revision B, dated January 12, 2010, contains minor editorial changes that do not have an effect on the technical content in this AD. We have revised paragraphs (h) and (i) of this AD to refer to Bombardier Service Bulletin 670BA–27–053, Revision B, dated January 12, 2010. We have also added Bombardier Service Bulletin 670BA–27–053, Revision A, dated July 7, 2009, to paragraph (j) of this AD for credit for inspections and replacements accomplished before the effective date of this AD.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received. One commenter, Air Line Pilots Association, International, supports the NPRM.

Request to Reference the Correct Service Bulletin

Comair, Inc. states that the intended reference for paragraph (j) of the NPRM should be Bombardier Service Bulletin 670BA–27–053, dated May 14, 2009, for inspections and replacements accomplished before the effective date of this AD.

We agree with Comair, Inc. that Bombardier Service Bulletin 670BA–27–053, dated May 14, 2009, is considered acceptable for compliance with the corresponding actions specified in this AD. We have added this service bulletin to paragraph (j) of this AD.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. We determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the

MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect about 368 products of U.S. registry.

The actions that are required by AD 2009–22–12 and retained in this AD take about 1 work-hour per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the currently required actions is $85 per product.

We estimate that it will take about 5 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the AD on U.S. operators to be $156,400, or $425 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–16065 (74 FR 55767, October 29, 2009) and adding the following new AD:

2010–20–15 Bombardier, Inc.: Amendment 39–16450. Docket No. FAA–2010–0438; Directorate Identifier 2009–NM–265–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 5, 2010.

Affected ADs

(b) This AD supersedes AD 2009–22–12, Amendment 39–16065.

Applicability

(c) This AD applies to Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, and Model CL–600–2D24 (Regional Jet Series 900) airplanes; certificated in any category, that are equipped with Thales angle of attack (AOA) transducers having part number (P/N) C16258AA.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight Controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

The heating capability of several AOA [angle of attack] transducer heating elements removed from in-service aircraft has been found to be below the minimum requirement. Also, it was discovered that a large number of AOA transducers repaired in an approved maintenance facility were not calibrated accurately.

Inaccurate calibration of the AOA transducer and/or degraded AOA transducer heating elements can result in early or late activation of the stall warning, stick shaker and stick pusher by the Stall Protection Computer (SPC).

This [Canadian] directive mandates a periodic inspection of the inrush current to verify the AOA heating capability and replacement of the inaccurately calibrated AOA transducers.

Inaccurate calibration of the AOA transducers and/or degraded AOA transducer heating elements could result in an ineffective response to an aerodynamic stall and reduced controllability of the airplane.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 2009–22–12

(g) Do the following actions.

(1) Within the applicable compliance times specified in Table 1 of this AD: Measure the inrush current of both AOA transducers, in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–051, dated May 14, 2009.

TABLE 1—INITIAL MEASUREMENT

For any AOA transducer that, as of November 13, 2009 (the effective date of AD 2009–22–12), has accumulated—	Do the initial inrush current measurement—
Less than 6,500 total flight hours	Before the AOA transducer has accumulated 7,500 total flight hours.

TABLE 1—INITIAL MEASUREMENT—Continued

For any AOA transducer that, as of November 13, 2009 (the effective date of AD 2009–22–12), has accumulated—	Do the initial inrush current measurement—
More than or equal to 6,500 total flight hours but less than 7,500 total flight hours.	Within 500 flight hours after November 13, 2009, but before the AOA transducer has accumulated 8,000 total flight hours.
More than or equal to 7,500 total flight hours	Within 250 flight hours after November 13, 2009.

(2) If, during any measurement required by paragraph (g)(1) of this AD, an AOA transducer is found to have an inrush current less than 1.60 amps ("degraded" transducer), before further flight replace the transducer with a new or serviceable transducer, in accordance with Part C of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–051, dated May 14, 2009. Do the measurement specified in paragraph (g)(1) of this AD for that replacement transducer at the times specified in paragraph (g)(2)(i) or (g)(2)(ii) of this AD.

(i) At the applicable time specified in Table 2 of this AD if the degraded transducer was replaced with a serviceable transducer that is not new; or

(ii) Within 2,000 flight hours after replacement if the degraded transducer was replaced with a new one.

(3) If, during any measurement required by paragraph (g)(1) of this AD, an AOA transducer is found to have an inrush current more than or equal to 1.60 amps, repeat the measurement specified in paragraph (g)(1) of this AD thereafter at intervals not to exceed the applicable interval specified in Table 2 of this AD.

TABLE 2—REPETITIVE MEASUREMENT INTERVALS

If the last inrush current measurement of the serviceable AOA transducer is—	Then repeat the measurement—
More than or equal to 1.90 amps	Within 2,000 flight hours after the last measurement.
More than or equal to 1.80 amps but less than 1.90 amps	Within 1,500 flight hours after the last measurement.
More than or equal to 1.70 amps but less than 1.80 amps	Within 1,000 flight hours after the last measurement.
More than or equal to 1.60 amps but less than 1.70 amps	Within 500 flight hours after the last measurement.

New Requirements of This AD

(h) Within 6,000 flight hours after the effective date of this AD: Do an inspection to determine the serial number of the AOA transducer having P/N C16258AA, and to determine if the serial number has suffix "A," in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–053, Revision B, dated January 12, 2010.

(1) If the serial number is not specified in paragraph 1.A.(1) of Bombardier Service Bulletin 670BA–27–053, Revision B, dated January 12, 2010, no further action is required by this paragraph.

(2) If the serial number is specified in paragraph 1.A.(1) of Bombardier Service Bulletin 670BA–27–053, Revision B, dated January 12, 2010, and the serial number has a suffix "A," no further action is required by this paragraph.

(3) If the serial number is specified in paragraph 1.A.(1) of Bombardier Service Bulletin 670BA–27–053, Revision B, dated January 12, 2010, and the serial number does not have suffix "A," before further flight, replace the AOA transducer with a serviceable transducer, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–053, Revision B, dated January 12, 2010.

(i) As of the effective date of this AD, no person may install, on any airplane, an AOA transducer having P/N C16258AA with any serial number specified in paragraph 1.A.(1) of Bombardier Service Bulletin 670BA–27–053, Revision B, dated January 12, 2010, unless the serial number has a suffix "A."

(j) Inspections and replacements accomplished before the effective date of this AD, according to the service information specified in Table 3 of this AD, are considered acceptable for compliance with the corresponding actions specified in this AD.

TABLE 3—CREDIT SERVICE BULLETINS

Service Bulletin—	Revision—	Date—
Bombardier Service Bulletin 670BA–27–053	Original	May 14, 2009.
Bombardier Service Bulletin 670BA–27–053	A	July 7, 2009.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(k) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(l) Refer to MCAI Canadian Airworthiness Directive CF–2009–35, dated August 31, 2009; Bombardier Service Bulletin 670BA–27–051, dated May 14, 2009; and Bombardier Service Bulletin 670BA–27–053, Revision B,

dated January 12, 2010; for related information.

Material Incorporated by Reference

(m) You must use Bombardier Service Bulletin 670BA–27–051, dated May 14, 2009; and Bombardier Service Bulletin 670BA–27–053, Revision B, dated January 12, 2010; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Bombardier Service Bulletin 670BA–27–053, Revision B, dated January 12, 2010, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Bombardier Service Bulletin 670BA–27–051, dated May 14, 2009, on November 13, 2009 (74 FR 55767, October 29, 2009).

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington on September 16, 2010.

Robert D. Breneman,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–24255 Filed 9–30–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0478; Directorate Identifier 2008–NM–090–AD; Amendment 39–16451; AD 2010–20–16]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model A300 C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes); and Model A300 and A310 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

* * * * *

Two cases of complete nose landing gear (NLG) shock absorber bolts failure were reported to the manufacturer. In both cases, the crew was unable to retract the gear and was forced to an In Flight Turn Back. In one case, the aircraft experienced a low speed runway excursion. The root cause of the bolts failure has been identified being due to a bolt(s) over-torque. The investigation has highlighted that the design of the NLG shock absorber was not tolerant to the over-torque, and an inspection plan has been developed to track any NLG shock absorber-to-main barrel attachment bolts status. * * *

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective November 5, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 5, 2010.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 19, 2010 (75 FR 27956). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

* * * * *

Two cases of complete nose landing gear (NLG) shock absorber bolts failure were reported to the manufacturer. In both cases, the crew was unable to retract the gear and was forced to an In Flight Turn Back. In one case, the aircraft experienced a low speed runway excursion. The root cause of the bolts failure has been identified being due to a bolt(s) over-torque. The investigation has highlighted that the design of the NLG shock absorber was not tolerant to the over-torque, and an inspection plan has been developed to track any NLG shock absorber-to-main barrel attachment bolts status. The preliminary inspection plan, required by DGAC France Airworthiness Directive (AD) F–2004–075 and F–2004–076, has allowed limiting the number of findings: High at the initial inspection, it has decreased following the repetitive inspections.

This new [European Aviation Safety Agency (EASA)] AD retains the requirements of those ADs, which are superseded, and requires a repetitive torque check of the NLG shock absorber-to-main barrel attachment bolts with new thresholds and intervals. This new AD also refers to an optional modification as terminating action.

* * * * *

The optional modification involves modifying the shock absorber-to-barrel attachment to increase over-torque tolerances. The actions to address the unsafe condition also include inspecting the NLG shock absorber-to-main barrel attachment bolts and doing corrective actions. The corrective actions include replacing bolts, screws, nuts, washers, and cotter pins; contacting Airbus for repair and doing the repair; and modifying the shock absorber; as applicable. The inspection of the NLG shock absorber-to-main barrel attachment bolts is repeated at intervals not to exceed 400 flight hours or 1,000 flight cycles, depending on the inspection results and corrective actions performed. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

Request To Remove Reporting Requirement

UPS requests that we remove the requirement to submit a report after each inspection that results in re-torque or replacement of bolts. UPS contends that Airbus has had sufficient time to gather enough data to determine the root cause of the over-torqued bolts. UPS has done the inspections of the NLG in accordance with Airbus All Operator Telex A300–32A6093, dated April 22, 2004, since it was published. UPS states that Airbus has been collecting data from airlines that operate under EASA regulations. UPS also points out that, although it has been doing the inspections for 6 years, it would need to do an additional inspection within 30

days to document the findings and complete the inspection report. UPS believes this reporting requirement places an unnecessary burden on the operator.

We agree with the request for the reasons stated above. Airbus no longer needs this information from operators. We have removed paragraph (k) of the NPRM and have re-identified subsequent paragraphs in this AD accordingly.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the change described previously. We determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a Note within the AD.

Costs of Compliance

We estimate that this AD will affect 229 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $38,930, or $170 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2010–20–16 Airbus: Amendment 39–16451. Docket No. FAA–2010–0478; Directorate Identifier 2008–NM–090–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 5, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B2–1A, B2–1C, B4–2C, B2K–3C, B4–103, B2–203, and B4–203 airplanes; Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes; and Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes; all certified models, all serial numbers, certificated in any category; except airplanes on which Airbus Modification 13212 has been done in production or Airbus Service Bulletin A300–32–0453, A310–32–2135, or A300–32–6099 has been done in service.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Two cases of complete nose landing gear (NLG) shock absorber bolts failure were reported to the manufacturer. In both cases, the crew was unable to retract the gear and was forced to an In Flight Turn Back. In one case, the aircraft experienced a low speed runway excursion. The root cause of the bolts failure has been identified being due to a bolt(s) over-torque. The investigation has highlighted that the design of the NLG shock absorber was not tolerant to the over-torque, and an inspection plan has been developed to track any NLG shock absorber-to-main barrel attachment bolts status. The preliminary inspection plan, required by DGAC France Airworthiness Directive (AD) F–2004–075 and F–2004–076, has allowed limiting the number of findings: High at the initial inspection, it has decreased following the repetitive inspections.

This new [European Aviation Safety Agency (EASA)] AD retains the requirements of those ADs, which are superseded, and requires a repetitive torque check of the NLG shock absorber-to-main barrel attachment bolts with new thresholds and intervals. This new AD also refers to an optional modification as terminating action.

* * * * *

The optional modification involves modifying the shock absorber-to-barrel attachment to increase over-torque tolerances. The actions to address the unsafe condition also include inspecting the NLG shock absorber-to-main barrel attachment bolts and corrective actions. The corrective actions include replacing bolts, screws, nuts, washers, and cotter pins; contacting Airbus

for repair and doing the repair; and modifying the shock absorber; as applicable.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection and Corrective Action

(g) At the applicable time specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD: Do a visual inspection to detect operational condition (*i.e.,* free of corrosion and not deformed) and inspect rotation/torque of the NLG shock absorber-to-main barrel attachment bolts and do all applicable corrective actions, in accordance with the applicable Airbus all operators telex (AOT) identified in Table 1 of this AD. Do all applicable corrective actions before further flight. Thereafter, repeat the inspection at the applicable intervals, depending on inspection results and the corrective actions performed, as specified in the applicable Airbus AOT identified in Table 1 of this AD.

(1) For airplanes on which the NLG has been overhauled (the bolts have been removed) as of the effective date of this AD: Within 30 days or 1,000 flight cycles on the NLG after the effective date of this AD, whichever occurs later.

(2) For airplanes on which, as of the effective date of this AD, the NLG has accumulated less than 1,000 total flight cycles, and has not been overhauled (the bolts have never been removed), since manufacture of the NLG: Before the accumulation of 1,000 total flight cycles on the NLG, or within 30 days after the effective date of this AD, whichever occurs later.

(3) For airplanes on which, as of the effective date of this AD, the NLG has accumulated 1,000 or more total flight cycles, and has not been overhauled since new (the bolts have never been removed): Within 30 days after the effective date of this AD.

TABLE 1—AIRBUS ALL OPERATOR TELEXES

For model—	Use airbus all operator telex—	Dated—
A300 series airplanes	A300–32A0447	April 22, 2004.
A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model A300 C4-605R Variant F airplanes (Collectively called A300–600 series airplanes).	A300–32A6093	April 22, 2004.
A310 series airplanes	A310–32A2132	April 22, 2004.

Torque Load Inspection and Corrective Action

(h) At the latest of the compliance times specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD, do an inspection of the torque load of the nuts of the NLG shock absorber-to-main barrel attachment bolts in accordance with the Accomplishment Instructions of the applicable Airbus service bulletin listed in Table 2 of this AD. Depending on the torque load value found during the inspection, before further flight: Retighten the bolt(s) or replace the discrepant bolt(s), or replace all bolts, in accordance with the applicable Airbus service bulletin listed in Table 2 of this AD. Thereafter, repeat the torque load inspection at intervals not to exceed 3,200 flight cycles or 30 months time-in-service accumulated by the NLG, whichever occurs first.

(1) Within 3,200 flight cycles or 30 months since NLG's first flight, whichever occurs first.

(2) Within 3,200 flight cycles or 30 months accumulated by the NLG since installation of new bolts, whichever occurs first.

(3) Within 3,200 flight cycles or 30 months after the effective date of this AD, whichever occurs first.

TABLE 2—SERVICE INFORMATION FOR INSPECTIONS

For model—	Use airbus mandatory service bulletin—	Revision level—	Dated—
A300 series airplanes	A300–32–0447	01	June 1, 2007.
A300–600 series airplanes	A300–32–6093	01	June 1, 2007.
A310 series airplanes	A310–32–2132	01	June 1, 2007.

(i) After accomplishment of the initial inspection in accordance with paragraph (h) of this AD, as applicable, the repetitive inspections of paragraph (g) of this AD are no longer required.

Optional Terminating Action

(j) For airplanes on which the modification of the shock absorber-to-barrel attachment has been done in accordance with the applicable service bulletin listed in Table 3 of this AD, the requirements of this AD are no longer required, as long as that modification remains installed.

TABLE 3—SERVICE INFORMATION FOR OPTIONAL TERMINATING ACTION

For model—	Use airbus service bulletin—	Dated—
A300 series airplanes	A300–32–0453	June 1, 2007.
A300–600 series airplanes	A300–32–6099	June 1, 2007.
A310 series airplanes	A310–32–2135	June 1, 2007.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No Differences.

Other FAA AD Provisions

(k) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425)

227–2125; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(l) Refer to MCAI EASA Airworthiness Directive 2008–0052R1, dated June 30, 2008; and the service information identified in Tables 1, 2, and 3 of this AD; for related information.

Material Incorporated by Reference

(m) You must use the applicable service information contained in Table 4 of this AD to do the actions required by this AD, unless the AD specifies otherwise. If you accomplish the optional terminating actions specified by this AD, you must use the applicable service information identified in Table 5 of this AD to perform those actions, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com;* Internet: *http://www.airbus.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 4—MATERIAL INCORPORATED BY REFERENCE FOR ACTIONS REQUIRED IN THIS AD

Document	Revision	Date
Airbus All Operator Telex A300-32A0447	Original	April 22, 2004.
Airbus All Operator Telex A300-32A6093	Original	April 22, 2004.
Airbus All Operator Telex A310-32A2132	Original	April 22, 2004.
Airbus Mandatory Service Bulletin A300–32–0447, excluding Appendix 01	01	June 1, 2007.
Airbus Mandatory Service Bulletin A300–32–6093, excluding Appendix 01	01	June 1, 2007.
Airbus Mandatory Service Bulletin A310–32–2132, excluding Appendix 01	01	June 1, 2007.

TABLE 5—MATERIAL INCORPORATED BY REFERENCE FOR THE OPTIONAL TERMINATING ACTION IN THIS AD

Airbus service bulletin—	Dated—
A300–32–0453	June 1, 2007.
A300–32–6099	June 1, 2007.
A310–32–2135	June 1, 2007.

Issued in Renton, Washington, on September 16, 2010.

Robert D. Breneman,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–24257 Filed 9–30–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0035; Directorate Identifier 2009–NM–066–AD; Amendment 39–16447; AD 2010–20–12]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747–400, 747–400D, and 747–400F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Model 747–400, 747–400D, and 747–400F series airplanes. This AD requires installing a hot short protector (HSP) for the fuel quantity indicating system (FQIS) of the center fuel tank and, for certain airplanes, the horizontal stabilizer fuel tank. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent an electrical hot short from a source outside the FQIS to the densitometer wiring from causing failure of the FQIS densitometer resistors, which could result in an ignition source inside the center or horizontal stabilizer fuel tanks. An ignition source, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane. This AD is effective November 5, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 5, 2010.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; *e-mail me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6482; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Model 747–400, 747–400D, and 747–400F series airplanes. That NPRM

was published in the **Federal Register** on February 11, 2010 (75 FR 6821). That NPRM proposed to require installing a hot short protector for the fuel quantity indicating system of the center fuel tank and, for certain airplanes, the horizontal stabilizer fuel tank.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from The Boeing Company.

Request To Revise Preamble of the NPRM

Boeing requests the following changes to sections of the preamble of the NPRM:

- In the section "Relevant Service Information," revise "We have received Boeing Service Bulletin 74728A2266, Revision 1, dated December 10, 2009 (for the CWTs)" to "We have received Boeing Service Bulletin 74728A2266, Revision 1, dated December 10, 2009 (for all airplanes)," because there are no configurations of the Model 747–400 without the center fuel tank.
- Revise "Relevant Service Information" to add the phrase "(for airplanes with horizontal stabilizer tanks)" to "Boeing Alert Service Bulletin 747–28A2267, dated December 18, 2008." Boeing states that this service bulletin adds a hot short protector on the horizontal stabilizer tank (HST).

We acknowledge the commenter's requests. While the commenter's suggestions may clarify information that the NPRM contained, these sections are not included in the final rule. As a result, we have not changed the AD in regard to these issues.

Request To Clarify the FQIS Wire Separation Requirement

Boeing requests that we clarify the requirement of the FQIS wire separation from the wiring of the other systems as a result of implementing the actions required by this AD. Boeing requests that we revise the Discussion section of the NPRM to state that after the actions required by the AD are implemented, then no further actions are required to separate the FQIS wire from the wiring of other systems.

We agree with the commenter that no action is required for the undisturbed portion of the densitometer wiring from the HSP to the fuel quantity processor unit at the electrical equipment bay. This final rule requires the installation of the HSP according to the accomplishment instructions of the applicable service bulletins. No part of this AD implies or requires action for the undisturbed portion of the densitometer wiring. Therefore, we have not changed the final rule in regard to this issue.

Request To Add Service Bulletin to Credit Paragraph

Boeing requests that we revise paragraph (h) of the NPRM to include Boeing Alert Service Bulletin 747–28A2266, Revision 1, dated December 10, 2009.

We do not agree to revise the AD, because such a revision is unnecessary. Paragraph (h) of this AD exists to give credit for actions accomplished before the effective date of this AD using Boeing Alert Service Bulletin 747–28A2266, dated December 18, 2008, and paragraph (g) of this AD requires that Revision 1 of this service bulletin is used for the action specified in that paragraph. We have not changed the AD in regard to this issue.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD affects 80 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Fleet cost
Installation[1]	6 to 17	$85	$15,821 to $30,650	$16,331 to $32,095	$1,306,480 to $2,567,600.

[1] Work hours and parts costs depend on airplane configuration.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2010–20–12 The Boeing Company: Amendment 39–16447; Docket No. FAA–2010–0035; Directorate Identifier 2009–NM–066–AD.

Effective Date

(a) This AD is effective November 5, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 747–400, 747–400D, and 747–400F series airplanes, certificated in any category; as identified in the service bulletins listed in paragraphs (c)(1) and (c)(2) of this AD.

(1) Boeing Service Bulletin 747–28A2266, Revision 1, dated December 10, 2009.

(2) Boeing Alert Service Bulletin 747–28A2267, dated December 18, 2008.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Unsafe Condition

(e) This AD results from fuel system reviews conducted by the manufacturer. The Federal Aviation Administration is issuing this AD to prevent an electrical hot short from a source outside the fuel quantity indicating system (FQIS) to the densitometer wiring from causing failure of the FQIS densitometer resistors, which could result in an ignition source inside the center or horizontal stabilizer fuel tanks. An ignition source, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Installation of Hot Short Protector (HSP)

(g) Within 60 months after the effective date of this AD: Do the applicable installations of the HSP specified in paragraphs (g)(1) and (g)(2) of this AD.

Note 1: Boeing Service Bulletin 747–28A2266, Revision 1, dated December 10, 2009; and Boeing Alert Service Bulletin 747–28A2267, dated December 18, 2008; refer to Cinch Service Bulletin CN1036–28–01, Revision C, dated January 18, 2007, as an additional source of guidance for installing the HSP in the fuel tanks which must be done before or concurrently with the actions specified in Boeing Service Bulletin 747–28A2266, Revision 1, dated December 10, 2009; and Boeing Alert Service Bulletin 747–28A2267, dated December 18, 2008.

(1) For all airplanes: Install the HSP in the center wing tank, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–28A2266, Revision 1, dated December 10, 2009.

(2) For airplanes identified in Boeing Alert Service Bulletin 747–28A2267, dated December 18, 2008: Install the HSP in the horizontal stabilizer tank, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–28A2267, dated December 18, 2008.

Credit for Installation Previously Accomplished in Accordance With Previous Issue of Service Bulletin

(h) Actions accomplished before the effective date of this AD according to Boeing Alert Service Bulletin 747–28A2266, dated December 18, 2008, are considered acceptable for compliance with the corresponding action specified in this AD, provided that Cinch Service Bulletin CN1036–28–01, Revision C, dated January 18, 2007, is used as an additional source of guidance.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6482; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Material Incorporated by Reference

(j) You must use Boeing Service Bulletin 747–28A2266, Revision 1, dated December 10, 2009; or Boeing Alert Service Bulletin 747–28A2267, dated December 18, 2008; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on September 16, 2010.

Robert D. Breneman,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–24169 Filed 9–30–10; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 241

[Release No. 34–62991]

Commission Guidance Regarding Auditing, Attestation, and Related Professional Practice Standards Related To Brokers and Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: The Securities and Exchange Commission is publishing interpretive guidance to clarify the application of certain Commission rules, regulations, releases, and staff bulletins in light of the authority granted to the Public Company Accounting Oversight Board in the Dodd-Frank Wall Street Reform and Consumer Protection Act to establish auditing, attestation, and related professional practice standards governing the preparation and issuance of audit reports to be included in broker and dealer filings with the Commission.

DATES: *Effective Date:* October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Questions should be referred to Rebekah Goshorn (Attorney), Division of Trading and Markets, at (202) 551–5777, or to John Offenbacher (Senior Associate Chief Accountant) or Jeffrey Cohan (Senior Special Counsel), Office of the Chief Accountant, at (202) 551–5300, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7561.

SUPPLEMENTARY INFORMATION: Section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act [1] ("Dodd-Frank Act") amended the Sarbanes-Oxley Act of 2002 [2] (the "Sarbanes-Oxley Act") to authorize the Public Company Accounting Oversight Board ("PCAOB"), among other things, to establish, subject to approval by the

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] 17 U.S.C. 7202 *et seq.*

Commission, auditing and related attestation, quality control, ethics, and independence standards to be used by registered public accounting firms with respect to the preparation and issuance of audit reports to be included in broker and dealer filings with the Commission pursuant to Rule 17a–5 [3] under the Exchange Act of 1934 [4] ("Exchange Act"). The amendments directly impact certain Commission rules, regulations, releases, and staff bulletins related to brokers and dealers (collectively referred to in this release as "Commission rules and staff guidance") and certain provisions in the federal securities laws for brokers and dealers, which refer to Generally Accepted Auditing Standards ("GAAS") and to specific standards under GAAS (including related professional practice standards).[5] There may be confusion on the part of brokers, dealers, auditors, and investors with regard to the professional standards auditors should follow for reports filed and furnished by brokers and dealers pursuant to the federal securities laws and the rules of the Commission.

The Commission is considering a rulemaking project to update the audit and related attestation requirements under the federal securities laws for brokers and dealers, particularly in light of the Dodd-Frank Act. In addition, the PCAOB has not yet revised its rules, which currently refer only to issuers, to require registered public accounting firms to comply with PCAOB standards for audits of non-issuer brokers and dealers.[6]

As a result, the Commission is providing transitional guidance with respect to its existing rules regarding non-issuer brokers and dealers. Specifically, references in Commission rules and staff guidance and in the federal securities laws to GAAS or to specific standards under GAAS, as they relate to non-issuer brokers or dealers, should continue to be understood to mean auditing standards generally accepted in the United States of America,[7] plus any applicable rules of the Commission. The Commission intends, however, to revisit this interpretation in connection with its rulemaking project referenced above.

List of Subjects in 17 CFR Part 241

Brokers, Reporting and recordkeeping reports, Securities.

Amendments to the Code of Federal Regulations

■ For the reasons set forth above, the Commission is amending title 17, chapter II of the Code of Federal Regulations as set forth below:

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ Part 241 is amended by adding Release No. 34–62991 to the list of interpretive releases as follows:

Subject	Release No.	Date	Fed. Reg. vol. and page
* * *	*	* *	* *
Commission Guidance Regarding Auditing, Attestation, and Related Professional Practice Standards Related to Brokers and Dealers.	34–62991	September 24, 2010	75 FR [INSERT FR PAGE NUMBER]

By the Commission.

Dated: September 24, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–24657 Filed 9–30–10; 8:45 am]

BILLING CODE 8010–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

18 CFR Parts 806 and 808

Review and Approval of Projects

AGENCY: Susquehanna River Basin Commission.

ACTION: Final rule.

SUMMARY: This document contains final rules that amend the project review regulations of the Susquehanna River Basin Commission (Commission) to include subsidiary allocations for public water supply systems under the scope of withdrawals requiring review and approval; improve notice procedures for all project applications; clarify requirements for grandfathered projects increasing their withdrawals from an existing source or initiating a new withdrawal; refine the provisions governing transfer and re-issuance of approvals; clarify the Executive Director's authority to grant, deny, suspend, rescind, modify, or condition an Approval by Rule; include decisional criteria for diversions into the basin; amend administrative appeal procedures to broaden available remedies and streamline the appeal process; and make other minor regulatory clarifications to the text of the regulations.

DATES: Effective November 1, 2010.

ADDRESSES: Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: 717–238–0423, ext. 306; fax: 717–238–2436; e-mail: *rcairo@srbc.net*. Also, for further information on the final rulemaking, visit the Commission's Web site at *http://www.srbc.net*.

SUPPLEMENTARY INFORMATION:

Comments and Responses to Proposed Rulemaking

Notice of proposed rulemaking was published in the **Federal Register** on June 25, 2010; the New York Register on July 7, 2010; the Pennsylvania Bulletin on July 10, 2010; and the Maryland Register on July 16, 2010. The Commission convened public hearings on July 27, 2010, in Binghamton, New York and on July 2010, in Harrisburg, Pennsylvania. A written comment period was held open until August 10, 2010. Comments on the proposed rulemaking were received at both the hearings and during the comment period. A summary of the comments and the Commission's responses thereto follows.

[3] 17 CFR 240.17a–5.

[4] 15 U.S.C. 78a *et seq.*

[5] Many parts of Commission rules and staff guidance related to obligations of brokers and dealers refer to GAAS and contain requirements for audits to be conducted in accordance with GAAS. Rule 17a–5(g)(1) under the Exchange Act, for example, states that the audit of the report required by Rule 17a–5(d) "* * * shall be made in accordance with generally accepted auditing standards * * *" (*See* 17 CFR 240.17a–5) Rule 17a–12 under the Exchange Act requires that the audit of certain over-the-counter derivative dealers "* * * shall be made in accordance with U.S. Generally Accepted Auditing Standards * * *" (17 CFR 240.17a–12).

[6] *See* PCAOB Rule 3100. *See also, e.g.,* PCAOB Rules 3200T, 3300T, 3400T, and 3500T.

[7] Audit and attestation standards established by the AICPA.

Comments by Section, Part 806

Section 806.4 Projects Requiring Review and Approval

Comment: With respect to gas well development and hydrofracking operations, there is a need for the Commission to evaluate the cumulative impacts of water withdrawals and to require flow monitoring at water withdrawal sites.

Response: The Commission does employ cumulative impact analysis in its review and approval of projects. Flows are monitored at all sites where passby flow requirements have been imposed either directly or through the use of reference gages. Commission field inspectors verify that users required to cease taking water at given flow levels are in fact abiding by passby limitations. In addition, the Commission has implemented a Remote Water Quality Monitoring Network with 30 monitoring stations in the areas where drilling in the Marcellus Shale formation is most active.

Comment: The Commission should exercise greater regulatory authority over drilling operations in the Marcellus Shale formation, including assuming jurisdiction over water quality related matters.

Response: The Commission's current regulatory authority extends only to water withdrawal and consumptive use by gas drilling operations. As established in Section 3.2 of the Susquehanna River Basin Compact, the Commission is directed to utilize the existing agencies of Federal and State government who currently exercise regulatory authority on water quality, underground injection, and on the extraction of mineral resources. At this point, the member States are asserting their regulatory authority and it would not be appropriate for the Commission to interpose its authority and duplicate the plenary authority exercised by the States in this area. If, at some point in the future, the Commission concludes, after public hearing, that it must assume jurisdiction in order to effectuate the terms of the comprehensive plan or implement the terms of the Compact, it may then do so.

Section 806.6 Transfer and Re-Issuance of Approvals

Comment: Allowing "transfer of approvals" under 18 CFR 806.6 is inappropriately treating water as a "commodity" instead of as a "common resource" of the basin.

Response: Under 18 CFR 806.6, the instances where approvals may be transferred with only administrative approval of the Executive Director are limited. Transfers of approvals more than ten years old, those changing the quantity or use of the water, or having pre-compact or pre-regulation elements will require a subsequent application for approval, thus phasing out grandfathered uses and bringing these projects under the authority of the Commission, where the water used can be better managed as a "common resource" of the basin. We would also note that transfer of approvals is not limited to the gas drilling industry. Other transfers occur, such as the transfer of water withdrawal approvals from municipalities to municipal authorities, whenever a project using the waters of the basin is sold to a new owner.

Section 806.15 Notice of Application

Comment: Notification of property owners within one-half mile of a withdrawal is insufficient. Notice should be provided to all property owners in the watershed or even to all basin residents because of the high volumes of water withdrawals for gas production and the contents of fracking water. Also, people farther than a half mile may experience impacts to their water, air, and soil quality.

Response: The one-half mile notification requirement for withdrawals provides more effective notice than the current contiguous property owner requirement that is based on proximity, not science. Ongoing scientific evaluations indicate that a one-half mile notice will cover the vast majority of areas affected by groundwater and surface water withdrawals. Thus, the Commission believes this new standard is both reasonable and appropriate. If data is collected during the aquifer test that indicates that the influence of the withdrawal extends beyond a half mile radius, the staff has the discretion to direct project applicants to send notification to property owners in these extended areas. Because newspaper notice is also required and because the Commission publishes an advanced notice for all withdrawal applications in the **Federal Register** and State notice publications prior to taking action, other interested parties throughout the watershed and the basin will have notice and opportunity to comment on such applications. Similar information is also provided to the public by the Commission through its Web-based Water Resources Portal.

Comment: In amending its notification requirements for project applications, the Commission is properly focusing on those persons who are actually affected and who have a real interest in participating in the approval process.

Response: Agreed.

Comment: The Commission's proposed rules are scientifically based and therefore sound.

Response: Agreed.

Comment: The notice sent to landowners within one-half mile of a groundwater withdrawal should include an opportunity for the property owner to comment on the project application.

Response: 18 CFR 806.15(a) specifies that all notices required under this section contain the address, electronic mail address, and phone number of the project sponsor and the Commission, and comments are therefore welcome from any landowner or other interested party who wishes to do so. Also, the form of notice sent to landowners contains information concerning the submission of comments and providing relevant contact information.

Comment: The notice sent to property owners within one-half mile of a groundwater withdrawal should include information on how the 72-hour testing will be done, when it will occur, and other information concerning the evaluation and approval of the groundwater withdrawal project. Follow-up information should be provided to property owners receiving notifications such as the results of water withdrawal testing.

Response: The Commission readily understands that landowners may have an interest in aquifer testing information at the application stage. Under current Commission procedures, however, applicants submit testing plans and conduct tests prior to the filing of an application that triggers the notice requirement. At this pre-application stage, applicants may also submit information supporting a request for a waiver of the testing requirements, which may or may not be granted. The Commission believes that the requirement for pre-application submission of test information is a conservative management approach helping to ensure that applications are supported by science. Rather than modifying this procedure, the Commission feels that the legitimate concerns expressed in this comment can best be addressed by providing landowners with a right of access to the information sought.

Comment: For applications to use wastewater discharge sources, in addition to the newspaper notice, any property owner within 1,000 feet of the use (or some other appropriate distance compatible with other resource agencies) should be notified by mail.

Response: Newspaper notices noting the use of a wastewater discharge source will be required in every area where the water will be used for natural gas development. The Commission believes that this form of notice will be sufficient. Also, all approved water sources that a natural gas developer may use on a given site are available for viewing on line by interested landowners at the Commission's Web based Water Resources Portal.

Section 806.24 Standards for Diversions

Comment: The meaning of the "catch all phrase" in the proposed revision to 18 CFR 806.24 requiring consideration of the "extent to which the proposed diversion satisfies all other applicable standards set forth in subchapter C of this part," is not clear. It is recommended that this phrase be struck.

Response: While the Commission agrees that a clarification is needed, it is important that the sponsors of diversion projects understand that they must also abide by the Commission's general and specific standards set forth in subchapter C of part 806 governing withdrawals and consumptive use. The Commission has modified this language in the final rule to add more clarity.

Comment: For projects involving a diversion of water out of the basin, the in-basin public should be noticed and have an opportunity to provide written comments. This notice should tell the public where the water is being diverted and why.

Response: The proposed regulations do provide for newspaper publication in the in-basin area, plus since the diversion will also involve a withdrawal of some kind in the in-basin area, property owners within one-half mile will also receive notifications in accordance with 18 CFR 806.15.

General Comments

Comment: The Commission should institute a moratorium on approval of any unconventional gas drilling related water withdrawals until the completion of certain studies that will assess the environmental impacts of drilling and fracking activity.

Response: The Commission can find no evidence linking its approval of water withdrawals and consumptive uses by gas drilling operations in the Marcellus Shale formation with a threat of harm or of injury to the public justifying a moratorium on all approvals. Ultimately, a moratorium based on supposition rather than science cannot be legally justified or defended. It is also far more appropriate for the States and the Federal government, who exercise broader authority with respect to water quality, underground injection and mineral extraction, and who have such studies underway, to inform the Commission's regulatory program as that science develops. In the interim, the Commission continues to study and evaluate the cumulative impact of these withdrawals and consumptive use on the water resources of the basin.

Comment: The idea of allowing water withdrawals for any other reason than to support life is abhorrent.

Response: The Susquehanna River Basin Compact and the Commission Comprehensive Plan do place importance upon the conservation of water to support the living resources of the basin and the Chesapeake Bay, and the Commission devotes a major part of its mission to protecting those resources; however, the purposes of the Compact and the goals of the Comprehensive Plan also include the utilization and development of the basin's water resources to make secure and protect developments within the States (i.e. economic development). Managing the basin's waters to protect living resources and developments within the States are not mutually exclusive efforts.

Comment: The Commission did not give sufficient public notice of the public hearings on these proposed rules.

Response: The Commission followed the notice requirements of its own regulations found at 18 CFR 808.1, publishing well in advance of public hearings the text of the proposed rules in the **Federal Register** and in the member State notice publications, and including in those notices the date, time and place of two public hearings held in Binghamton, NY on July 27, 2010, and Harrisburg, PA on July 29, 2010. Written comments were also invited through August 10, 2010. The Commission gave further notice of the proposed rulemaking contents, the public hearings, and the comment period via its Web site and in a news release sent to media throughout the basin. These are the same notice procedures followed by the Commission on past proposed rulemaking actions as well. The Commission is, nevertheless, considering ways that it can improve notice procedures in future rulemaking actions and welcomes this comment.

Comment: The Pennsylvania Department of Environmental Protection (PADEP) is permitting gas drilling on lands subject to frequent inundation, creating a danger that toxic materials or waters stored on such land will be washed away and contaminate streams and rivers.

Response: 18 CFR 806.21 provides that the Commission may suspend the review of any project that has not been approved by a member jurisdiction or a political subdivision thereof. The Commission may also modify, suspend, or revoke a previously granted approval where the project sponsor fails to obtain or maintain the approval of member jurisdiction or political subdivision thereof. All land uses in Pennsylvania in flood prone designated communities are subject to the provisions of the Pennsylvania Flood Plain Management Act and local ordinances adopted pursuant thereto. If a project sponsor is not in compliance with these local ordinances, they run the risk of having their Commission approval suspended or revoked.

Comment: The Commission has been blocking participation of landowners in the approval process for gas drilling consumptive use and withdrawal approvals by withholding information on pending project applications.

Response: The Commission disagrees with this comment. The Commission has historically welcomed and encouraged public comment on applications submitted to the Commission for its review and consideration. It continues to improve its notice requirements, as witnessed by the modifications being made to 18 CFR 806.15 of this final rule, and has taken considerable steps to build its online Water Resources Portal Web application to facilitate that end.

Comment by Section, Part 808

Section 808.2 Administrative Appeals

Comment: There is a need to improve some of the provisions of the proposed changes to the administrative appeal provisions of 18 CFR 808.2 by removing certain unneeded language, defining a standard for granting nunc pro tunc appeals, providing for a direct notice of hearing to the petitioner and project sponsor, and specifying a deadline for filing an appeal for consideration at the next regular Commission meeting.

Response: Agreed. These changes have been made to the text of 18 CFR 808.2 in the final rulemaking document.

List of Subjects in 18 CFR Parts 806 and 808:

Administrative practice and procedure, Water resources.

■ Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission amends 18 CFR parts 806 and 808 as follows:

PART 806—REVIEW AND APPROVAL OF PROJECTS

Subpart C—Standards for Review and Approval

■ 1. The authority citation for part 806 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91–575, 84 Stat. 1509 *et seq.*

■ 2. In § 806.4, revise paragraphs (a)(2) introductory text, (a)(2)(iv), and (c) to read as follows:

§ 806.4 Projects requiring review and approval.

(a) * * *

(2) *Withdrawals.* Any project described below shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in § 806.23. Hydroelectric projects, except to the extent that such projects involve a withdrawal, shall be exempt from the requirements of this section regarding withdrawals; provided, however, that nothing in this paragraph shall be construed as exempting hydroelectric projects from review and approval under any other category of project requiring review and approval as set forth in this section, § 806.5, or 18 CFR part 801. The taking or removal of water by a public water supplier indirectly through another public water supply system or another water user's facilities shall constitute a withdrawal hereunder.

* * * * *

(iv) With respect to groundwater projects in existence prior to July 13, 1978, and surface water projects in existence prior to November 11, 1995, any project that will increase its withdrawal from any source, or initiate a withdrawal from a new source, or combination of sources, by a consecutive 30-day average of 100,000 gpd or more, above that maximum consecutive 30-day amount which the project was withdrawing prior to the said applicable date.

* * * * *

(c) Any project that did not require Commission approval prior to January 1, 2007, and not otherwise exempt from the requirements of paragraph (a)(1)(iv), (a)(2)(v), or (a)(3)(iv) pursuant to paragraph (b) of this section, may be undertaken by a new project sponsor upon a change of ownership pending action by the Commission on an application submitted by such project sponsor requesting review and approval of the project, provided such application is submitted to the Commission in accordance with this part within 90 days of the date change of ownership occurs and the project features related to the source, withdrawal, diversion or consumptive use of water, or the nature or quantity of water withdrawal, diversion or consumptive use associated with the project do not change pending review of the application. For purposes of this paragraph, changes in the quantity of water withdrawal, diversion or consumptive use shall only relate to increases in quantity in excess of the quantity withdrawn, diverted or consumptively used prior to the change of ownership.

■ 3. In § 806.6, revise paragraphs (a), (b) introductory text, (b)(1), (c) introductory text and (d) introductory text, and add paragraph (e) to read as follows:

§ 806.6 Transfer and re-issuance of approvals.

(a) An existing Commission project approval may be transferred or conditionally transferred to a new project sponsor upon a change of ownership of the project, subject to the provisions of paragraphs (b), (c) and (d) of this section, and the new project sponsor may only operate the project in accordance with and subject to the terms and conditions of the existing approval pending approval of the transfer, provided the new project sponsor notifies the Commission within 90 days from the date of the change of ownership, which notice shall be on a form and in a manner prescribed by the Commission and under which the new project sponsor certifies its intention to comply with all terms and conditions of the transferred approval and assume all other associated obligations.

(b) An existing Commission project approval for any of the following categories of projects may be conditionally transferred, subject to administrative approval by the Executive Director, upon a change of ownership and the new project sponsor may only operate such project in accordance with and subject to the terms and conditions of the transferred approval:

(1) A project undergoing a change of ownership as a result of a corporate reorganization where the project property is transferred to a corporation by one or more corporations solely in exchange for stock or securities of the transferee corporation, provided that immediately after the exchange the transferor corporation(s) own 80 percent of the voting stock and 80 percent of all other stock of the transferee corporation.

* * * * *

(c) An existing Commission approval of a project that satisfies the following conditions may be conditionally transferred and the project sponsor may only operate such project in accordance with and subject to the terms and conditions of the conditionally transferred approval, pending action by the Commission on the application submitted in accordance with paragraph (c)(3) of this section:

* * * * *

(d) An existing Commission project approval for any project not satisfying the requirements of paragraphs (b) or (c) of this section may be conditionally transferred and the project sponsor may only operate such project in accordance with and subject to the terms and conditions of the conditionally transferred approval, pending action by the Commission on an application the project sponsor shall submit to the Commission, provided that:

* * * * *

(e) An existing Commission project approval may be re-issued by the Executive Director at the request of a project sponsor undergoing a change of name, provided such change does not affect ownership or control of the project or project sponsor. The project sponsor may only continue to operate the project under the terms and conditions of the existing approval pending approval of its request for re-issuance, provided it submits its request to the Commission within 90 days from the date of the change, which notice shall be on a form and in a manner prescribed by the Commission, accompanied by the appropriate fee established therefore by the Commission.

■ 4. In § 806.7, revise paragraph (a) to read as follows:

§ 806.7 Concurrent project review by member jurisdictions.

(a) The Commission recognizes that agencies of the member jurisdictions will exercise their review and approval authority and evaluate many proposed projects in the basin. The Commission will adopt procedures to assure compatibility between jurisdictional review and Commission review.

* * * * *

■ 5. Revise § 806.15 to read as follows:

§ 806.15 Notice of application.

(a) Any project sponsor submitting an application to the Commission shall provide notice thereof to the appropriate agency of the member State, each municipality in which the project is located, and the county planning agency of each county in which the project is located. The project sponsor shall also publish notice of submission of the application at least once in a newspaper of general circulation serving the area in

which the project is located. The project sponsor shall also meet any of the notice requirements set forth in paragraphs (b) through (e) of this section, if applicable. All notices required under this section shall be provided or published no later than 10 days after submission of the application to the Commission and shall contain a description of the project, its purpose, the requested quantity of water to be withdrawn obtained from for sources other than withdrawals or consumptively used, and the address, electronic mail address, and phone number of the project sponsor and the Commission. All such notices shall be in a form and manner as prescribed by the Commission.

(b) For withdrawal applications submitted pursuant to § 806.4(a)(2), the project sponsor shall also provide the notice required under paragraph (a) of this section to each property owner listed on the tax assessment rolls of the county in which such property is located and identified as follows:

(1) For groundwater withdrawal applications, the owner of any property that is located within a one-half mile radius of the proposed withdrawal location.

(2) For surface water withdrawal applications, the owner of any property that is riparian or littoral to the body of water from which the proposed withdrawal will be taken and is within a one-half mile radius of the proposed withdrawal location.

(c) For projects involving a diversion of water out of the basin, the project sponsor shall also publish a notice of the submission of its application at least once in a newspaper of general circulation serving the area outside the basin where the project proposing to use the diverted water is located. For projects involving a diversion of water into the basin, the project sponsor shall also publish a notice of the submission of its application at least once in a newspaper of general circulation serving the area outside the basin where the withdrawal of water proposed for diversion is located.

(d) For applications submitted under § 806.22(f)(12)(ii) to use a public water supply source, the newspaper notice requirement contained in paragraph (a) of this section shall be satisfied by publication in a newspaper of general circulation in the area served by the public water supply.

(e) For applications submitted under § 806.22(f)(12)(ii) to use a wastewater discharge source, the newspaper notice requirement contained in paragraph (a) of this section shall be satisfied by publication in a newspaper of general circulation in each area within which the water obtained from such source will be used for natural gas development.

(f) The project sponsor shall provide the Commission with a copy of the United States Postal Service return receipt for the notifications to agencies of member States, municipalities and county planning agencies required under paragraph (a) of this section. The project sponsor shall also provide certification on a form provided by the Commission that it has published the newspaper notice(s) required by this section and made the landowner notifications as required under paragraph (b) of this section, if applicable. Until these items are provided to the Commission, processing of the application will not proceed. The project sponsor shall maintain all proofs of notice required hereunder for the duration of the approval related to such notices.

■ 6. In § 806.22, revise paragraphs (e)(1), (e)(6), (f)(3), (f)(9), and (f)(12) to read as follows:

§ 806.22 Standards for consumptive uses of water.

* * * * *

(e) * * *

(1) Except with respect to projects involving natural gas well development subject to the provisions of paragraph (f) of this section, any project whose sole source of water for consumptive use is a public water supply, may be approved by the Executive Director under this paragraph (e) in accordance with the following, unless the Executive Director determines that the project cannot be adequately regulated under this approval by rule:

(i) Notification of Intent: No fewer than 90 days prior to the construction or implementation of a project or increase above a previously approved quantity of consumptive use, the project sponsor shall submit a Notice of Intent (NOI) on forms prescribed by the Commission, and the applicable application fee, along with any required attachments.

(ii) Within 10 days after submittal of an NOI under paragraph (e)(1)(i) of this section, the project sponsor shall satisfy the notice requirements set forth in § 806.15.

* * * * *

(6) The Executive Director may grant, deny, suspend, rescind, modify or condition an approval to operate under this approval by rule and will notify the project sponsor of such determination, including the quantity of consumptive use approved.

* * * * *

(f) * * *

(3) Within 10 days after submittal of an NOI under paragraph (f)(2) of this section, the project sponsor shall satisfy the notice requirements set forth in § 806.15.

* * * * *

(9) The Executive Director may grant, deny, suspend, rescind, modify or condition an approval to operate under this approval by rule and will notify the project sponsor of such determination, including the sources and quantity of consumptive use approved. The issuance of any approval hereunder shall not be construed to waive or exempt the project sponsor from obtaining Commission approval for any water withdrawals or diversions subject to review pursuant to § 806.4(a).

* * * * *

(12) The following additional sources of water may be utilized by a project sponsor in conjunction with an approval by rule issued pursuant to paragraph (f)(9) of this section:

(i) Water withdrawals or diversions approved by the Commission pursuant to § 806.4(a) and issued to persons other than the project sponsor, provided any such source is approved for use in natural gas well development, the project sponsor has an agreement for its use, and at least 10 days prior to use, the project sponsor registers such source with the Commission on a form and in a manner as prescribed by the Commission, and provides a copy of same to the appropriate agency of the member State. Any approval issued hereunder shall be further subject to any approval or authorization required by the member State to utilize such source(s). The project sponsor shall record on a daily basis, and report quarterly on a form and in a manner prescribed by the Commission, the quantity of water obtained from any source registered hereunder.

(ii) Sources of water other than those subject to paragraph (f)(12)(i) of this section, including public water supply or wastewater discharge, provided such sources are first approved by the Executive Director pursuant to this section. Any request to utilize such source(s) shall be submitted on a form and in a manner as prescribed by the Commission, shall satisfy the notice requirements set forth in § 806.15, and shall be subject to review pursuant to the standards set forth in subpart C of this part. Any approval issued hereunder shall be further subject to any approval or authorization required by the member State to utilize such source(s).

■ 7. In § 806.24, add paragraph (c)(2), to read as follows:

§ 806.24 Standards for diversions.

* * * * *

(c) * * *

(2) In deciding whether to approve a proposed diversion into the basin, the Commission shall also consider and the project sponsor shall provide information related to the following factors:

(i) Any adverse effects and cumulative adverse effects the project may have on the Susquehanna River Basin, or any portion thereof, as a result of the introduction or potential introduction of invasive or exotic species that may be injurious to the water resources of the basin.

(ii) The extent to which the proposed diversion satisfies all other applicable general and specific standards set forth in subpart C of this part pertaining to withdrawals and consumptive use.

■ 8. Revise § 806.35 to read as follows:

§ 806.35 Fees

Project sponsors shall have an affirmative duty to pay such fees as established by the Commission to cover its costs of administering the regulatory program established by this part, including any extraordinary costs associated with specific projects.

PART 808—HEARINGS AND ENFORCEMENT ACTIONS

■ 10. The authority citation for part 808 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91–575, 84 Stat. 1509 *et seq.*

Subpart A—Conduct of Hearings

■ 11. In § 808.2, revise paragraphs (a), (b), (c), (d), (e), (f), (g), and (h) to read as follows:

§ 808.2 Administrative appeals.

(a) A project sponsor or other person aggrieved by a final action or decision of the Commission or Executive Director on a project application or a records access determination made pursuant to Commission policy may file a written appeal requesting a hearing. In the case of a project approval or denial, such appeal shall be filed by a project sponsor within 30 days of receipt of actual notice, and by all others within 30 days of publication of notice of the action taken on the project in the **Federal Register**. In the case of records access determinations, such appeal shall be filed with the Commission within 30 days of receipt of actual notice of the determination. Appeals filed later than 20 days prior to a regular Commission meeting will be considered at a subsequent Commission meeting. Appeals shall be filed on a form and in a manner prescribed by the Commission and the petitioner shall have 20 days from the date of filing to amend the appeal form.

(b) The appeal shall identify the specific action or decision for which a hearing is requested, the date of the action or decision, the interest of the person requesting the hearing in the subject matter of the appeal, and a statement setting forth the basis for objecting to or seeking review of the action or decision.

(c) Any request not filed on or before the applicable deadline established in paragraph (a) of this section hereof will be deemed untimely and such request for a hearing shall be considered denied unless the Commission, upon written request and for good cause shown, grants leave to make such filing nunc pro tunc; the standard applicable to what constitutes good cause shown being the standard applicable in analogous cases under Federal law. Receipt of requests for hearings pursuant to this section, whether timely filed or not, shall be submitted by the Executive Director to the commissioners for their information.

(d) Petitioners shall be limited to a single filing that shall set forth all matters and arguments in support thereof, including any ancillary motions or requests for relief. Issues not raised in this single filing shall be considered waived for purposes of the instant proceeding. Where the petitioner is appealing a final determination on a project application and is not the project sponsor, the petitioner shall serve a copy of the appeal upon the project sponsor within five days of its filing.

(e) If a hearing is granted, the Commission shall serve notice thereof upon the petitioner and project sponsor and shall publish such notice in the **Federal Register**. The hearing shall not be held less than 20 days after publication of such notice. Hearings may be conducted by one or more members of the Commission, by the Executive Director, or by such other hearing officer as the Commission may designate.

(1) The petitioner may also request a stay of the action or decision giving rise to the appeal pending final disposition of the appeal, which stay may be granted or denied by the Executive Director after consultation with the Commission chair and the member from the affected member State. The decision of the Executive Director on the request for stay shall not be appealable to the Commission under this section and shall remain in full force and effect until the Commission acts on the appeal.

(2) In addition to the contents of the request itself, the Executive Director, in granting or denying the request for stay, will consider the following factors:

(i) Irreparable harm to the petitioner.

(ii) The likelihood that the petitioner will prevail.

(f) The Commission shall grant the hearing request pursuant to this section if it determines that an adequate record with regard to the action or decision is not available, the case involves a determination by the Executive Director or staff which requires further action by the Commission, or that the Commission has found that an administrative review is necessary or desirable. If the Commission denies any request for a hearing, the party seeking such hearing shall be limited to such remedies as may be provided by the compact or other applicable law or court rule.

(g) If a hearing is granted, the Commission shall refer the matter for hearing to be held in accordance with § 808.3, and appoint a hearing officer.

(h) *Intervention.* (1) A request for intervention may be filed with the Commission by persons other than the petitioner within 20 days of the publication of a notice of the granting of such hearing in the **Federal Register.** The request for intervention shall state the interest of the person filing such notice, and the specific grounds of objection to the action or decision or other grounds for appearance. The hearing officer(s) shall determine whether the person requesting intervention has standing in the matter that would justify their admission as an intervener to the proceedings in accordance with Federal case law.

(2) Interveners shall have the right to be represented by counsel, to present evidence and to examine and cross-examine witnesses.

* * * * *

Dated: September 21, 2010.

Thomas W. Beauduy,

Deputy Director.

[FR Doc. 2010–24643 Filed 9–30–10; 8:45 am]

BILLING CODE 7040–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0711; FRL–9207–7]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on December 9, 2009 and concerns oxides of nitrogen (NO_X) emissions from solid fuel fired boilers, steam generators and process heaters. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves a local rule that regulates these emission sources and directs California to correct rule deficiencies.

DATES: *Effective Date:* This rule is effective on November 1, 2010.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2009–0711 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Idalia Perez, EPA Region IX, (415) 972–3248, *perez.idalia@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

I. Proposed Action

On 12/09/09 (74 FR 65042), EPA proposed a limited approval and limited disapproval of the following rule that the SJVUAPCD submitted for incorporation into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	4352	Solid Fuel Fired Boilers, Steam Generators and Process Heaters.	05/18/06	10/05/06

We proposed a limited approval because we determined that this rule improves the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions do not satisfy the requirements of section 110 and part D of the Act. Specifically:

• Section 5.1 of the Rule establishes the emission limits. We proposed to find that, with the exception of the NO_X emission limit for biomass fuel-fired units, SJVUAPCD has not adequately demonstrated that the NO_X emission limits (*i.e.,* NO_X limits for units burning municipal solid waste or other solid fuels, such as coal) satisfy Reasonably Available Control Technology (RACT) requirements. As explained further in the TSD for the proposed action, EPA's 1994 Alternative Control Techniques Document for NO_X emissions from Industrial/Commercial/Institutional Boilers (1994 ACT) contains lower emission ranges for similar boilers. Source-specific information from the SJVUAPCD also indicates that emission limits lower than those in Rule 4352 are reasonably achievable.

We are now disapproving all of the NO_X emission limits in Rule 4352, including the limit for biomass fuel-fired units, because the District has not adequately demonstrated that these limits satisfy RACT. Our proposed action and our response to comments below contain more information on the basis for this rulemaking and our evaluation of the submittal.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from the following parties.

1. Sarah Jackson, Earthjustice; letter and e-mail dated and received January 8, 2010.

2. Seyed Sadredin, SJVUAPCD; letter dated January 8, 2010 and received January 11, 2010.

The comments and our responses are summarized below.

Comment #1: Earthjustice supported EPA's proposed disapproval of the NO_X emission limits in Rule 4352 for municipal solid waste-burning and other solid fuel-burning units and agreed that the District had failed to demonstrate that these limits satisfy CAA RACT requirements.

Response #1: No response needed.

Comment #2: Earthjustice disagreed with EPA's proposal to approve the NO_X emission limit in Rule 4352 for biomass-fired units as RACT. Earthjustice provided several arguments in support of its objection to EPA's proposal, each of which we address in separate comment summaries below.

Response #2: Although we do not agree with all of the arguments provided in support of this comment, we have changed our position based on this comment and agree that the District has failed to provide adequate support for its conclusion that the NO_X emission limit in Rule 4352 for biomass-fired units satisfies RACT. We believe our conclusion on this issue is a logical outgrowth of our proposed rule.

Comment #2.a: Earthjustice challenged EPA's conclusion that the NO_X emission limit of 115 ppm at 3% O_2 for biomass-fired units in Rule 4352 is more stringent than the level provided in EPA's 1994 ACT, given that the 1994 ACT provides achievable NO_X levels ranging from 23 to 155 ppm at 3% O_2 for wood-fired boilers with fluidized bed combustors. Additionally, Earthjustice asserted that this range of NO_X emission levels undermines EPA's conclusion that the 40 ppm limit in other districts' rules is not feasible.

Response #2.a: We acknowledge that our previous statement that Rule 4352's requirements for biomass-fired units are more stringent than the levels in the 1994 ACT was not entirely accurate. In this action, we are clarifying that the NO_X emission limit in Rule 4352 for biomass-fired boilers (115 ppm at 3% O_2) falls in the mid-range of achievable emission levels provided in the 1994 ACT for this source category (24 ppm to 187 ppm at 3% O_2).[1]

[1] The range of emission levels that Earthjustice identifies (23 to 155 ppm at 3% O_2) are presented in the TSD for our proposed action and are calculated based on the lb/MMBtu values shown in

Continued

As to the commenter's assertion that the range of emission levels in the 1994 ACT undermines EPA's conclusion that a NO_X limit of 40 ppm is not feasible for biomass-fired boilers, however, we disagree. In the TSD for our proposal, we referenced a 40 ppm NO_X emission limit based on SJVUAPCD's April 16, 2009 RACT SIP analysis, which identified four other California districts' rules that contain emission limits of 40 ppm at 3% O_2 for units firing "non-gaseous fuels": The South Coast Air Quality Management District (SCAQMD) Rule 1146 (as amended September 5, 2008); Sacramento Metropolitan Air Quality Management District (SMAQMD) Rule 411 (as amended August 23, 2007); Bay Area Air Quality Management District (BAAQMD) Regulation 9 Rule 7 (as amended July 30, 2008) [2]; and Ventura County Air Pollution Control District (VCAPCD) Rule 74.15 (as amended November 8, 1994). *See* SJVUAPCD, RACT Demonstration for Ozone SIP, Chapter 4: Rule Analysis, at 4–64 to 4–67 (April 16, 2009) ("RACT SIP analysis"). In response to this comment, we contacted each of these districts to determine whether there are any biomass-fired units subject to the NO_X emission limits in these rules. None of these districts provided information indicating that any biomass-fired boiler has achieved a NO_X limit of 40 ppm at 3% O_2.

Specifically, we are not aware of any biomass-fired boiler that is or has been subject to the 40 ppm NO_X emission limit in VCAPCD Rule 74.15 or SCAQMD Rule 1146.[3] *See* e-mail dated June 7, 2010, from Kerby Zozula (VCAPCD) to Shirley Rivera (EPA Region 9); e-mail dated August 10, 2010, from Charles Tupac (SCAQMD) to Idalia Perez (EPA Region 9). The BAAQMD has issued one permit for a biomass-fired unit at a facility called Standard Structures, Inc., but we have no information indicating that this unit is achieving emission levels as low as 40 ppm at 3% O_2. *See* e-mail dated June 7, 2010, from Barry Young (BAAQMD) to Shaheerah Kelly (EPA Region 9); Facsimile Transmittal dated June 8, 2010, attaching Evaluation Report and Engineering Evaluation for Standard Structures, Inc., from Art Valla (BAAQMD) to S. Kelly (EPA Region 9); e-mail dated June 8, 2010, from Charles McClure (BAAQMD) to Idalia Perez (EPA Region 9). In the Sacramento Metro area, one source has operated a biomass-fired boiler in the past 20 years, but that source was subject to an earlier version of SMAQMD's Rule 411 containing significantly higher NO_X emission limits until it ceased operating in March 1996. *See* Response #2.b, below. We have no information indicating that a NO_X emission level of 40 ppm at 3% O_2 is generally achievable for biomass-fired units, and the commenter has not identified any such information.

ACT documents describe available control techniques and their cost effectiveness but do not define presumptive RACT levels as the CTGs do. The 1994 ACT (at Appendix B, pages B20–B21) identifies NO_X emission levels for biomass-fueled boilers ranging from 24 ppm to 187 ppm at 3% O_2, based on the use of SNCR controls with ammonia or urea injection. This wide range of emission levels reflects the broad technical diversity among the types of boilers that fire biomass as fuel, including stokers, circulating fluidized bed boilers and bubbling fluidized bed boilers. It also reflects the variety of fuels that the term "biomass" covers, including various kinds of plant materials, wood materials and agricultural wastes.

Given the broad technical diversity of existing biomass-fired boilers and their varying fuel compositions, the NO_X emission levels achievable for one operation (*e.g.,* 24 ppm) may not necessarily be achievable for others. Even where boiler type, control technology, and fuel type are the same, achievable emission levels may differ significantly from boiler to boiler depending on a number of site-specific factors, including furnace dimensions and operating characteristics, design and condition of burner controls, design and condition of stream control systems, and fan capacity. See, for example, 1994 ACT Appendix B (at page B–20), showing achievable NO_X emission levels ranging from 25 to 160 ppm at 3% O_2 for wood-fired stoker boilers using SNCR with ammonia injection.

Thus, the range of emission levels for biomass-fired boilers in the 1994 ACT does not necessarily establish that a NO_X emission level of 40 ppm at 3% O_2 is reasonably achievable for such boilers generally. It does, however, warrant a more detailed evaluation of the biomass-fired units in the SJV area, as discussed further below.

Comment #2.b: Earthjustice asserted that the District's claim that there are no solid-fuel fired units in the Sacramento area that currently meet the 70 ppm limit in the SMAQMD's Rule 411 is "misleading and irrelevant to answering the feasibility question." Earthjustice stated that according to CARB and SMAQMD staff, "there was, in fact, at least one source in the Sacramento Metropolitan air district that burned biomass as a fuel, and that source met the emission limit of this rule until it decided to switch to landfill gas as a fuel source." In support of these assertions, Earthjustice referenced a letter to EPA dated June 29, 2007, in which it had made these same assertions. Earthjustice concluded that the SMAQMD's NO_X limit of 70 ppm for biomass-fired units in Rule 411 "has been demonstrated as feasible," and that "EPA must conduct its own review of the feasibility of Sacramento's limit," rather than "rely[] on the District's misleading claims."

Response #2.b: First, the difference between the limit in SMAQMD's Rule 411 and the limit in SJVUAPCD's Rule 4352 is not as significant as the commenter contends. The current 70 ppm NO_X emission limit in Rule 411 is expressed in parts per million corrected to 12% carbon dioxide (ppm at 12% CO_2), which equates to approximately 100 ppm at 3% O_2. *See* Rule 411 (as amended August 23, 2007), section 303.1.[4] As such, the appropriate comparison is between a limit of 100 ppm at 3% O_2 (not 70 ppm at 3% O_2) in SMAQMD's Rule 411 and a limit of 115 ppm at 3% O_2 in SJVUAPCD's Rule 4352.

Second, to the extent the commenter intended to argue that an emission level of 70 ppm at 3% O_2 has been achieved in the Sacramento area, this argument is unsupported. In both the comments submitted for this rulemaking and the June 29, 2007 comment letter, Earthjustice refers to, without identifying, a source in the Sacramento

Table 2–6 of the ACT. We note, however, that the values presented in Appendix B of the ACT (24 ppm to 187 ppm at 3% O_2) are more reliable because they were compiled from numerous sources including technical reports, EPA documents, compliance records, and manufacturers' literature, while Table 2–6 is simply a summary of Appendix B.

[2] The District's RACT SIP analysis provides an incorrect adoption date of November 7, 2007, for this regulation. The version of Regulation 9 Rule 7 that is currently effective in the Bay Area was last amended on July 30, 2008. *See* e-mail dated August 11, 2010, from Dan Belik (BAAQMD) to Idalia Perez (EPA Region 9).

[3] Note that SCAQMD Rule 1146 applies only to "combustion equipment fired with liquid and/or gaseous (including landfill and digester gas) and/or solid *fossil fuel.* * * *" Rule 1146 (as amended September 5, 2008), sections (a), (b)(4), and (b)(12) (emphasis added). As such, this rule does not apply to biomass-fired units.

[4] We have converted the emission limit into its approximate equivalent at 3% O_2 to allow for more direct comparison to the emission limits in SJVUAPCD Rule 4352 and the other rules we have evaluated, which are also generally expressed in ppm at 3% O_2. Briefly, using equations available in EPA Method 3B along with F Factors obtained from Method 19, we calculated the O_2 that should be obtained during combustion if there is 12% CO_2 in the flue gas and corrected the NO_2 concentration obtained to 3% O_2.

Metropolitan area that at some point burned biomass and that met the emission limits in Rule 411 before it decided to switch to landfill gas as a fuel source. It appears that Earthjustice is referring to an almond processing facility called Blue Diamond, which we understand was the only source in the Sacramento Metropolitan area to have operated a biomass-fired boiler in the past 20 years. *See* e-mail dated May 13, 2010, from Bruce Nixon (SMAQMD) to Idalia Perez (EPA Region 9).

According to SMAQMD staff, the Blue Diamond facility ceased operations in March 1996. *See* e-mail dated February 8, 2010, from Bruce Nixon (SMAQMD) to Idalia Perez (EPA Region 9). Prior to this time, the facility was subject to Rule 411 as adopted on February 2, 1995, which contained a limit for NO_X emissions from biomass-fired boilers of 110 ppm at 12% CO_2, or approximately 156 ppm at 3% O_2.[5] *See* Section 303.1, Rule 411 (as adopted February 2, 1995). Notably, this limit was significantly higher than the NO_X limit for biomass-fired boilers in SJVUAPCD's current Rule 4352 (115 ppm at 3% O_2). Assuming Blue Diamond's biomass-fired boiler was in compliance with the applicable limit in the 1995 version of Rule 411, *i.e.,* approximately 156 ppm at 3% O_2, this does not demonstrate that a NO_X emission limit of 70 ppm at 3% O_2 is achievable.[6]

Comment #2.c: Earthjustice asserted that "the evidence EPA has put in the record suggests that much lower limits for biomass-fired units are not only reasonably available but, in fact, are already being achieved by just about every facility in the Valley." Earthjustice provided an excerpt from a document EPA had identified in the TSD and asserted that according to this document, which contained information about solid fuel-fired units and associated permit limits in the SJV area, "[a]ll but one biomass-fired unit is already meeting the more stringent SMAQMD limit of 70 ppm at 12% CO_2 (~100 ppm at 3% O_2) and most are permitted well below this limit * * *." Earthjustice also stated that the permitted levels do not necessarily reflect the level of emissions from these facilities, and that EPA should consider source test data for these facilities "to aid in the determination of what is reasonably achievable."

Response #2.c: The commenter correctly notes that biomass-fired boilers in the SJV area are achieving NO_X emission levels below the levels required by Rule 4352. In fact, based on information we have gathered in response to these comments, it appears that all of the existing biomass-fired boilers in the SJV area that are subject to Rule 4352 are achieving emission levels significantly below 115 ppm at 3% O_2. In the absence of information indicating that these lower emission levels are not reasonably achievable in the SJV area, we conclude that the District has not adequately demonstrated that the NO_X limit in Rule 4352 (115 ppm at 3% O_2) represents RACT.

Ten biomass-fired boilers in the SJV area are currently subject to the NO_X emission limit in Rule 4352. We have reviewed source test data for four of these units and found that each unit is achieving actual NO_X emission levels between 44 and 79 ppm at 3% O_2. We also evaluated source test data for two biomass-fired units in Placer County and one unit in Yolo County, California, which indicate actual NO_X emission levels between 45 and 103 ppm at 3% O_2. *See* Table 1. These source test results indicate that biomass-fired units both within the SJV area and elsewhere in California are currently achieving NO_X emission levels significantly below 115 ppm at 3% O_2.

TABLE 1—NO_X SOURCE TEST DATA FOR SELECTED BOILERS FIRING BIOMASS IN CA

Facility	Air district	Test year	Emission
Madera Power, LLC	SJVUAPCD	2009	44.3 ppm at 3% O_2.
Covanta Delano, Inc	SJVUAPCD	2009	Unit 1—0.07 lbs/MMBtu (~54 ppm at 3% O_2)
			Unit 2—0.063 lbs/MMBtu (~49 ppm at 3% O_2).
Sierra Power Corporation	SJVUAPCD	2009	78.7 ppm at 3% O_2.
Sierra Pacific Industries, Lincoln	Placer County APCD (PCAPCD).	2009	51.2 ppm at 12% CO_2 (~103 ppm at 3% O_2).
Rio Bravo Rocklin	PCAPCD	2009	37.6 ppm at 12% CO_2 (~76 ppm at 3% O_2)
Woodland Biomass Power, LTD	Yolo-Solano APCD	2010	45.34 ppm at 3% O_2.

The remaining six biomass-fired units in the SJV area are subject to NO_X permit limits ranging from 62 to 83 ppm at 3% O_2. See Table 2.

TABLE 2—NO_X PERMIT LIMITS FOR BIOMASS FACILITIES IN SJVUAPCD

Permit No.	Size of unit	NO_X Limit
C–825	317 MMBtu/hr	27.8 lb/hr (~83 ppm at 3% O_2).
C–1820	352 MMBtu/hr	0.08 lb/MMBTU (~62 ppm at 3% O_2).
N–1026	259 MMBtu/hr	27.2 lb/hr (~83 ppm at 3% O_2).
N–4607	185 MMBtu/hr	0.08 lb/MMBtu (~83 ppm at 3% O_2).
S–285	11.5 MW	0.09 lb/MMBtu (~70 ppm at 3% O_2).
C–6923	185 MMBtu/hr	0.08 lb/MMBtu (~62 ppm at 3% O_2).

[5] *See* fn. 4, *supra,* for an explanation of the conversion methodology from ppm at 12% CO_2 to ppm at 3% O_2.

[6] The 1995 version of SMAQMD Rule 411 also contained a lower limit of 70 ppm at 12% CO_2 (~100 ppm at 3% O_2) which took effect May 31, 1997. *See* Section 306.1, Rule 411 (as adopted February 2, 1995). On October 27, 2005, SMAQMD revised Rule 411 by eliminating the NO_X emission limit of 110 ppm at 12% CO_2 (~156 ppm at 3% O_2) but retaining the NO_X emission limit of 70 ppm at 12% CO_2 (~100 ppm at 3% O_2). At that time, however, no facility in the SMAQMD area operated a biomass-fired boiler subject to this limit. See e-mail dated May 13, 2010, from Bruce Nixon (SMAQMD) to Idalia Perez (EPA Region 9).

We note that each of the biomass-fired units located in the SJV area that is subject to Rule 4352 is also subject to a NO_X emission limit representing the Best Available Control Technology (BACT) [7] in its District-issued permit, and that the BACT standard often requires a more stringent control level than RACT. BACT requirements are established prior to construction on an emissions-unit by emissions-unit basis through the District's permitting process. *See* SJVUAPCD Rule 2201 (as amended December 18, 2008), sections 2.0 and 4.1. RACT, on the other hand, applies to existing sources and is defined as the lowest emission limitation that a particular source is capable of meeting "by the application of control technology that is reasonably available considering technological and economic feasibility." 44 FR 53762 (September 17, 1979). EPA historically has recommended source-category-wide presumptive RACT limits based on capabilities that are general to an industry, although RACT decisions may also be made on a case-by-case basis. *See* 57 FR 55620 at 55624 (November 25, 1992) ("NOx Supplement to General Preamble"). Similarly, a RACT prohibitory rule may establish emission limits based on capabilities that are general to the covered source category, rather than based on source-specific analyses.

Given the stringency and source-specific nature of the BACT requirement, a BACT limit established in a pre-construction permit does not necessarily represent RACT for the source category in general. This does not mean, however, that the two standards may never result in similar emission levels based on the same or similar controls. In some cases, RACT may even result in more stringent control levels than a source-specific control standard like BACT or the Lowest Achievable Emission Rate (LAER). *See* Memorandum dated March 30, 1994, from Tom Helms, Chief, Ozone/Carbon Monoxide Programs Branch, to Region V Air Enforcement Branch, "Nitrogen Oxides (NOx) Questions from Ohio EPA"; Memorandum dated December 1, 1988, from Gerald Emison, Director, Office of Air Quality Planning and Standards, to William Spratlin, Director, Air and Toxics Division, Region VII, "RACT Requirements in Ozone Nonattainment Areas" (noting that LAER is determined at the time of permit issuance). Fundamentally, each of these standards requires a specific evaluation of the types of controls that are available to the source—or, in the case of a prohibitory rule, to the covered sources in the relevant area—taking into account, where appropriate, technological and economic feasibility.

In this case, every existing biomass-fired boiler in the SJV area that is subject to this rule is already achieving lower NO_X levels based on BACT controls. Absent information indicating that these controls may not be technologically or economically feasible for sources in the area, we have no basis for concluding that these emissions levels are not also reasonably available and appropriate as RACT in the SJV area.

Comment #2.d: Earthjustice asserted that, in addition to identifying the control technology that can achieve a RACT level of control, EPA must provide an "analysis that identifies the appropriately stringent emission limit within the range of control achievable by this technology."

Response #2.d: We agree that a RACT analysis generally should identify not only reasonably available control technologies but also appropriately stringent emission limitations based on these controls. We are disapproving all of the NO_X emission limits in Rule 4352 because the District has not adequately demonstrated that these limits satisfy RACT.

Comment #3: Earthjustice asserted that EPA should evaluate the source test data available to it in evaluating Rule 4352, rather than "relying strictly on outdated technology reviews and ignoring the fact that SNCR and other similar technologies have radically improved over the last fifteen years* * *." Earthjustice provided a list of California biomass facilities at *http://www.calbiomass.org/county.htm* and stated that this could be a good starting point for EPA's investigation. Finally, Earthjustice reiterated its assertions that "[t]he 70 ppm limit for biomass-fired units in the Sacramento rule has been proven, not just by the source that used to operate in Sacramento, but also by the many biomass-burning facilities in the Valley that are already meeting that standard," and that EPA should disapprove all of the limits in Rule 4352 as RACT.

Response #3: Although we do not agree with the commenter's assertion that a NO_X emission level of 70 ppm at 3% O_2 has been achieved by a biomass-fired unit in the Sacramento area, our review of source test data and permits for biomass-fired units in the SJV area indicate that emission levels between 44 and 83 ppm at 3% O_2 are currently being achieved. *See* Responses #2.b. and #2.c above. We are disapproving all of the NO_X limits in Rule 4352, including the limit for biomass-fired units, because the District has not demonstrated that these limits satisfy RACT.

Comment #4: Earthjustice requested confirmation that any alternate source-specific RACT emission limit requested by the owner or operator of a source under section 5.4 of Rule 4352 will be approved by EPA only after notice and comment rulemaking.

Response #4: We understand that section 5.4 requires the District to provide an opportunity for public comment on any alternate source-specific RACT limit that it seeks to approve through issuance of a Permit to Operate under Rule 2520 (as amended June 21, 2001), subject to EPA review, as explained further below. Before we approve any alternate limit under this provision, EPA intends to ensure that the District has satisfied the procedural requirements of Rule 2520 and that the Permit to Operate ensures compliance with applicable CAA requirements, including RACT, consistent with the requirements of CAA title V.

Specifically, section 5.4 of Rule 4352 states that, for a unit operating at or below 50 percent of the rated heat input (*i.e.,* the heat input capacity specified on the nameplate of the unit), "the APCO, ARB, and EPA may approve an increased emission limit if the owner/operator submits an application for a Permit to Operate, which provides a justification for the requested limit." Upon approval by the APCO, ARB, and EPA, the source owner/operator may comply with this higher limit in lieu of the applicable limits in Table 1 of the rule.

Importantly, the rule allows the District, ARB, and EPA to approve an alternate limit only after the owner/operator submits an application for a Permit to Operate (PTO) that provides a justification for the requested limit. Any source in the SJV area that is subject to Rule 4352 based on its potential to emit at least 10 tons per year (tpy) of NO_X is also subject to the District's EPA-approved title V permit program because it is a "major source." *See* SJVUAPCD Rule 2520, "Federally Mandated Operating Permits" (as amended June 21, 2001), sections 2.3 and 3.19 (applying program to any "major source" as defined in SJVUAPCD Rule 2201); SJVUAPCD Rule 2201, "New and Modified Stationary Source Review Rule" (as amended December 18, 2008),

[7] SJVUAPCD Rule 2201 (New and Modified Stationary Source Review Rule) defines BACT, in relevant part, as "the most stringent emission limitation or control technique * * * achieved in practice for such category and class of source * * *." SJVUAPCD Rule 2201 (as amended December 18, 2008), section 3.9.

section 3.23 (defining "major source" to include any source that has the potential to emit at least 20,000 pounds per year (10 tpy) of NO_X). Thus, any source owner/operator seeking to obtain an alternate limit under Rule 4352 must submit an application under Rule 2520 either for an initial PTO (if it is a new source) or for a "significant permit modification" to its existing PTO. *See* Rule 2520, sections 5.3.1, 3.29, and 3.20.3. Both initial PTOs and significant modifications to existing PTOs are subject to a 30-day public comment period and a 45-day EPA review period, during which EPA may object to the permit if it does not meet applicable CAA requirements. *See* Rule 2520, sections 11.3 and 11.7. Furthermore, if EPA does not object in writing to the District's preliminary decision during the 45-day review period, any person may petition EPA to review the permit. *See* Rule 2520, section 11.3.7.

These procedures ensure that the public will have an opportunity not only to comment on any alternate limit proposed by the District under section 5.4 of Rule 4352, but also to submit a title V petition to EPA where EPA does not object to a proposed permit containing such an alternate limit. Prior to approving any alternate limit requested under section 5.4 of Rule 4352, EPA intends to ensure that the District has satisfied these procedural requirements under Rule 2520 and that the PTO, including the alternate limit, satisfies CAA RACT requirements.

Comment #5: SJVUAPCD agreed with EPA's proposal to approve the NO_X limit in Rule 4352 for biomass-fired units and stated that all solid fuel-fired units in the area are equipped with SNCR or SCR controls, which are more effective than SNCR.

Response #5: As explained above, based on the comments we received, we have determined that the District has not adequately demonstrated that the NO_X limit in Rule 4352 for biomass-fired units satisfies RACT. *See* Responses #2.c and 2.d.

Comment #6: SJVUAPCD disagreed with EPA's proposal to disapprove the limit of 115 ppm at 3% O_2 in Rule 4352 for solid fuels other than municipal solid waste and biomass (*i.e.,* coal, petroleum coke, and/or tire-derived fuels). The District provided several arguments in support of its objection to EPA's proposal, each of which we address in separate comment summaries below.

Response #6: For the reasons discussed below, we have concluded that the District has not adequately demonstrated that the existing limit in Rule 4352 for units firing solid fuels other than municipal solid waste and biomass (*i.e.,* coal, petroleum coke, and/or tire-derived fuels) (115 ppm at 3% O_2) satisfies RACT.

Comment #6.a: The District stated that six facilities in the SJV area operate seven boilers that are permitted to fire coal, petroleum coke, and/or tire-derived fuels, and that all of these boilers have installed SNCR controls, which represent BACT for this source category.

Response #6.a: See Responses #2.c above and 8.d below.

Comment #6.b: The District asserted that EPA's reliance on the emission levels for coal-fired units in the 1994 ACT (29–65 ppm at 3% O_2 or 0.04 to 0.09 lb/MMBtu) as part of its RACT evaluation was not appropriate because these emission levels apply only to fluidized bed combustor (FBC) units fired exclusively on coal. SJVUAPCD asserted that coal has less fuel-bound nitrogen compared to petroleum coke and, therefore, results in less NO_X formation during combustion even with the same emission control technology.

Response #6.b: Although we agree with the commenter that coal has less fuel-bound nitrogen than petroleum coke, this does not provide a basis for approving the current limit in Rule 4352 as RACT. Likewise, an argument that the emission levels for coal-fired units provided in the 1994 ACT (29–65 ppm at 3% O_2 or 0.04 to 0.09 lb/MMBtu) do not reflect reasonably available controls for boilers firing combinations of coal, petroleum coke, and tire-derived fuels, also does not demonstrate that the limit in Rule 4352 for these units (115 ppm at 3% O_2) satisfies RACT.

In determining the level of control that is reasonably available to sources in the SJV area, the District must consider new information that has become available, including information about control levels currently achieved by similar sources. We note that the range provided in the 1994 ACT reflects control technologies from over a decade ago, and that RACT may change over time as new technology becomes available or the cost of existing technologies decreases. As discussed in the TSD for our proposed rule, it appears that boilers burning coal, petroleum coke, and/or tire-derived fuels in the SJV area are generally achieving NO_X emission levels significantly below 115 ppm at 3% O_2, and the 1994 ACT indicates that coal-fired boilers with SNCR and ammonia injection generally can achieve NO_X emission levels below 115 ppm at 3% O_2. *See* TSD at 6; 1994 ACT at B–19. We also note that use of cleaner-burning fuels, work practice standards, or other operation and maintenance requirements may be considered as part of a RACT analysis. *See* Memorandum dated July 30, 1993, from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, to Air Division Directors, Regions I through X, "Fuel Switching to Meet the Reasonably Available Control Technology (RACT) Requirements for Nitrogen Oxides (NO_X)"; Memorandum dated November 7, 1996, from Sally Shaver, Director, Air Quality Strategies & Standards Division, to Air Division Directors, Regions I through X, "Approval Options for Generic RACT Rules Submitted to Meet the non-CTG VOC RACT Requirement and Certain NO_X RACT Requirements." The District has provided no technological or economic information to support a conclusion that these lower emission levels are not reasonably achievable in the SJV area.

Comment #6.c: SJVUAPCD asserted that it had reviewed EPA's RACT/BACT/LAER Clearinghouse (RBLC) and had not identified any boilers in the nation that fire a blend of coal/coke/tire-derived fuel and that meet the emission range in the 1994 ACT. The District asserted that EPA should not have referenced this emission range as part of its RACT evaluation, and that the current limit in Rule 4352 should be considered RACT for boilers firing coal, petroleum coke, and tire-derived fuels.

Response #6.c: We disagree. As shown in Table 3 below, the RBLC identifies several boiler units firing combinations of coal, petroleum coke, and/or tire-derived fuels that achieve emission levels in the range provided in the 1994 ACT (29–65 ppm at 3% O_2 or 0.04–0.09 lb/MMBtu). The District has provided no technological or economic information to support a conclusion that these lower emission levels are not reasonably achievable in the SJV area. See Response #6.b.

TABLE 3—RACT/BACT/LAER CLEARINGHOUSE NO_X EMISSION LEVELS FOR BOILERS FIRING PETROLEUM COKE, COAL, AND/OR TIRE-DERIVED FUELS

RLBC ID	Year	Fuel	Control Technology	Limit (lb/MMBtu)
LA–0202	2006	Pet Coke/Coal	SNCR	0.07
LA–0223	2008	Pet Coke	SNCR	0.07
MI–0258	2001	Coal/Tire/Wood	SCR	0.06
MS–0075	2003	Wood/Tires	LNB, overfire air, good combustion practices	0.0310
WI–0122	2001	Pet Coke	SNCR	0.07

Comment #7: SJVUAPCD asserted that "EPA has consistently interpreted the Clean Air Act provisions to require only those feasible measures necessary for expeditious attainment," and that "if a feasible measure alone or in combination with other measures, cannot expedite attainment by at least one year then it is not considered to be reasonably available." The District asserted that no additional emission reduction would be achieved by reducing the limits in Rule 4352 to the NO_X limits in the sources' permits "because the reduction from affected boilers has already occurred." Therefore, the District argued, "such action is not necessary for the District's efforts for expeditious attainment of the ozone and PM2.5 standards."

Response #7: We disagree. Although EPA has long interpreted the RACT requirement in section 172(c)(1) of the Act, known as "subpart 1 RACT," as requiring only those control measures that will contribute to timely attainment and meet reasonable further progress (RFP) requirements (*see* 40 CFR 51.912(c) and 70 FR 71612 at 71653 (November 29, 2005)), this is not true for the more specific RACT requirements of CAA section 182(b)(2), known as "subpart 2 RACT." Section 182 of the Act requires, for any ozone nonattainment area classified as moderate or above, a SIP revision to require RACT for all major stationary sources of NO_X that are located in the area, among other sources. CAA 182(b)(2)(C), 182(f); 40 CFR 51.912(a). These control measures are mandated whether or not they advance attainment or contribute to RFP. Because the SJV area is designated and classified as an extreme ozone nonattainment area (40 CFR 81.305),[8] the SIP for the area must meet subpart 2 RACT requirements for all major NO_X sources.

In addition, it is not clear that no additional emission reduction would be achieved by reducing the limits in Rule 4352 for units burning coal, petroleum coke, and/or tire-derived fuels. As explained above in Responses #6.b and #6.c, both the 1994 ACT and EPA's RBLC provide NO_X emission levels ranging from 29 to 65 ppm at 3% O_2 (0.04–0.09 lb/MMBtu) for units burning coal, petroleum coke, and/or tire-derived fuels. Information that the District submitted to us indicates that the permit limits for units burning coal, petroleum coke, and/or tire-derived fuels in the SJV area range between 28 and 146.7 ppm at 3% O_2. *See* Attachment #6 to TSD. Several of these permit limits exceed the NO_X emission levels provided in the 1994 ACT and the RBLC for comparable units, one of these (146.7 ppm at 3% O_2) by a substantial margin. Absent technical or economic information indicating that these units cannot reasonably achieve the emission levels identified in the 1994 ACT and the RBLC, we conclude that the District has not adequately demonstrated that the NO_X limit in Rule 4352 (115 ppm at 3% O_2) represents RACT.

Moreover, the permit limits that the District references are not approved into the SIP. We have no basis for evaluating permit limits not submitted for SIP approval to support a RACT determination under section 182(b)(2) of the CAA. *See* Response #8.d below.

Comment #8: SJVUAPCD disagreed with EPA's proposal to disapprove the limit of 200 ppm at 12% CO_2 in Rule 4352 for units firing municipal solid waste (MSW). The District provided several arguments in support of its objection to EPA's proposal, each of which we address in separate comment summaries below.

Response #8: For the reasons discussed below, we have concluded that the District has not adequately demonstrated that the existing limit in Rule 4352 for units firing MSW (200 ppm at 12% CO_2) satisfies RACT.

Comment #8.a: SJVUAPCD stated that there is one facility in the District that operates two boilers firing MSW, and that both of these boilers have SNCR controls, which represent BACT. The District asserted that BACT is more stringent than RACT.

Response #8.a: See Responses #2.c above and 8.d below.

Comment #8.b: SJVUAPCD asserted that the emission levels for MSW-fired units in the 1994 ACT (52–232 ppm at 3% O_2), which EPA had referenced in the TSD for the proposed rule, are based on "short term test data" which are not necessarily representative of typical day-to-day operations.

Response #8.b: The comment implies that the emission levels for MSW-fired units in the 1994 ACT are not appropriate for consideration as RACT because they are based on emissions data that may not represent typical operations. This argument is unsupported. ACT documents describe available control techniques and their cost effectiveness, although they do not define presumptive RACT, and it is EPA's long-standing position that States may consider information available in ACTs to identify available control options as part of a RACT analysis. *See, e.g.,* 70 FR 71612 at 71654–55 (November 29, 2005) (preamble to final Phase II ozone implementation rule). The emission levels in the 1994 ACT are based on numerous sources of information in addition to compliance records, including technical reports, EPA documents, and manufacturers' literature. *See* footnote 1 above and 1994 ACT at B–1. The District's comment does not support an argument that the emission levels in the 1994 ACT are not appropriate for consideration in a RACT analysis.

The information provided in the 1994 ACT is, however, over a decade old and may not provide an accurate picture of current control options. It is possible that the controls identified in the 1994 ACT are now more cost-effective or that new control options have since become available. The District is required to consider not only the information in the 1994 ACT but also any new information that has become available in determining the control obligation and emissions limitation that is consistent with RACT. 70 FR 71612 at 71655.

[8] Effective June 4, 2010, the SJV area was reclassified from "serious" to "extreme" nonattainment for the 8-hour ozone NAAQS. *See* 75 FR 24409 (May 5, 2010). The SJV area also remains classified as "extreme" nonattainment for the 1-hour ozone NAAQS. 40 CFR 81.305.

Comment #8.c: SJVUAPCD asserted that the MSW-fired boilers in the SJV area "operate an SNCR system whereby the amount of ammonia injected into the flue gas is closely controlled to prevent excessive ammonia slip," and that any increase in ammonia injection above certain established levels for purposes of achieving additional NO_X reductions would potentially increase PM_{10} emissions above allowable permit limits.

Response #8.c: SJVUAPCD has not provided information to substantiate this assertion. Recent source test data for the Covanta Stanislaus facility, which operates the only two permitted MSW-fired units in the SJV area, shows average total particulate emissions of 7.58×10^{-3} gr/DSCF for Unit 1 and 7.08×10^{-3} gr/DSCF for Unit 2. *See* letter dated August 20, 2009, from Richard L. Wright, Air Quality Inspector, SJUAPCD, to Terry Coble, Covanta Stanislaus, Inc., enclosing "Summary of Source Test Results," Tables 2.1 and 2.3. These emission levels are well below the facility's permit limit for total particulate emissions from each unit, which is 0.0275 gr/DSCF. *Id.* Additionally, the same source test data indicates average ammonia concentrations in the flue gas of 1.54 ppm for Unit 1 and 3.47 ppm for Unit 2, both of which are well below the ammonia limit of 50 ppm for each unit. *Id.* Thus, it appears the Covanta Stanislaus facility could substantially increase the amount of ammonia injection for purposes of achieving additional NO_X reductions without violating permit requirements. The District's argument is unclear and, in any case, does not support a conclusion that the NO_X limit in Rule 4352 for MSW-fired units satisfies RACT.

Comment #8.d: SJVUAPCD asserted that although the rule limit for MSW-fired boilers is 200 ppm at 12% CO_2, the existing permit limit of 165 ppm at 12% CO_2 "is within the range of limit[s] recommended in the ACT for this boiler type, and therefore the units meet RACT."

Response #8.d: It appears the District intended to argue that EPA should evaluate the permit limits for MSW-fired boilers (165 ppm at 12% CO_2), rather than the limit in Rule 4352 (200 ppm at 12% CO_2), for RACT purposes. This would be appropriate if SJVUAPCD were to adopt and submit the relevant permit limits for approval into the SJVUAPCD portion of the California SIP. In this action, however, we are evaluating Rule 4352 for approval into the SIP, not the permit limits that the District references. We have no basis for evaluating permit limits not submitted for SIP approval to support a RACT determination under section 182(b)(2) of the CAA.

As discussed in the TSD for our proposed action, the NO_X emission limit in Rule 4352 for MSW-fired units is 200 ppm at 12% CO_2, which equates to roughly 266 ppm at 3% O_2. The 1994 ACT provides NO_X emission levels for MSW-fired units ranging between 44 and 210 ppm at 3% O_2,[9] based on the use of SNCR with ammonia or urea injection. *See* 1994 ACT at Appendix B, pg. B–21. The District has provided no technological or economic information to support a conclusion that these lower emission levels are not reasonably achievable in the SJV area.

Comment #8.e: SJVUAPCD asserted that EPA's RBLC does not indicate any BACT emission level for boilers firing MSW fuels. The District stated that the RBLC does identify a source called Mahoning Renewable Energy, which operates two boilers that burn refuse-derived fuel (RDF) and are equipped with Regenerative Selective Catalytic Reduction (RSCR). Citing EPA's 1994 ACT, the District asserted that "unlike MSW and industrial solid waste fuels, which are burned in the same form as they are received at the boiler site, RDF is fuel processed from general solid waste" and is generated by sorting and processing such solid waste. SJVUAPCD concluded by asserting that because the Mahoning facility's boilers "use RSCR and are fired on RDF, RSCR cannot be considered RACT for boilers fired on MSW fuel."

Response #8.e: The District's assertion that the RBLC does not contain BACT emission levels for MSW fuel-fired boilers is not correct (although we note that these entries are difficult to locate as they are not categorized under fuel combustion (process type 10), as are boilers burning other fuels). The RBLC includes MSW fuel-fired boiler units under the process type 21.400, Waste Combustion Processes. For example, the Lee County Waste-To-Energy Facility in Florida (RBLC ID FL–0258) operates two mass-burn municipal waste combustion units that are equipped with SNCR and subject to an emission limit of 150 ppm at 7% O_2 (approximately 143 ppm at 12% CO_2). Another facility identified in the RBLC is the Resource Recovery Facility in Virginia (RBLC ID VA–0277), which operates two MSW-fired units subject to an emission limit of 160 ppm at 7% O_2 (approximately 152 ppm at 12% CO_2).[10]

Additionally, we have examined source test data for other MSW-fired units to determine what emission limits have been achieved in practice. The Montenay Pacific Power Corporation has a facility in Long Beach, California with three MSW fuel-fired units, each of which appears to have NO_X emission levels between 64 and 104 ppm at 7% O_2 (approximately 61–99 ppm at 12% CO_2). Eco/Pittsfield, LLC in Pittsfield, Massachusetts operates three MSW combustors that appear to have average NO_X emissions of 70.4 ppm at 7% O_2 (approximately 67 ppm at 12% CO_2). These emission levels are significantly lower than 200 ppm at 12% CO_2.

It appears the District believes that important distinctions between the use of RDF and MSW as fuel justify the NO_X emission limit in Rule 4352 as RACT, but this argument is not supported. The District has provided no technical or economic information to support an argument that the control levels currently achieved by MSW fuel-fired units elsewhere are not reasonably available in the SJV area.

Comment #8.f: SJVUAPCD stated that the permits for boilers firing MSW have stringent limits for numerous hazardous air pollutants, because the facility is subject to the Federal NESHAP for municipal solid waste combustors. The District asserted that "[t]here is no more emission reduction that would result with the current SNCR system, even if the rule limit is lowered to the permitted level since the emission has already been reduced because of more stringent operating permit emission limits."

Response #8.f: First, to the extent the District intended to argue that NESHAP requirements provide a basis for approving the NO_X limits in 4352 as RACT, this argument is unsupported. Federal NESHAPs regulate hazardous air pollutants under section 112 of the CAA and do not necessarily establish RACT for NO_X control under section 182 of the Act. The District has provided no support for an assertion that NESHAP controls satisfy RACT requirements in this case.

Second, the District appears to assume that lowering the NO_X emission

[9] The emission levels that the District identifies (52 to 232 ppm at 3% O_2) are presented in the TSD for our proposed action and are calculated based on the lb/MMBtu values shown in Table 2–6 of the ACT. We note that the values presented in Appendix B of the Act (44 to 210 ppm at 3% O_2) are more reliable. *See* fn. 1 above.

[10] We have converted each of the emission limits we identified in the RBLC into their approximate equivalent at 12% CO_2 to allow for more direct comparison to the emission limit in SJVUAPCD Rule 4352, which is also expressed in ppm at 12% CO_2. Briefly, using equations available in EPA Method 3B along with F Factors obtained from Method 19, we calculated the O_2 that should be obtained during combustion if there is 12% CO_2 in the flue gas and assumed this O_2 in correcting to 7% O_2.

limits for MSW-fired units in Rule 4352 to permit levels will satisfy RACT. This is not correct. Although permit limits can in some cases indicate a level of emissions control that is reasonably available, source-specific permit limits do not in themselves establish RACT. *See* Response #2.c above.

Finally, the District appears to assert that the permits for MSW-fired units in the SJV area contain emission limits more stringent than the limit in Rule 4352. This also does not appear to be correct. According to the list of permitted solid fuel-fired boilers that the District provided to us and that we referenced as Attachment #6 to the TSD, the two MSW-fired boilers in the SJV area (at the Covanta Stanislaus facility) are subject to District-issued permits, both of which establish a NO_X limit of 200 ppm at 12% CO_2. This permit limit is identical to the NO_X emission limit in Rule 4352 for MSW-fired units. The source test data that we obtained for the Covanta Stanislaus facility indicate that each of these two MSW-fired units is subject to both a limit of 200 ppm at 12% CO_2 and a limit of 175 ppm at 12% CO_2, but it is not clear how and when these different permit limits apply. *See* letter dated August 20, 2009, from Richard L. Wright, Air Quality Inspector, SJUAPCD, to Terry Coble, Covanta Stanislaus, Inc., enclosing "Summary of Source Test Results," Tables 2.1 and 2.3. In any case, the District has provided no support for its assertion that reducing the limit in Rule 4352 would result in no emissions reductions because of "more stringent operating permit emission limits." See also Response 8.d.

Comment #9: SJVUAPCD stated that the SJV area needs emission reductions as quickly as feasible and is "hesitant to divert resources to conduct work that is not demonstrated to have significant potential for additional reductions or enforceability." SJVUAPCD stated that its focus on early and voluntary reductions from Fast Track measures, incentive programs, and the Healthy Air Living program demonstrates the District's earnest desire to expedite air quality improvement and that it is conducting a study to determine the feasibility of retrofitting solid fuel-fired boilers with SCR, in addition to SNCR, to achieve significant NO_X reductions. The District urged that its efforts not be diverted without clear benefits.

Response #9: As discussed above in Response #7, section 182 of the CAA requires, for any ozone nonattainment area classified as moderate or above, a SIP revision to require RACT for all major stationary sources of NO_X that are located in the area, among other sources. CAA 182(b)(2)(C), 182(f); 40 CFR 51.912(a). Because the SJV area is designated and classified as an extreme ozone nonattainment area (40 CFR 81.305), the SIP for the area must meet subpart 2 RACT requirements for all major NO_X sources.

We recognize the District's substantial efforts to expedite air quality improvement in the Valley, and we also recognize that it is not clear that revising the NO_X emission limits in this rule will result in significant emissions reductions in the SJV area. Nonetheless, we are obligated to review Rule 4352 for compliance with the CAA, which requires, among other things, that the SJVUAPCD portion of the California SIP provide for the implementation of RACT at a minimum. We note that the District's reevaluation of the NO_X emission limits in Rule 4352 may reveal additional emission reductions not yet considered and encourage the District to begin this process as expeditiously as practicable, consistent with CAA requirements.

III. EPA Action

Under CAA sections 110(k)(3) and 301(a) and for the reasons set forth above and in our December 9, 2009 proposed rule, we are finalizing a limited approval and limited disapproval of amended District Rule 4352, as submitted on October 5, 2006. We are finalizing a limited approval of the submitted rule because we continue to believe that the rule improves the SIP and is largely consistent with relevant CAA requirements. This action incorporates amended Rule 4352, including those provisions identified as deficient, into the District portion of the Federally-enforceable California SIP. The amended rule approved herein supersedes the version of Rule 4352 that we approved in February 1999 into the applicable SIP.

We are finalizing a limited disapproval of the submitted rule because the District has not adequately demonstrated that the NO_X limits in the rule for MSW-fired units, biomass-fired units, and units burning other solid fuels (*e.g.,* coal, petroleum coke, and tire-derived fuels) satisfy RACT as required by the CAA. Our reasons for disapproving the NO_X limits for MSW-fired units and units burning other solid fuels (*e.g.,* coal, petroleum coke, and tire-derived fuels) are explained in the proposed rule and further in our responses to comments above. With respect to the NO_X emission limit for biomass-fired units, we are not finalizing our proposal to approve this limit and are instead disapproving it because the District has not adequately demonstrated that this emission limit satisfies RACT, as explained in our responses to comments above. The final limited disapproval triggers a sanctions clock and EPA's obligation to promulgate a Federal implementation plan (FIP). Sanctions will be imposed unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action. These sanctions would be imposed under section 179 of the Act according to 40 CFR 52.31. In addition, EPA must promulgate a FIP under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months of the effective date of this action. Note that the submitted rule has been adopted by the SJVUAPCD, and EPA's final limited disapproval does not prevent the local agency from enforcing it.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals and limited approvals/limited disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this limited approval/limited disapproval action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the limited approval/limited disapproval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a State rule implementing a Federal standard.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on November 1, 2010.

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 30, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial

review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 26, 2010.

Jared Blumenfeld,

Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(347)(i)(A)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(347) * * *

(i) * * *

(A) * * *

(*2*) Rule 4352, "Solid Fuel Fired Boilers, Steam Generators and Process Heaters," amended on May 18, 2006.

* * * * *

[FR Doc. 2010–24686 Filed 9–30–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2010–0066; SW FRL–9208–7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is proposing to grant a petition submitted by ExxonMobil Refining and Supply Company—Beaumont Refinery (Beaumont Refinery) to exclude (or delist) a certain solid waste generated by its Beaumont, Texas, facility from the lists of hazardous wastes. EPA used the Delisting Risk Assessment Software (DRAS) Version 3.0 in the evaluation of the impact of the petitioned waste on human health and the environment.

DATES: This rule is effective on November 30, 2010. Comments must be received by November 1, 2010. Your requests for a hearing must reach EPA by October 18, 2010. The request must contain the information described in § 260.20(d).

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–RCRA–2010–0066 by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: peace.michelle@epa.gov.*

3. *Mail:* Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–C, 1445 Ross Avenue, Dallas, TX 75202.

4. *Hand Delivery or Courier.* Deliver your comments to: Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–C, 1445 Ross Avenue, Dallas, TX 75202.

Requests for a hearing should be made to: Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

Instructions: Direct your comments to Docket ID No. EPA–R06–RCRA–2010–0066. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, RCRA Branch, 1445 Ross Avenue, Dallas, TX 75202. The hard copy RCRA regulatory docket for this proposed rule, EPA–R06–RCRA–2010–0066, is available for viewing from 8 a.m. to 5 p.m., Monday through Friday, excluding Federal holidays. The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: For further technical information concerning this document or for appointments to view the docket or the Beaumont Refinery petition, contact Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–C, 1445 Ross Avenue, Dallas, TX 75202, by calling (214) 665–7430 or by e-mail at *peace.michelle@epa.gov.*

SUPPLEMENTARY INFORMATION: Beaumont Refinery submitted a petition under 40 CFR 260.20 and 260.22(a). Section 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273. Section 260.22(a) specifically provides generators the opportunity to petition the Administrator to exclude a

waste on a "generator specific" basis from the hazardous waste lists.

The Agency bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would conditionally exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, we would conclude the petitioned waste from this facility is non-hazardous with respect to the original listing criteria and that the waste process used will substantially reduce the likelihood of migration of hazardous constituents from this waste. We would also conclude that the processes minimize short-term and long-term threats from the petitioned waste to human health and the environment.

Table of Contents

I. Overview Information

A. What action is EPA approving?

EPA is approving the delisting petition submitted by Beaumont Refinery to have centrifuge solids generated from treatment of Tank Bottoms from its Lower Park Tank Farm excluded, or delisted, from the definition of a hazardous waste. The centrifuge solids are derived from the management and treatment of several F- and K-waste codes. These waste codes are F037, F038, K048, K049, K051, K052, K169, and K170.

B. Why is EPA approving this delisting?

Beaumont Refinery's petition requests a delisting for the centrifuge solids listed as F037, F038, K048, K049, K051, K052, K169, and K170. Beaumont Refinery does not believe that the petitioned wastes meet the criteria for which EPA listed them. Beaumont Refinery also believes no additional constituents or factors could cause the wastes to be hazardous. EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). *See* section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)–(4). In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition. EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned wastes do not meet the listing criteria and thus should not be a listed waste. EPA's decision to delist wastes from the facility is based on the information submitted in support of this rule, including descriptions of the waste and analytical data from the Beaumont Refinery, Beaumont, Texas facility.

C. How will Beaumont Refinery manage the waste, if it is delisted?

Beaumont Refinery will dispose of the storage containers with the centrifuge solids. The centrifuge solids will be transported and disposed of at a permitted municipal solid waste landfill or a commercial industrial waste landfill regulated by the Texas Commission on Environmental Quality (TCEQ).

D. When would the delisting exclusion be finalized?

RCRA section 3001(f) specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion unless and until it addresses all timely public comments (including those at public hearings, if any) on this proposal.

RCRA section 3010(b)(1), at 42 USCA 6930(b)(1), allows rules to become effective in less than six months after EPA addresses public comments when the regulated facility does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How would this action affect the States?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude States which have received authorization from EPA to make their own delisting decisions.

EPA allows the States to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, EPA urges petitioners to contact the State regulatory authority to

establish the status of their wastes under the State law. Delisting petitions approved by EPA Administrator under 40 CFR 260.22 are effective in the State of Texas only after the final rule has been published in the **Federal Register.**

II. Background

A. What is the history of the delisting program?

EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. EPA has amended this list several times and published it in §§ 261.31 and 261.32. EPA lists these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in § 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be hazardous.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What is a delisting petition, and what does it require of a petitioner?

A delisting petition is a request from a facility to EPA or an authorized State to exclude wastes from the list of hazardous wastes. The facility petitions EPA because it does not believe the wastes should be hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for which the waste was listed. The criteria for which EPA lists a waste are in part 261 and further explained in the background documents for the listed waste.

In addition, under § 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics and present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. *See* part 261 and the background documents for the listed waste.

Generators remain obligated under RCRA to confirm whether their waste remains non-hazardous based on the hazardous waste characteristics even if EPA has "delisted" the waste.

C. What factors must EPA consider in deciding whether to grant a delisting petition?

Besides considering the criteria in § 260.22(a) and section 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which EPA listed the waste, if a reasonable basis exists to determine that these additional factors could cause the waste to be hazardous.

EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. *See* § 261.3(a)(2)(iii) and (iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded. *See* 66 FR 27266 (May 16, 2001).

III. EPA's Evaluation of the Waste Information and Data

A. What waste did Beaumont Refinery petition EPA to delist?

Beaumont Refinery petitioned EPA on September 9, 2009, to exclude from the lists of hazardous wastes contained in §§ 261.31, and 261.32, from its centrifuge solids from the treatment of tank bottoms from five tanks from the Lower Park Tank Farm.

The waste stream was generated from the Beaumont Refinery facility located in Beaumont, Texas. The centrifuge solids are listed under EPA Hazardous Waste No. F037, F038, K048, K049, K051, K052, K169, and K170. Specifically, in its petition, Beaumont Refinery requested that EPA grant a one time exclusion for 8,300 cubic yards of the centrifuge solids.

B. Who is Beaumont Refinery and what process do they use to generate the petitioned waste?

Beaumont Refinery is a petroleum refinery located at 1795 Burt Street in Beaumont, Jefferson County, Texas. The Beaumont Texas Facility is situated on approximately 1,200 acres of land. The refinery began operations at the current location in 1903 as Magnolia Petroleum Company. The facility is operated on a continuous basis with production occurring 24 hours per day, 7 days per week, and 365 days per year and produces approximately seven petroleum products from crude oil, the primary raw material. Significant production processes/units at the Beaumont Refinery include crude units, saturated gas plant, fluid catalytic cracker, hydrocracker, diesel hydrotreater, coker, jet fuel treaters, cogeneration, isomerization, continuous catalytic reformers, alkylation, sulfur recovery plants, and wastewater treatment. Tanks 758, 763, 765, 766 and 771 in the Beaumont Refinery's Lower Park Tank Farm were constructed during the early days of the facility, and as the tanks aged, the service gradually changed from product storage to slop oil storage. The slop oil system at a refinery entails collecting materials that have some degree of recoverable hydrocarbon (*e.g.,* crude oil, API separator sludge, DAF float, *etc.*) but also have materials that are not readily recoverable (*e.g.,* solids, scale, sediment, *etc.*). Candidate oily streams are routed to slop oil storage tanks from collection system piping and/or from smaller tanks prior to being reprocessed within the refinery to recovery oil. To initiate the Lower Park Tank Farm cleanout project, the Beaumont Refinery determined that the five tanks were in slop oil service beginning in the 1960's. Since the tank bottoms in the five tanks are historical, the Beaumont Refinery has elected to conservatively assume that the solids from the tanks may bear K- and F-waste codes associated with petroleum refining. Tank 758 was selected as the first tank to clean and sample since it is expected to have the highest concentrations of chemicals and hazardous constituents. The Beaumont Refinery's subcontractor Superall Products LLP has developed a proprietary chemical (Superall 38), which acts as a chemical agent for treating wastes from oil-related clean-up activities that, when coupled with centrifuging, reduces the volume and toxicity of historical tank bottoms from the refinery's Lower Park Tank Farm. The primary function of Superall 38 is to facilitate recovery of as much oil and associated constituents of concern as possible for reintroduction into the refinery process. The proprietary mixture does not contain RCRA Part 261 Appendix VIII or Part 264 Appendix IX constituents. Historical tank bottoms in Tank 758 served as the worst-case representation of the five tanks and the biggest challenge for performance of the Superall 38 treatment process and passing delisting criteria.

The Beaumont Refinery intends to dispose of the delisted centrifuge solids at an authorized municipal solid waste or commercial industrial solid waste

landfill. Treatment of historical tank bottoms from Tanks 758, 763, 765, 766 and 771 in the Beaumont Refinery's Lower Park Tank Farm generate centrifuge solids that are classified as F037, F038, K048, K049, K051, K052, K169 and K170 listed hazardous wastes pursuant to 40 CFR 261.31 and 261.32. The 40 CFR part 261 hazardous constituents which are the basis for listing can be found in Table 1.

TABLE 1—EPA WASTE CODES FOR CENTRIFUGE SOLIDS AND THE BASIS FOR LISTING

Waste code	Basis for listing
F037	Benzene, benzo(a)pyrene, chrysene, lead, chromium.
F038	Benzene, benzo(a)pyrene, chrysene, lead, chromium.
K048	Hexavalent chromium, lead.
K049	Hexavalent chromium, lead.
K051	Hexavalent chromium, lead.
K052	Lead.
K169	Benzene.
K170	Benzo(a)pyrene, dibenzo(a,h)anthracene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, 3-methylcholanthrene, 7,12-dimethylbenzo(a)anthracene.

C. What information did Beaumont Refinery submit to support this petition?

To support its petition, Beaumont Refinery submitted:

1. Analytical results of the toxicity characteristic leaching procedure (TCLP) analysis for volatile and semivolatile organics, and metals for ten samples and one duplicate of the centrifuge solids;

2. Analytical results of the total constituent analysis for volatile and semivolatile organics, and metals for three samples of the centrifuge solids;

3. Analytical results for Appendix IX volatile and semivolatile organics, pesticides, herbicides, dioxins/furans, PCBs, and metals for one sample of the centrifuge solids;

4. Analytical results for the EPA Region 6 TCLP analysis for Appendix IX metals for one sample of the centrifuge solids;

5. Analytical results for the oily waste extraction procedure (OWEP) for Beaumont Refinery metals for one sample of the centrifuge solids;

6. Analytical results for total reactive cyanides for three samples of the centrifuge solids;

7. Analytical results for total reactive sulfides for three samples of the centrifuge solids;

8. Analytical results for total oil and grease for ten samples of the centrifuge solids;

9. Description of the operations and waste generated from the centrifuging of tank bottoms at the Lower Park Tank Farm.

D. What were the results of Beaumont Refinery's analysis?

EPA believes that the descriptions of Beaumont Refinery's waste, and the analytical data submitted in support of the petition show that the centrifuge solids are non-hazardous. Analytical data from Beaumont Refinery's centrifuge solid samples were used in the Delisting Risk Assessment Software (DRAS). The data summaries for detected constituents are presented in Table 2. EPA has reviewed the sampling procedures used by Beaumont Refinery and has determined that they satisfy EPA's criteria for collecting representative samples of the variations in constituent concentrations in the Centrifuge solids. The data submitted in support of the petition show that constituents in Beaumont Refinery's wastes are presently below health-based risk levels used in the delisting decision-making. EPA believes that Beaumont Refinery has successfully demonstrated that the Centrifuge solids are non-hazardous.

TABLE 2—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATIONS OF THE CENTRIFUGE SOLIDS[1]

Constituent	Maximum total (mg/kg)	Maximum TCLP (mg/l)	Maximum allowable TCLP delisting level (mg/L)
Antimony	5.38	0.0224	1.87
Arsenic	26.9	0.0353	5.0
Acetone	< 0.5	0.65	9080
Acenaphthene	26	0.009	185
Anthracene	32	0.006	452
Beryllium	0.289	<0.001	20.44
Butyl benzene phthalate	3.7	0.00026	698
Barium	823	1.94	100
Benzene	0.8	0.046	0.5
Bis(2-ethylhexyl)phthalate	< 0.5	0.0058	0.0522
Benzo(a) anthracene	72	< 0.001	1.22
Benzo(a) pyrene	67	< 0.001	461.44
Benzo(b) fluoranthene	28	< 0.001	3916.8
Benzo(k) fluoranthene	10	< 0.001	11.6
m,p cresol	6	0.16	200
Cadmium	0.837	< 0.001	1.0
Chromium	608	0.122	5.0
Cobalt	20.5	0.0735	3.64
Copper	302	< 0.001	417.3
o-cresol	1.5	0.0091	200
Chrysene	120	0.00014	122
2,4 Dimethyl phenol	9.8	0.066	198
Di-n-butyl phthalate	< 0.5	0.0012	429
7,12 dimethylbenz(a)anthracene	53	< 0.001	0.08176
Dibenz(a,h)anthracene	1.7	< 0.001	4.41
Ethylbenzene	< 0.5	0.073	189
Fluorene	54	0.0033	85.6
Fluoranthrene	17	< 0.001	42.96
Lead	1290	1.44	5.0

TABLE 2—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATIONS OF THE CENTRIFUGE SOLIDS[1]—Continued

Constituent	Maximum total (mg/kg)	Maximum TCLP (mg/l)	Maximum allowable TCLP delisting level (mg/L)
Mercury	2.65	0.000065	0.2
Methyl Isobutyl ketone	< 0.5	0.02	807
2-Methylnaphthalene	570	< 0.001	12.70
Naphthalene	180	0.15	0.571
Nickel	195	0.556	231
Phenanthrene	170	0.0041	Not applicable
Phenol	< 0.5	0.0033	3030
Pyrene	100	0.0057	77.6
Selenium	20.6	< 0.001	1.0
Silver	0.194	< 0.001	5.0
Thallium	0.842	< 0.001	0.639
Tin	3.46	< 0.001	22.5
Toluene	0.5	0.032	263
Vanadium	< 0.5	0.138	57.5
Xylenes	3.3	0.16	167
Zinc	1160	8.41	3530

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.
< # Denotes that the constituent was below the detection limit.

E. How did EPA evaluate the risk of delisting this waste?

The worst case scenario for management of the centrifuge solids was modeled for disposal in a landfill. EPA used such information gathered to identify plausible exposure routes (*i.e.,* ground water, surface water, soil, air) for hazardous constituents present in the Centrifuge solids. EPA determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for Beaumont Refinery's centrifuge solids. EPA applied the DRAS described in 65 FR 58015 (September 27, 2000), 65 FR 75637 (December 4, 2000) and 73 FR 28768 (May 19, 2008), to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned wastes after disposal and determined the potential impact of the disposal of Beaumont Refinery's petitioned wastes on human health and the environment. In assessing potential risks to ground water, EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the ground water at a hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of 10^{-5} and non-cancer hazard index of 0.1), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and Agency health-based numbers. Using the maximum compliance-point concentrations and EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in ground water.

EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible ground water contamination resulting from disposal of the petitioned waste in a landfill for the centrifuge solids. A reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenarios resulted in conservative values for the compliance-point concentrations and ensured that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health and/or the environment. The DRAS also uses the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (*e.g.,* volatilization or wind-blown particulate from the landfill). As in the above ground water analyses, the DRAS uses the risk level, the health-based data and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or "delisting levels").

In most cases, because a delisted waste is no longer subject to hazardous waste control, EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. EPA does control the type of unit where the waste is disposed.

EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, the disposal will occur in an offsite Landfill, so no ground water monitoring data for disposal of this waste stream in the landfill is available.

EPA believes that the descriptions of Beaumont Refinery's Centrifuge solids and analytical characterizations of these wastes illustrate the presence of toxic constituents at lower concentrations in these waste streams. Therefore, it is reasonable to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are minimized.

The DRAS results, which calculated the maximum allowable concentration of chemical constituents in the Centrifuge solids are presented in Table 2. Based on the comparison of the DRAS results and maximum TCLP concentrations found in Table 2, the

petitioned wastes should be delisted because no constituents of concern are likely to be present or formed as reaction products or byproducts in Beaumont Refinery's wastes as long as they are disposed of in a Subtitle D Landfill.

F. What did EPA conclude about Beaumont Refinery's analysis?

EPA concluded, after reviewing Beaumont Refinery's processes that no other hazardous constituents of concern, other than those for which Beaumont Refinery tested, are likely to be present or formed as reaction products or by-products in Beaumont Refinery's wastes. In addition, on the basis of explanations and analytical data provided by Beaumont Refinery, pursuant to § 260.22, EPA concludes that the petitioned wastes: Centrifuge solids do not exhibit any of the characteristics of ignitability, corrosivity, reactivity, or toxicity. *See* §§ 261.21, 261.22, 261.23, and 261.24 respectively.

G. What other factors did EPA consider in its evaluation?

During the evaluation of this petition, in addition to the potential impacts to the ground water, EPA also considered the potential impact of the petitioned waste via non-ground water exposure routes (*i.e.,* air emissions and surface runoff) for the Centrifuge solids. With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from the petitioned waste is unlikely. No appreciable air releases are likely from the centrifuge solids under any likely disposal conditions. EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from the solids in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from the centrifuge solids.

H. What is EPA's evaluation of this delisting petition?

The descriptions by Beaumont Refinery of the hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis for EPA to grant the petition. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable concentrations (*See* Table 2). EPA believes that the Centrifuge solids generated by Beaumont Refinery contain hazardous constituents at levels which will present minimal short-term and long-term threats from the petitioned wastes to human health and the environment.

Thus, EPA believes that it should grant to Beaumont Refinery an exclusion from the list of hazardous wastes for the Centrifuge solids. EPA believes that the data submitted in support of the petition show the Beaumont Refinery's Centrifuge solids to be non-hazardous.

EPA has reviewed the sampling procedures used by Beaumont Refinery and has determined they satisfy EPA's criteria for collecting representative samples of variable constituent concentrations in the Centrifuge solids. The data submitted in support of the petition show that constituents in Beaumont Refinery's wastes are presently below the compliance-point concentrations used in the delisting decision-making process and would not pose a substantial hazard to the environment and the public. EPA believes that Beaumont Refinery has successfully demonstrated that the Centrifuge solids are non-hazardous.

EPA, therefore, proposes to grant an exclusion to Beaumont Refinery for the Centrifuge solids described in its September 2009 petition. EPA's decision to exclude these wastes is based on analysis performed on samples taken of the Centrifuge solids.

If EPA finalizes the rule, EPA will no longer regulate 8,300 cubic yards of centrifuge solids from Beaumont Refinery's Beaumont facility under parts 262 through 268 and the permitting standards of part 270.

IV. Next Steps

A. With what conditions must the petitioner comply?

The petitioner, Beaumont Refinery, must comply with the requirements in 40 CFR Part 261, Appendix IX, Tables 1 and 2 as amended by this notice. The text below gives the rationale and details of those requirements.

(1) Data Submittals

To provide appropriate documentation that the Beaumont Refinery facility is correctly managing the Centrifuge solids, Beaumont Refinery must compile, summarize, and keep delisting records on-site for a minimum of five years. Beaumont Refinery must keep all delisting records for five years. Paragraph (1) requires that Beaumont Refinery furnish these data upon request for inspection by any employee or representative of EPA or the State of Texas.

If the exclusion is made final, then it will apply only to 8,300 cubic yards of centrifuge solids generated at the Beaumont Refinery facility after successful initial verification testing.

EPA would require Beaumont Refinery to submit additional verification data under any of the following circumstances:

(a) Beaumont Refinery must submit a modification to the petition complete with full sampling and analysis for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream. EPA will publish an amendment to the exclusion if the changes are acceptable.

Beaumont Refinery must manage waste volumes greater than 8,300 cubic yards of centrifuge solids as hazardous waste until EPA grants a revised exclusion. When this exclusion becomes final, the management by Beaumont Refinery of the Centrifuge solids covered in this petition would be relieved from Subtitle C jurisdiction. Beaumont Refinery may not classify the waste as non-hazardous until the revised exclusion is finalized.

(2) Reopener

The purpose of paragraph (2) is to require Beaumont Refinery to disclose new or different information related to a condition at the facility or disposal of the waste, if it is pertinent to the delisting. This provision will allow EPA to reevaluate the exclusion, if a source provides new or additional information to EPA. EPA will evaluate the information on which it based the decision to see if it is still correct or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition, if presented.

This provision expressly requires Beaumont Refinery to report differing site conditions or assumptions used in the petition in addition to failure to meet the annual testing conditions within 10 days of discovery. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

It is EPA's position that it has the authority under RCRA and the Administrative Procedures Act (APA), 5 U.S.C. 551 (1978) *et seq.,* to reopen a delisting decision. EPA may reopen a delisting decision when it receives new information that calls into question the assumptions underlying the delisting.

EPA believes a clear statement of its authority in delisting is merited in light of EPA's experience. *See* the **Federal**

Register notice regarding Reynolds Metals Company at 62 FR 37694 (July 14, 1997) and 62 FR 63458 (December 1, 1997) where the delisted waste leached at greater concentrations into the environment than the concentrations predicted when conducting the TCLP, leading EPA to repeal the delisting. If an immediate threat to human health and the environment presents itself, EPA will continue to address these situations on a case-by-case basis. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. *See* APA section 553 (b)(3)(B).

B. What happens, if Beaumont Refinery violates the terms and conditions?

If Beaumont Refinery violates the terms and conditions established in the exclusion, EPA will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, EPA will evaluate the need for enforcement activities on a case-by-case basis. EPA expects Beaumont Refinery to conduct the appropriate waste analysis and comply with the criteria explained above in paragraph (1) of the exclusion.

V. Final Action

EPA is approving the delisting petition for the centrifuge solids generated at Beaumont Refinery's Beaumont—Texas facility.

EPA is publishing this rule without prior proposal because we view this as a non-controversial exclusion and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register,** we are publishing a separate document that will serve as the proposed rule to approve the petition if relevant adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, *see* the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We would address all public comments in a subsequent final rule based on the proposed rule. Please note that if we receive adverse comment on a paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism," (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule. Similarly, because this rule will affect only a particular facility, this proposed rule does not have Tribal implications, as specified in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to infants and children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, "Civil Justice Reform," (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: September 20, 2010.

Bill Luthans,

Acting Director, Multimedia Planning and Permitting Division.

■ For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

■ 2. In Tables 1 and 2 of Appendix IX of Part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded under §§ 260.20 and 260.22.

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* * *	*	* * *
ExxonMobil Refining and Supply Company-Beaumont Refinery	Beaumont, TX ..	Centrifuge Solids (EPA Hazardous Waste Numbers F037, F038, K048, K049, K051, K052, K169, and K170.) generated at a maximum rate of 8,300 cubic yards after November 30, 2010 and disposed of in a Subtitle D Landfill. (1) Reopener V (A) If, anytime after disposal of the delisted waste Beaumont Refinery possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If testing data (and retest, if applicable) of the waste does not meet the delisting requirements in paragraph 1, Beaumont Refinery must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (C) If Beaumont Refinery fails to submit the information described in paragraphs (1)(A) or (1)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Division Director determines that the reported information requires action by EPA, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from receipt of the Division Director's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (1)(D) or (if no information is presented under paragraph (1)(D)) the initial receipt of information described in paragraphs (1)(A) or (1)(B), the Division Director will issue a final written determination describing EPA actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (2) *Notification Requirements:* Beaumont Refinery must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any State Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update one-time written notification, if it ships the delisted waste into a different disposal facility.

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.
* * * *	* * *	

TABLE 2—WASTE EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
* * * *	* * *	
ExxonMobil Refining and Supply Company—Beaumont Refinery	Beaumont, TX ..	Centrifuge Solids (EPA Hazardous Waste Numbers F037, F038, K048, K049, K051, K052, K169, and K170.) generated at a maximum rate of 8,300 cubic yards after November 30, 2010 and disposed of in a Subtitle D Landfill. Beaumont Refinery must implement the requirements in Table 1. Wastes Excluded from Non-Specific Sources for the petition to be valid.
* * * *	* * *	

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[FR Doc. 2010–24571 Filed 9–30–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412, 413, 415, 424, 440, 441, 482, 485, and 489

[CMS–1498–F, and CMS–1498–IFC; CMS–1406–F]

RIN 0938–AP80; RIN 0938–AP33

Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System Changes and FY 2011 Rates; Provider Agreements and Supplier Approvals; and Hospital Conditions of Participation for Rehabilitation and Respiratory Care Services; Medicaid Program: Accreditation for Providers of Inpatient Psychiatric Services; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of final rules and interim final rule with comment period.

SUMMARY: This document corrects technical and typographical errors in the final rules and interim final rule with comment period entitled "Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System Changes and FY 2011 Rates; Provider Agreements and Supplier Approvals; and Hospital Conditions of Participation for Rehabilitation and Respiratory Care Services; Medicaid Program: Accreditation for Providers of Inpatient Psychiatric Services" that appeared in the August 16, 2010 **Federal Register**.

DATES: *Effective Date:* This correction notice is effective October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Tzvi Hefter, (410) 786–4487.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2010–19092 of August 16, 2010 (75 FR 50042), there were a number of technical errors that are identified and corrected in the Correction of Errors section below. The provisions in this correction notice are effective as if they had been included in the document entitled "Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System Changes and FY 2011 Rates; Provider Agreements and Supplier Approvals; and Hospital Conditions of Participation for Rehabilitation and Respiratory Care Services; Medicaid Program: Accreditation for Providers of Inpatient Psychiatric Services" (hereinafter referred to as the fiscal year (FY) 2011 IPPS/LTCH PPS final rule) that appeared in August 16, 2010 **Federal Register**. Accordingly, the corrections are effective October 1, 2010.

II. Summary of Errors

The following is a summary of the errors identified in the FY 2011 IPPS/LTCH PPS final rule and corrected in section III. of this notice:

A. Summary of Errors in the Preamble

On page 50099, we are correcting errors in the present on admission (POA) indicator "Y" percentage for two previously considered hospital acquired conditions (HACs) that are listed in Chart H "POA Status of Previously Considered 'Candidate' HAC Conditions—October 2008 Through September 2009."

On page 50161, we are correcting a website reference error in the first footnote to the table regarding the Frontier States identified for the FY 2011 wage index floor adjustment.

On page 50224, in our discussion of the data submission and reporting requirements for the Reporting Hospital Quality Data for Annual Payment Update (RHQDAPU) program, we inadvertently indicated that the Central Line Associated Blood Stream Infection (CLABSI) measure would be part of the measure set for the FY 2012 payment determination rather than the FY 2013 payment determination. We had previously, on page 50202, finalized the CLABSI measure for the FY 2013 payment determination and the information on page 50224 should have reflected this policy.

B. Summary of Errors in the Addendum

On page 50432, in the table "Comparison of FY 2010 Standardized Amounts to the FY 2011 Standardized

Amount with Full and Reduced Update" we inadvertently indicated the incorrect figures in the column headings.

On page 50433, in our discussion of the Federal rate, we inadvertently indicated an incorrect amount for the low-volume payment adjustment.

On pages 50451 through 50547 in Table 2, we are correcting the provider and wage index data to reflect corrections to Tables 4C, 4J, and 9A.

On pages 50516 through 50520, Table 4C, we inadvertently made technical errors in several hospitals' geographic reclassifications that were used in calculating the wage index that was published in the FY 2011 IPPS/LTCH PPS final rule. As a result of reclassification corrections in Table 9A, the wage index for CBSA 22180 increased from 0.9193 to 0.9254. The wage indices for CBSA 26580 (KY, OH, WV) decreased from 0.8726 to 0.8672. The addition of provider 360096 to Table 9A also results in a wage index for Ohio hospitals reclassifying to CBSA 49660 of 0.8558.

On pages 50540 through 50547 in Table 4J, we inadvertently omitted providers located in Tarrant County, TX that are eligible to receive the out-migration adjustment. As a result of the reclassification correction to provider 360096, we are correcting Table 4J to indicate that the provider will be reclassified for FY 2011.

On pages 50593 through 50604, in Table 9A.—Hospital Reclassifications and Redesignations—FY 2011, we are correcting an error in the reclassification of provider 340008; the provider was reclassified to CBSA 22180 rather than CBSA 26580. Also, we have added provider to 360096 to Table 9A.

III. Correction of Errors

In FR Doc. 2010–19092 of August 16, 2010, make the following corrections:

A. Corrections to the Preamble

1. On page 50099, in the chart, "Chart H.—POA Status of Previously Considered 'Candidate' HAC Conditions—October 2008 Through September 2009," column 8 (Present on Admission, POA = Y, Percent) is corrected for the listed entries as follows:

Previously considered HAC condition	Present on admission	
	POA = Y	
	Number	Percent
4. Staphylococcus aureus Septicemia	17,330	77.3
5. Methicillin-Resistant Staphylococcus aureus	68,089	96.4

2. On page 50161, middle of the page, in the table entitled "Frontier States Indentified for the FY 2011 Wage Index Floor Adjustment Under Section 10324(a) of the Affordable Care Act," in the first footnote, the Web site link "*http://www.census.gov/popest/estimates.html* (2009 County Total Population Estimates)" is corrected to read "*http://www.census.gov/popest/counties/counties.html* (County population, population change.)"

3. On page 50224,

a. Top quarter of the page, third column, first partial paragraph, line 4, the fiscal year "2012" is corrected to read "2013".

b. Top third of the page, in the table "Submission Timeframes for CLABSI Measure for the FY 2012 Payment Determination,"

(1) The table heading, "Submission Timeframes for CLABSI Measure for the FY 2012 Payment Determination," is corrected to read "Submission Timeframes for CLABSI Measure for the FY 2013 Payment Determination".

(2) Column 3, the column heading, "Final Submission Deadline for RHQDAPU FY 2012 Payment Determination" is corrected to read "Final Submission Deadline for RHQDAPU FY 2013 Payment Determination".

B. Corrections to the Addendum

1. On page 50432, in the table "Comparison of FY 2010 Standardized Amounts to the FY 2011 Standardized Amount with Full and Reduced Update," the column headings,

a. Columns 2 and 3, the figure "2.4" is corrected to read "2.35".

b. Columns 4 and 5, the figure "0.4" is corrected to read "0.35".

2. On page 50433, second column, seventh paragraph, line 8, the phrase "25 percent." is corrected to read "the applicable percentage increase specified in § 412.101(c)."

3. On pages 50451 through 50504, in Table 2 "Hospital Case-Mix Indexes for Discharges occurring in Federal Fiscal Year 2009; Hospital Wage Indexes for Federal Fiscal Year 2011; Hospital Average Hourly Wages for Federal Fiscal Years 2009 (2005 Wage Data), 2010 (2006 Wage Data), and 2011 (2007 Wage Data); and 3-Year Average Hourly Wages" column 2 (FY 2011 Wage Index) is corrected for the following provider numbers:

Provider No.	FY 2011 Wage index
180044	0.8672
180069	0.8672
180078	0.8672
340008	0.9254
340050	0.9254
360008	0.8672
360054	0.8672
360096	0.8558
510077	0.8672
670023	0.9438
670042	0.9438
670046	0.9438

4. On pages 50516 through 50520, in Table 4C "Wage Index and Capital Geographic Adjustment Factor (GAF) for Acute Care Hospitals that are Reclassified By CBSA and By State—FY 2011" is correcting the wage index and GAF for hospitals reclassifying to the following CBSA:

CBSA	CBSA Name	State	Wage index	GAF
22180	Fayetteville, NC	NC	0.9254	0.9483
26580	Huntington-Ashland, WV–KY–OH	KY	0.8672	0.9070
26580	Huntington-Ashland, WV–KY–OH	OH	0.8672	0.9070
26580	Huntington-Ashland, WV–KY–OH	WV	0.8672	0.9070
49660	Youngstown-Warren-Boardman, OH–PA	OH	0.8558	0.8989

5. On pages 50540 through 50547, in Table 4J "Out Migration Adjustment for Acute Care Hospitals-FY 2011" the table is corrected by adding the following entries:

Provider No.	Reclassified for FY 2011	Out-migration adjustment	Qualifying county name	County code
360096	*	0.0011	COLUMBIANA	36140
670023		0.0054	TARRANT	45910
670042		0.0054	TARRANT	45910
670046		0.0054	TARRANT	45910

6. On pages 50593 and 50604, in Table 9A.—Hospital Reclassifications and Redesignations—FY 2011 the table is corrected by—

a. Changing the reclassified CBSA for the following entry:

Provider No.	Geographic CBSA	Reclassified CBSA	LUGAR
340008	34	22180	

b. Adding following entry:

Provider No.	Geographic CBSA	Reclassified CBSA	LUGAR
360096	36	49660	LUGAR

IV. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

In our view, this notice does not constitute a rulemaking that would be subject to the APA notice and comment or delayed effective date requirements. This notice merely corrects typographical and technical errors in the preamble and addendum of the FY 2011 IPPS/LTCH PPS final rule and does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. As a result, this notice is intended to ensure that the FY 2011 IPPS/LTCH PPS final rule accurately reflects the policies adopted in that rule.

In addition, even if this were a rulemaking to which the notice and comment and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this notice into the final rule or delaying the effective date would delay these corrections beyond the October 1 start of the fiscal year, and would be contrary to the public interest. Furthermore, such procedures would be unnecessary, as we are not altering the policies that were already subject to comment and finalized in our final rule.

Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 28, 2010.

Dawn L. Smalls,

Executive Secretary to the Department.

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Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831, 841, and 842

RIN 3206–AL69

Customs and Border Protection Officer Retirement

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to amend its regulations, to reflect changes in the retirement benefits available to customs and border protection officers under the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS). These proposed rules incorporate amendments to CSRS and FERS retirement law pursuant to section 535 of the Department of Homeland Security Appropriations Act, 2008. The Act provides early retirement and enhanced annuity benefits for customs and border protection officers employed by the United States Department of Homeland Security under CSRS and FERS; requires an increase in the percentage rate of withholdings from the basic pay of customs and border protection officers; and establishes mandatory retirement of customs and border protection officers at age 57.

DATES: We must receive your comments by November 1, 2010.

ADDRESSES: You may submit comments, identified by docket number or RIN number 3206–AL69, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: combox@opm.gov*. Include RIN number 3206–AL69 in the subject line of the message.
- *Mail:* Patrick Jennings, Retirement Policy, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–3200.

FOR FURTHER INFORMATION CONTACT: Patrick Jennings, (202) 606–0299.

SUPPLEMENTARY INFORMATION: Section 535 of the Department of Homeland Security Appropriations Act, 2008 (the Act), Division E of the Consolidated Appropriations Act, 2008, Public Law 110–161 (approved December 26, 2007), 112 Stat. 1844, enacts new human resource management provisions applicable to specified Customs and Border Protection employees. It provides that individuals defined as "customs and border protection officers" will be prospectively added as a new group with special human resource management provisions essentially similar to those applicable to other special retirement groups including law enforcement officers, nuclear materials couriers, and firefighters. The principal elements of those structures include: (1) A maximum entry age (to permit a career to be completed by mandatory retirement age); (2) Early optional retirement eligibility; (3) Enhanced annuity provisions (to make a shorter career economically feasible); (4) Mandatory retirement (generally at age 57, but with agency authority to extend to age 60), and (5) Higher employer and employee retirement contribution rates. The effective date of section 535 is July 6, 2008.

In addition to the provisions that will be continuing and that will apply to individuals employed as customs and border protection officers on its effective date, section 535 of the Act also includes unique provisions applicable to individuals who are customs and border protection officers on its effective date. These incumbents will not be subject to mandatory retirement, but are eligible for partial annuity computation credit for future service as a customs and border protection officer.

Who Is Covered

The same definition is applicable to both FERS and CSRS:

> The term "customs and border protection officer" means an employee in the Department of Homeland Security (A) who holds a position within the GS–1895 job series (determined applying the criteria in effect as of September 1, 2007) or any successor position, and (B) whose duties include activities relating to the arrival and departure of persons, conveyances, and merchandise at ports of entry, including any such employee who is transferred directly to a supervisory or administrative position in the Department of Homeland Security after performing such duties (as described in subparagraph (B)) in 1 or more positions (as described in subparagraph (A)) for at least 3 years.

This definition, while similar to the statutory definition of "law enforcement officer," contains important differences that distinguish it from that definition. For the first time in special retirement coverage definitions, there is specific reference to a Federal occupational series—the Customs and Border Protection job series (GS–1895). Two points are significant in this regard. First, only positions in this series are eligible for "primary" coverage. Second, in addition to position classification, there is an additional requirement that the duties of the specific position must include specified activities. Thus, not all positions in the GS–1895 job series will meet the requirements for primary coverage, although it is probable that those that are not eligible for primary coverage will generally meet the requirements for secondary (supervisory or administrative) coverage.

The provision for extending coverage to "any successor position" is also novel. Primary coverage is based upon the GS–1895 series as of September 1, 2007, and it is possible that position classification standards and/or the manner in which positions are described may be changed in the future. The logical interpretation is that this is intended to provide authority for coverage should positions with the same elements currently classified in the GS–1895 series be assigned to another series at some time in the future so long as they would have been covered under the GS–1895 series as it existed on September 1, 2007.

Secondary coverage is not limited to positions in the GS–1895 series. However, section 535 of the Act permits secondary coverage using language equivalent to that applicable to other special retirement groups (i.e., law enforcement officers, firefighters, etc.). Thus, as in the law enforcement officer retirement regulations, secondary coverage will generally be limited to continuous employment in supervisory and/or administrative positions that could not be performed by individuals without prior experience in a customs and border protection officer primary position.

As with other special retirement groups, the final authority on position coverage for retirement purposes is OPM, although coverage determinations are delegated to the Department of

Homeland Security. Statutorily, OPM is also the final authority on position classification, the other aspect of retirement coverage eligibility.

Incumbent Employees

Section 535 of the Act has provisions concerning mandatory retirement and annuity computation that are applicable to individuals who, depending upon the provision, were first appointed as a customs and border protection officer prior to the effective date, or are customs and border protection officers on the effective date.

Mandatory retirement: Sections 831.1608(c) and 842.1006(d) of the proposed rule address the provisions of section 535(e)(2)(A) of the Act, which provide that mandatory retirement "shall not apply to an individual first appointed as a customs and border protection officer before the effective date" of July 6, 2008. Unlike another provision of section 535, this does not specify that the individual has to be a customs and border protection officer on the effective date. Thus, an individual previously appointed as a customs and border protection officer before July 6, 2008, but not employed on that date would not be subject to mandatory retirement upon returning to customs and border protection officer employment following that break in service.

Prior service and secondary coverage: Sections 831.1604(b) and 842.1003(c) of the proposed rule address the provisions of section 535(e)(2)(B) of the Act, which provide special rules for treatment of pre-enactment customs and border protection officer service. These special rules are relevant to secondary customs and border protection officer coverage determinations. Section 535 of the Act is explicit that its provisions are prospective, stating in section 535(e)(2)(B)—

(B) TREATMENT OF PRIOR CBPO SERVICE.—

(i) GENERAL RULE.—Except as provided in clause (ii), nothing in this section or any amendment made by this section shall be considered to apply with respect to any service performed as a customs and border protection officer before the effective date under paragraph (1).

(ii) EXCEPTION.—Service described in section 8331(31) or 8401(36) of title 5, United States Code (as amended by this section) rendered before the effective date under paragraph (1) may be taken into account to determine if an individual who is serving on or after such effective date then qualifies as a customs and border protection officer by virtue of holding a supervisory or administrative position in the Department of Homeland Security.

The meaning of clause (ii) is that if an individual is in a secondary (supervisory or administrative) position on July 6, 2008, that individual's eligibility to be a customs and border protection officer will be determined by looking back at the individual's employment history to determine whether the requirements for coverage would have been met if the provisions of 535 had been in effect during the earlier employment history.

There is one potential issue in this regard resulting from the fact that the GS–1895 series dates back only to July of 2004, and that standard is the one in effect on September 1, 2007. Thus, a cursory reading of this provision could be interpreted to mean that only if there has been three years of post-July 2004 primary service actually classified in the GS–1895 series followed by a direct transfer to a secondary position can an individual in a secondary position be found to be a customs and border protection officer on July 6, 2008. This would permit such coverage only if an individual transferred into a secondary position on or after July 1, 2007. This would mean that some customs and border protection officers in secondary supervisory and administrative customs and border protection officer positions on July 6, 2008, would not be entitled to retirement coverage under the law when the law went into effect.

Despite the lack of relevant legislative history, such a rigid interpretation would be inconsistent with the statutory scheme. There is however an alternative interpretation yielding a reasonable result, which OPM has adopted for this proposed rule. Prior to the establishment of the GS–1895 series, it was preceded by two precursor position series, GS–1816, Immigration Inspection, and GS–1890, Customs Inspection. Most positions classified under those series would now be classified under the GS–1895 series. Accordingly, for purposes of evaluating whether pre-July 2004 service is qualifying as primary service, positions classified prior to July 2004 in either the GS–1816 or GS–1890 series should be considered as meeting the requirement of being a "position within the GS–1895 job series (determined applying the criteria in effect as of September 1, 2007)." However, merely being in one of those two series does not mean that the position was a primary position. The additional requirements relating to the type of work performed must also be satisfied.

Proportional Annuity Computation

Sections 831.1612(c) and 842.1009(c) of the proposed rule address the unique provisions of section 535(e)(2)(C) of the Act, which provide for proportional annuity computations that are applicable only to individuals who are customs and border protection officers on July 6, 2008. Unlike the mandatory retirement exemption, the provisions of section 535(e)(2)(C) of the Act do not apply to a previously appointed customs and border protection officer who is not employed as a customs and border protection officer on July 6, 2008. A previously employed customs and border protection officer who returns after July 6, 2008, would not be eligible, nor would a U.S. Customs and Border Protection employee not in a customs and border protection officer position on July 6, 2008. Under the provisions of section 535(e)(2)(C), individuals do not receive credit for pre-July 6, 2008, service counted towards special retirement eligibility or computation. However, they are eligible to have post-July 5, 2008 customs and border protection officer service credited in their annuity computation at a higher rate even though they may not meet the requirements for special customs and border protection officer retirement. Service in other special retirement categories such as law enforcement officer or firefighter cannot be added to customs and border protection officer service for use in a proportional annuity computation.

Thus, a customs and border protection officer employed on July 6, 2008, and covered by CSRS would have all full months of customs and border protection officer service computed using an annual multiplier of 2.5 percent per year of such service up to 20 years. A customs and border protection officer employed on July 6, 2008, and covered by FERS would have all full months of customs and border protection officer service computed using an annual multiplier of 1.7 percent per year of such service up to 20 years.

Elections

Sections 831.1612(a) and 842.1009(a) of the proposed rule address the provisions of section 535(e)(3) of the Act, which require that individuals who are customs and border protection officers on December 26, 2007, must be given the right to elect to be covered by or excluded from its provisions when it becomes effective on July 6, 2008. For such incumbents, section 535 provides a substantial lifetime annuity increase in return for a small increase in retirement contributions deducted from pay. Incumbents on July 6, 2008, are exempt from mandatory retirement. Although the Department of Homeland

Security has already provided affected employees with the opportunity to elect to be subject to the customs and border protection officer provisions, the proposed rule describes the terms of the election opportunity provided by the Department of Homeland Security in the event that there is any question about an employee's election opportunity in the future.

Current Law Enforcement Officers

Sections 831.1612(a) and 842.1009(a) of the proposed rule address the provisions of section 535(e)(5) of the Act, which specifies that nothing in section 535 or any amendment made by it shall be considered to afford any election or to otherwise apply with respect to anyone who as of December 25, 2007, was a law enforcement officer employed by U.S. Customs and Border Protection.

Technical and Conforming Amendments to Existing Regulations

The proposed rule makes various technical and conforming amendments to 5 CFR 831.502, 841.403, 841.503, 842.208, 842.403, 842.801, and 842.901 to add references to customs and border protection officers. Section 831.502 is also being reissued in its entirety to correct typographical errors in the existing paragraph designations.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retirement payments to retired employees, spouses, former spouses, and insurable interest survivors.

List of Subjects in 5 CFR Parts 831, 841 and 842

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

John Berry,

Director.

Accordingly, the Office of Personnel Management is proposing to amend parts 831, 841, and 842 of title 5 of the Code of Federal Regulations as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 is revised to read as follows:

Authority: 5 U.S.C. 8347; Sec. 831.102 also issued under 5 U.S.C. 8334; Sec. 831.106 also issued under 5 U.S.C. 552a; Sec. 831.108 also issued under 5 U.S.C. 8336(d)(2); Sec. 831.114 also issued under 5 U.S.C. 8336(d)(2), and Sec. 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Secs. 831.115 and 831.116 also issued under 5 U.S.C. 8346(a); Sec. 831.201(b)(1) also issued under 5 U.S.C. 8347(g); Sec. 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); Sec. 831.201(g) also issued under Secs. 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; Sec. 831.201(g) also issued under Sec. 7(b) and (e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.201(i) also issued under Secs. 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.204 also issued under Sec. 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by Sec. 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 831.205 also issued under Sec. 2207 of Pub. L. 106–265, 114 Stat. 784; Sec. 831.301 also issued under Sec. 2203 of Pub. L. 106–265, 114 Stat. 780; Sec. 831.303 also issued under 5 U.S.C. 8334(d)(2) and Sec. 2203 of Pub. L. 106–235, 114 Stat. 780; Sec. 831.502 also issued under 5 U.S.C. 8337, and section 1(3), E.O. 11228, 3 CFR 1965–1965 Comp. p. 317; Sec. 831.663 also issued under section 8339(j) and (k)(2); Secs. 831.663 and 831.664 also issued under Sec. 11004(c)(2) of Pub. L. 103–66, 107 Stat. 412; Sec. 831.682 also issued under Sec. 201(d) of Pub. L. 99–251, 100 Stat. 23; Sec. 831.912 also issued under Sec. 636 of Appendix C to Pub. L. 106–554, 114 Stat. 2763A–164; Subpart P also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042; Subpart V also issued under 5 U.S.C. 8343a and Sec. 6001 of Pub. L. 100–203, 101 Stat. 1330–275; Sec. 831.2203 also issued under Sec. 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388–328.

2. Revise 831.502 to read as follows:

§ 831.502 Automatic separation; exemption.

(a) When an employee meets the requirements for age retirement on any day within a month, he is subject to automatic separation at the end of that month. The department or agency shall notify the employee of the automatic separation at least 60 days in advance of the separation. If the department or agency fails through error to give timely notice, the employee may not be separated without his consent until the end of the month in which the notice expires.

(b) The head of the agency, when in his or her judgment the public interest so requires, may exempt a law enforcement officer, firefighter, nuclear materials courier, or customs and border protection officer from automatic separation until that employee becomes 60 years of age.

(c) The Secretary of Transportation and the Secretary of Defense, under such regulations as each may prescribe, may exempt an air traffic controller having exceptional skills and experience as a controller from automatic separation until that controller becomes 61 years of age.

(d) When a department or agency lacks authority and wishes to secure an exemption from automatic separation for one of its employees other than a Presidential appointee, beyond the age(s) provided by statute, i.e., age 60 for a law enforcement officer, firefighter, nuclear materials courier, or customs and border protection officer, and age 61 for an air traffic controller, the department or agency head shall submit a recommendation to that effect to OPM.

(1) The recommendation shall contain:

(i) A statement that the employee is willing to remain in service;

(ii) A statement of facts tending to establish that his/her retention would be in the public interest;

(iii) The period for which the exemption is desired, which period may not exceed 1 year; and,

(iv) The reasons why the simpler method of retiring the employee and immediately reemploying him or her is not being used.

(2) The recommendation shall be accompanied by a medical certificate showing the physical fitness of the employee to perform his or her work.

(e) OPM may approve an exemption only before the automatic separation date applicable to the employee. For this reason, the department or agency shall forward the recommendation to OPM at least 30 days before this separation date.

3. Add subpart P to part 831 to read as follows:

Subpart P—Customs and Border Protection Officers

Sec.

Subpart P—Customs and Border Protection Officers

§ 831.1601 Applicability and purpose.

(a) This subpart contains regulations of the Office of Personnel Management (OPM) to supplement 5 U.S.C. 8336(c), which establishes special retirement eligibility for customs and border protection officers employed under the Civil Service Retirement System; 5 U.S.C. 8331(3)(C) and (G), pertaining to basic pay; 5 U.S.C. 8334(a)(1) and (c), pertaining to deductions, contributions, and deposits; 5 U.S.C. 8335(b), pertaining to mandatory retirement; and 5 U.S.C. 8339(d), pertaining to computation of annuity.

(b) The regulations in this subpart are issued pursuant to the authority given to OPM in 5 U.S.C. 8347 to prescribe regulations to carry out subchapter III of chapter 83 of title 5 of the United States Code, and in 5 U.S.C. 1104 to delegate authority for personnel management to the heads of agencies, and pursuant to the authority given the Director of OPM in Section 535(d) of the Department of Homeland Security Appropriations Act, 2008, Division E of Public Law 110–161, 121 Stat. 1844.

§ 831.1602 Definitions.

In this subpart—

Agency head means the Secretary of the U.S. Department of Homeland Security. For purposes of an approval of coverage under this subpart, agency head is also deemed to include the designated representative of the Secretary of U.S. Department of Homeland Security (DHS), except that the designated representative must be a DHS Headquarters official who reports directly to the Secretary of the U.S. Department of Homeland Security, or to the Deputy Secretary of the U.S. Department of Homeland Security, and who is the sole such representative for the entire department. For the purposes of a denial of coverage under this subpart, *agency head* is also deemed to include the designated representative of the Secretary of the U.S. Department of Homeland Security at any level within the U.S. Department of Homeland Security.

Customs and border protection officer means an employee in the U.S. Department of Homeland Security occupying a position within the Customs and Border Protection Officer (GS–1895) job series (determined applying the criteria in effect as of September 1, 2007) or any successor position, and whose duties include activities relating to the arrival and departure of persons, conveyances, and merchandise at ports of entry. Also included in this definition is an employee engaged in this activity who is transferred directly to a supervisory or administrative position in the Department of Homeland Security after performing such duties in 1 or more positions within the GS–1895 job series (determined applying the criteria in effect as of September 1, 2007), or any successor position, for at least 3 years.

First-level supervisors are employees classified as supervisors who have direct and regular contact with the employees they supervise. First-level supervisors do not have subordinate supervisors. A first-level supervisor may occupy a primary position or a secondary position if the appropriate definition is met.

Primary position means a position classified within the Customs and Border Protection Officer (GS–1895) job series (determined applying the criteria in effect as of September 1, 2007) or any successor position whose duties include the performance of work directly connected with activities relating to the arrival and departure of persons, conveyances, and merchandise at ports of entry.

Secondary position means a customs and border protection officer position that is either—

(1) Supervisory; *i.e.,* a position whose primary duties are as a first-level supervisor of customs and border protection officers in primary positions; or

(2) Administrative; *i.e.,* an executive, managerial, technical, semiprofessional, or professional position for which experience in a primary customs and border protection officer position is a prerequisite.

§ 831.1603 Conditions for coverage in primary positions.

(a) An employee's service in a position that has been determined by the employing agency head to be a primary customs and border protection officer position is covered under the provisions of 5 U.S.C. 8336(c).

(b) An employee who is not in a primary position, nor covered while in a secondary position, and who is detailed or temporarily promoted to a primary position is not covered under the provisions of 5 U.S.C. 8336(c) for any purpose under this subpart.

§ 831.1604 Conditions for coverage in secondary positions.

(a) An employee's service in a position that has been determined by the employing agency head to be a secondary position is covered under the provisions of 5 U.S.C. 8336(c) if all of the following criteria are met:

(1) The employee is transferred directly (i.e., without a break in service exceeding 3 days) from a primary position to a secondary position; and

(2) The employee has completed 3 years of service in a primary position, including a position for which no CSRS deductions were withheld; and

(3) If applicable, the employee has been continuously employed in secondary positions since transferring from a primary position without a break in service exceeding 3 days, except that a break in employment in secondary positions which begins with an involuntary separation (not for cause), within the meaning of 8336(d)(1) of title 5, United States Code, is not considered in determining whether the service in secondary positions is continuous for this purpose.

(b) For the purpose of applying the criteria at paragraphs (a)(1) through (3) of this section to evaluate transfers, service, and employment periods that occurred before September 1, 2007—

(1) A primary position is deemed to include:

(i) A position whose duties included the performance of work directly connected with activities relating to the arrival and departure of persons, conveyances, and merchandise at ports of entry that was classified within the Immigration Inspector Series (GS–1816), Customs Inspector Series (GS–1890), or any other series which the agency head determines were predecessor series to the Customs and Border Protection Series (GS–1895) series, and that would have been classified under the GS–1895 series had it then existed; and

(ii) A position within the Customs and Border Protection Series (GS–1895) series whose duties included the performance of work directly connected with activities relating to the arrival and departure of persons, conveyances, and merchandise at ports of entry.

(2) A secondary position is deemed to include:

(i) A first-level supervisor of an employee in a position described at paragraph (b)(1)(i) or (b)(1)(ii) of this section; or

(ii) An executive, managerial, technical, semiprofessional, or professional position for which experience in a position described at paragraph (b)(1)(i) or (b)(1)(ii) of this section is a mandatory prerequisite.

(c) An employee who is not in a primary position, nor covered while in a secondary position, and who is detailed or temporarily promoted to a secondary position is not covered under the provisions of 5 U.S.C. 8336(c) for any purpose under this subpart.

§ 831.1605 Evidence.

(a) An agency head's determination under §§ 831.1603(a) and 831.1604(a) must be based solely on the official position description of the position in question and any other official description of duties and qualifications.

(b) If an employee is in a position not subject to the one-half percent higher withholding rate of 5 U.S.C. 8334(c), and the employee does not, within 6 months after entering the position or after any significant change in the position, formally and in writing seek a determination from the employing agency that his position is properly covered by the higher withholding rate, the agency head's determination that the service was not so covered at the time of the service is presumed to be correct. This presumption may be rebutted by a preponderance of the evidence that the employee was unaware of his or her status or was prevented by cause beyond his or her control from requesting that the official status be changed at the time the service was performed.

§ 831.1606 Requests from individuals.

(a) An employee who requests credit for service under 5 U.S.C. 8336(c) bears the burden of proof with respect to that service, and must provide the employing agency with all pertinent information regarding duties performed.

(b) An employee who is currently serving in a position that has not been approved as a primary or secondary position, but who believes that his or her service is creditable as service in a primary or secondary position may request the agency head to determine whether or not the employee's current service should be credited and, if it qualifies, whether it should be credited as service in a primary or secondary position. A written request for current service must be made within 6 months after entering the position or after any significant change in the position.

(c) A current or former employee (or the survivor of a former employee) who believes that a period of past service in an unapproved position qualifies as service in a primary or secondary position and meets the conditions for credit may request the agency head to determine whether or not the employee's past service should be credited and, if it qualifies, whether it should be credited as service in a primary or secondary position. A written request for past service must be made no later than June 30, 2011.

(d) The agency head may extend the time limit for filing under paragraph (b) or (c) of this section when, in the judgment of such agency head, the individual shows that he or she was prevented by circumstances beyond his or her control from making the request within the time limit.

§ 831.1607 Withholdings and contributions.

(a) During the service covered under the conditions established by § 831.1603 and § 831.1604, the U.S. Department of Homeland Security will deduct and withhold from the employee's base pay the amount required under 5 U.S.C. 8334(a) for such positions and submit that amount, together with agency contributions required by 5 U.S.C. 8334(a), to OPM in accordance with payroll office instructions issued by OPM.

(b) If the correct withholdings and/or Government contributions are not submitted to OPM for any reason whatsoever, the U.S. Department of Homeland Security must correct the error by submitting the correct amounts (including both employee and agency shares) to OPM as soon as possible. Even if the U.S. Department of Homeland Security waives collection of the overpayment of pay under any waiver authority that may be available for this purpose, such as 5 U.S.C. 5584, or otherwise fails to collect the debt, the correct amount must still be submitted to OPM without delay as soon as possible.

(c) Upon proper application from an employee, former employee or eligible survivor of a former employee, the U.S. Department of Homeland Security agency will pay a refund of erroneous additional withholdings for service that is found not to have been covered service. If an individual has paid to OPM a deposit or redeposit, including the additional amount required for covered service, and the deposit or redeposit is later determined to be erroneous because the service was not covered service, OPM will pay the refund, upon proper application, to the individual, without interest.

(d) The additional employee withholding and agency contribution for covered or creditable service properly made as required under 5 U.S.C. 8334(a)(1) or deposited under 5 U.S.C. 8334(c) are not separately refundable, even in the event that the employee or his or her survivor does not qualify for a special annuity computation under 5 U.S.C. 8339(d).

(e) While an employee who does not hold a primary or secondary position is detailed or temporarily promoted to a primary or secondary position, the additional withholdings and agency contributions will not be made. While an employee who does hold a primary or secondary position is detailed or temporarily promoted to a position which is not a primary or secondary position, the additional withholdings and agency contributions will continue to be made.

§ 831.1608 Mandatory separation.

(a) Except as provided in paragraph (c), the mandatory separation provisions of 5 U.S.C. 8335(b) apply to customs and border protection officers appointed in primary and secondary positions. A mandatory separation under section 8335(b) is not an adverse action under part 752 of this chapter or a removal action under part 359 of this chapter. Section 831.502 provides the procedures for requesting an exemption from mandatory separation.

(b) In the event an employee is separated mandatorily under 5 U.S.C. 8335(b), or is separated for optional retirement under 5 U.S.C. 8336(c), and OPM finds that all or part of the minimum service required for entitlement to immediate annuity was in a position which did not meet the requirements of a primary or secondary position and the conditions set forth in this subpart, such separation will be considered erroneous.

(c) The customs and border protection officer mandatory separation provisions of 5 U.S.C. 8335(b) do not apply to an individual first appointed as a customs and border protection officer before July 6, 2008.

§ 831.1609 Reemployment.

An employee who has been mandatorily separated under 5 U.S.C. 8335(b) is not barred from reemployment in any position except a primary position after age 60. Service by a reemployed annuitant is not covered by the provisions of 5 U.S.C. 8336(c).

§ 831.1610 Review of decisions.

(a) The final decision of the agency head issued to an employee as the result of a request for determination filed under § 831.1606 may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

(b) The final decision of the agency head denying an individual coverage while serving in an approved secondary position because of failure to meet the conditions in § 831.1604(a) may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

§ 831.1611 Oversight of coverage determinations.

(a) Upon deciding that a position is a customs and border protection officer position, the agency head must notify

OPM (Attention: Director, Planning and Policy Analysis, or such other official as may be designated) stating the title of each position, occupational series, position description number (or other unique identifier), the number of incumbents, and whether the position is primary or secondary. The Director of OPM retains the authority to revoke the agency head's determination that a position is a primary or secondary position.

(b) The Department of Homeland Security must establish and maintain a file containing all coverage determinations made by the agency head under § 831.1603 and § 831.1604, and all background material used in making the determination.

(c) Upon request by OPM, the U.S. Department of Homeland Security will make available the entire coverage determination file for OPM to audit to ensure compliance with the provisions of this subpart.

(d) Upon request by OPM, the Department of Homeland Security must submit to OPM a list of all covered positions and any other pertinent information requested.

§ 831.1612 Elections of Retirement Coverage, exclusions from retirement coverage, and proportional annuity computations.

(a) *Elections of coverage.* (1) The U.S. Department of Homeland Security must provide an employee who is a customs and border protection officer on December 26, 2007, the opportunity to elect to be treated as a customs and border protection officer under section 535(a) and (b) of the Department of Homeland Security Appropriations Act, 2008, Public Law 110–161, 121 Stat. 2042).

(2) An election under this paragraph (a) is valid only if made on or before June 22, 2008.

(3) An individual eligible to make an election under this paragraph who fails to make such an election on or before June 22, 2008, is deemed to have elected to be treated as a customs and border protection officer for retirement purposes.

(b) *Exclusion from coverage.* The provisions of this subpart and any other specific reference to customs and border protection officers in this part do not apply to employees who on December 25, 2007, were law enforcement officers under subpart I of this part or subpart H of part 842 within U.S. Customs and Border Protection. These employees cannot elect to be treated as a customs and border protection officer under paragraph (a) of this section, nor can they be deemed to have made such an election.

(c) *Proportional annuity computation.* The annuity of an employee serving in a primary or secondary customs and border protection officer position on July 6, 2008, must, to the extent that its computation is based on service rendered as a customs and border protection officer on or after that date, be at least equal to the amount that would be payable—

(1) To the extent that such service is subject to the Civil Service Retirement System, by applying section 8339(d) of title 5, United States Code, with respect to such service; and

(2) To the extent such service is subject to the Federal Employees' Retirement System, by applying section 8415(d) of title 5, United States Code, with respect to such service.

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

4. The authority citation for part 841 is revised to read as follows:

Authority: 5 U.S.C. 8461; Sec. 841.108 also issued under 5 U.S.C. 552a; Secs. 841.110 and 841.111 also issued under 5 U.S.C. 8470(a); subpart D also issued under 5 U.S.C. 8423; Sec. 841.504 also issued under 5 U.S.C. 8422; Sec. 841.507 also issued under section 505 of Pub. L. 99–335; subpart J also issued under 5 U.S.C. 8469; Sec. 841.506 also issued under 5 U.S.C. 7701(b)(2); Sec. 841.508 also issued under section 505 of Pub. L. 99–335; Sec. 841.604 also issued under Title II, Pub. L. 106–265, 114 Stat. 780.

5. Revise 841.403(c) to read as follows:

§ 841.403 Categories of employees for computation of normal cost percentages.

* * * * *

(c) Law enforcement officers, firefighters, nuclear materials couriers, customs and border protection officers, members of the Supreme Court Police.

* * * * *

6. Revise 841.503(b) to read as follows:

§ 841.503 Amounts of employee deductions.

* * * * *

(b) The rate of employee deductions from basic pay for FERS coverage for a Member, law enforcement officer, firefighter, nuclear materials courier, customs and border protection officer, air traffic controller, member of the Supreme Court Police, Congressional employee, or employee under section 302 of the Central Intelligence Agency Act of 1964 for Certain Employees is seven and one-half percent of basic pay, minus the percent of tax which is (or would be) in effect for the payment, for the employee cost of social security.

* * * * *

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

7. The authority citation for part 842 is revised to read as follows:

Authority: 5 U.S.C. 8461(g); Secs. 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); Sec. 842.104 also issued under sections 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); Sec. 842.106 also issued under section 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321–102; Sec. 842.107 also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251, and section 7(b) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.108 also issued under section 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.208 also issued under section 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042; Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and section 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Secs. 842.304 and 842.305 also issued under section 321(f) of Pub. L. 107–228, 116 Stat. 1383, Secs. 842.604 and 842.611 also issued under 5 U.S.C. 8417; Sec. 842.607 also issued under 5 U.S.C. 8416 and 8417; Sec. 842.614 also issued under 5 U.S.C. 8419; Sec. 842.615 also issued under 5 U.S.C. 8418; Sec. 842.703 also issued under section 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388; Sec. 842.707 also issued under section 6001 of Pub. L. 100–203, 101 Stat. 1300; Sec. 842.708 also issued under section 4005 of Pub. L. 101–239, 103 Stat. 2106 and section 7001 of Pub. L. 101–508, 104 Stat. 1388; Subpart H also issued under 5 U.S.C. 1104; Sec. 842.810 also issued under section 636 of Appendix C to Pub. L. 106–554 at 114 Stat. 2763A–164; Sec. 842.811 also issued under section 226(c)(2) of Public Law 108–176, 117 Stat. 2529; Subpart J also issued under section 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042.

8. In § 842.208, revise the section heading and paragraphs (a)(1) and (2) to read as follows:

§ 842.208 Firefighters, customs and border protection officers, law enforcement officers, members of the Capitol or Supreme Court Police, and nuclear materials couriers.

(a) * * *

(1) After completing any combination of service as a firefighter, customs and border protection officer, law enforcement officer, member of the Capitol or Supreme Court Police, or nuclear materials courier totaling 25 years; or

(2) After becoming age 50 and completing any combination of service as a firefighter, customs and border protection officer, law enforcement

officer, member of the Capitol or Supreme Court Police, or nuclear materials courier totaling 20 years.

* * * * *

9. Revise the section heading, and paragraph (b)(2)(ii) in § 842.403 to read as follows:

§ 842.403 Computation of basic annuity.

* * * * *

(b) * * *

(2) * * *

(ii) Is not a customs and border protection officer, a Member, Congressional employee, military reserve technician, law enforcement officer, firefighter, nuclear materials courier, or air traffic controller.

10. Revise 842.801 to read as follows:

§ 842.801 Applicability and purpose.

(a) This subpart contains regulations of the Office of Personnel Management (OPM) to supplement—

(1) 5 U.S.C. 8412(d) and (e), which establish special retirement eligibility for law enforcement officers, members of the Capitol Police and Supreme Court Police, firefighters, nuclear materials couriers, customs and border protection officers, and air traffic controllers employed under the Federal Employees Retirement System (FERS);

(2) 5 U.S.C. 8422(a), pertaining to deductions;

(3) 5 U.S.C. 8423(a), pertaining to Government contributions; and

(4) 5 U.S.C. 8425, pertaining to mandatory retirement.

(b) The regulations in this subpart are issued pursuant to the authority given to OPM in 5 U.S.C. 8461(g) to prescribe regulations to carry out the provisions of 5 U.S.C. chapter 84, in 5 U.S.C. 1104 to delegate authority for personnel management to the heads of agencies and pursuant to the authority given the Director of OPM in section 535(d) of the Department of Homeland Security Appropriations Act, 2008, Public Law 110–161, 121 Stat. 2042.

11. Revise 842.901 to read as follows:

§ 842.901 Applicability and purpose.

(a) This subpart contains regulations of the Office of Personnel Management (OPM) to supplement—

(1) 5 U.S.C. 8412(d) and (e), which establish special retirement eligibility for law enforcement officers, members of the Capitol Police and Supreme Court Police, firefighters, nuclear materials couriers, customs and border protection officers, and air traffic controllers employed under the Federal Employees Retirement System (FERS);

(2) 5 U.S.C. 8422(a), pertaining to deductions;

(3) 5 U.S.C. 8423(a), pertaining to Government contributions; and

(4) 5 U.S.C. 8425, pertaining to mandatory retirement.

(b) The regulations in this subpart are issued pursuant to the authority given to OPM in 5 U.S.C. 8461(g) to prescribe regulations to carry out the provisions of 5 U.S.C. chapter 84, in 5 U.S.C. 1104 to delegate authority for personnel management to the heads of agencies and pursuant to the authority given the Director of OPM in section 535(d) of the Department of Homeland Security Appropriations Act, 2008, Division E of Public Law 110–161, 121 Stat. 1844.

12. Add subpart J to part 842 to read as follows:

Subpart J—Customs and Border Protection Officers

Sec.

Subpart J—Customs and Border Protection Officers

§ 842.1001 Applicability and purpose.

(a) This subpart contains regulations of the Office of Personnel Management (OPM) to supplement—

(1) 5 U.S.C. 8412(d) and (e), which establish special retirement eligibility for law enforcement officers, members of the Capitol Police and Supreme Court Police, firefighters, nuclear materials couriers, customs and border protection officers, and air traffic controllers employed under the Federal Employees Retirement System (FERS);

(2) 5 U.S.C. 8422(a), pertaining to deductions;

(3) 5 U.S.C. 8423(a), pertaining to Government contributions; and

(4) 5 U.S.C. 8425, pertaining to mandatory retirement.

(b) The regulations in this subpart are issued pursuant to the authority given to OPM in 5 U.S.C. 8461(g) to prescribe regulations to carry out the provisions of 5 U.S.C. chapter 84, in 5 U.S.C. 1104 to delegate authority for personnel management to the heads of agencies and pursuant to the authority given the Director of OPM in section 535(d) of the Department of Homeland Security Appropriations Act, 2008, Division E of Public Law 110–161, 121 Stat. 1844.

§ 842.1002 Definitions.

As used in this subpart:

Agency head means the Secretary of the U.S. Department of Homeland Security. For purposes of an approval of coverage under this subpart, *agency head* is also deemed to include the designated representative of the Secretary of U.S. Department of Homeland Security, except that the designated representative must be a department headquarters-level official who reports directly to the Secretary of Homeland Security, or to the Deputy Secretary of Homeland Security, and who is the sole such representative for the entire department. For the purposes of a denial of coverage under this subpart, *agency head* is also deemed to include the designated representative of the Secretary of U.S. Department of Homeland Security at any level within the U.S. Department of Homeland Security.

Employee means an employee as defined by 5 U.S.C. 8401(11).

Customs and border protection officer means an employee in the Department of Homeland Security occupying a position within the Customs and Border Protection Officer (GS–1895) job series (determined applying the criteria in effect as of September 1, 2007) or any successor position and whose duties include activities relating to the arrival and departure of persons, conveyances, and merchandise at ports of entry. Also included in this definition is an employee engaged in this activity who is transferred directly to a supervisory or administrative position in the Department of Homeland Security after performing such duties in 1 or more positions within the GS–1895 job series (determined applying the criteria in effect as of September 1, 2007), or any successor position, for at least 3 years.

First-level supervisors are employees classified as supervisors who have direct and regular contact with the employees they supervise. First-level supervisors do not have subordinate supervisors. A first-level supervisor may occupy a primary position or a secondary position if the appropriate definition is met.

Primary position means a position classified within the Customs and Border Protection Officer (GS–1895) job series (determined applying the criteria in effect as of September 1, 2007) or any successor position whose duties include the performance of work directly connected with activities relating to the arrival and departure of persons, conveyances, and merchandise at ports of entry.

Secondary position means a customs and border protection officer position that is either—

(1) Supervisory; *i.e.,* a position whose primary duties are as a first-level supervisor of customs and border

protection officers in primary positions; or

(2) Administrative; *i.e.,* an executive, managerial, technical, semiprofessional, or professional position for which experience in a primary customs and border protection officer position is a prerequisite.

§ 842.1003 Conditions for coverage.

(a) *Primary positions.* (1) An employee's service in a position that has been determined by the employing agency head to be a primary customs and border protection officer position is covered under the provisions of 5 U.S.C. 8412(d).

(2) An employee who is not in a primary position, nor covered while in a secondary position, and who is detailed or temporarily promoted to a primary position is not covered under the provisions of 5 U.S.C. 8412(d) for any purpose under this subpart.

(3) A first-level supervisor position may be determined to be a primary position if it satisfies the conditions set forth in § 842.1002.

(b) *Secondary positions.* An employee's service in a position that has been determined by the employing agency head to be a secondary position is covered under the provisions of 5 U.S.C. 8412(d) if all of the following criteria are met:

(1) The employee, while covered under the provisions of 5 U.S.C. 8412(d) as a customs and border protection officer, is transferred directly (*i.e.,* without a break in service exceeding 3 days) from a primary position to a secondary position; and

(2) The employee has completed 3 years of service in a primary position, including service for which no FERS deductions were withheld; and

(3) If applicable, the employee has been continuously employed in secondary positions since transferring from a primary position without a break in service exceeding 3 days, except that a break in employment in secondary positions which begins with an involuntary separation (not for cause), within the meaning of 8414(b)(1)(A), is not considered in determining whether the service in secondary positions is continuous for this purpose.

(c) For the purpose of applying the criteria at paragraphs (b)(1) through (3) of this section to evaluate transfers, service, and employment periods that occurred before September 1, 2007—

(1) A primary position, covered under the provisions of 5 U.S.C. 8412(d), is deemed to include:

(i) A position whose duties included the performance of work directly connected with activities relating to the arrival and departure of persons, conveyances, and merchandise at ports of entry that was classified within the Immigration Inspector Series (GS–1816), Customs Inspector Series (GS–1890), or any other series which the agency head determines were predecessor series to the Customs and Border Protection Series (GS–1895) series, and that would have been classified under the GS–1895 series had it then existed; and

(ii) A position within the Customs and Border Protection Series (GS–1895) series whose duties included the performance of work directly connected with activities relating to the arrival and departure of persons, conveyances, and merchandise at ports of entry.

(2) A secondary position is deemed to include:

(i) A first-level supervisor of an employee in a position described at paragraph (c)(1)(i) or (c)(1)(ii) of this section; or

(ii) A executive, managerial, technical, semiprofessional, or professional position for which experience in a position described at paragraph (c)(1)(i) or (c)(1)(ii) of this section is a mandatory prerequisite.

(d) An employee who is not in a primary position, nor covered while in a secondary position, and who is detailed or temporarily promoted to a secondary position is not covered under the provisions of 5 U.S.C. 8412(d) for any purpose under this subpart.

(e) Except as specifically provided in this subpart, an agency head's authority under this section cannot be delegated.

§ 842.1004 Evidence.

(a) The agency head's determination under § 842.1003(a) that a position is a primary position must be based solely on the official position description of the position in question, and any other official description of duties and qualifications. The official documentation for the position must establish that it satisfies the requirements defined in § 842.1002.

(b) A determination under § 842.1003(b) must be based on the official position description and any other evidence deemed appropriate by the agency head for making the determination.

(c) If an employee is in a position not subject to the one-half percent higher withholding rate of 5 U.S.C. 8422(a)(3), and the employee does not, within 6 months of entering the position formally and in writing seek a determination from the employing agency that his or her service is properly covered by the higher withholding rate, the agency head's determination that the service was not so covered at the time of the service is presumed to be correct. This presumption may be rebutted by a preponderance of the evidence that the employee was unaware of his or her status or was prevented by cause beyond his or her control from requesting that the official status be changed at the time the service was performed.

§ 842.1005 Withholding and contributions.

(a) During service covered under the conditions established by § 842.1003(a) or (c), the U.S. Department of Homeland Security will deduct and withhold from the employee's base pay the amounts required under 5 U.S.C. 8422(a) and submit that amount to OPM in accordance with payroll office instructions issued by OPM.

(b) During service described in paragraph (a) of this section, the U.S. Department of Homeland Security must submit to OPM the Government contributions required under 5 U.S.C. 8423(a) in accordance with payroll office instructions issued by OPM.

(c) If the correct withholdings and/or Government contributions are not timely submitted to OPM for any reason whatsoever, including cases in which it is finally determined that past service of a current or former employee was subject to the higher deduction and Government contribution rates, the U.S. Department of Homeland Security must correct the error by submitting the correct amounts (including both employee and agency shares) to OPM as soon as possible. Even if the U.S. Department of Homeland Security waives collection of the overpayment of pay under any waiver authority that may be available for this purpose, such as 5 U.S.C. 5584, or otherwise fails to collect the debt, the correct amount must still be submitted to OPM as soon as possible.

(d) Upon proper application from an employee, former employee or eligible survivor of a former employee, the U.S. Department of Homeland Security will pay a refund of erroneous additional withholdings for service that is found not to have been covered service. If an individual has paid to OPM a deposit or redeposit, including the additional amount required for covered service, and the deposit is later determined to be erroneous because the service was not covered service, OPM will pay the refund, upon proper application, to the individual, without interest.

(e) The additional employee withholding and agency contributions for covered service properly made are not separately refundable, even in the event that the employee or his or her survivor does not qualify for a special

annuity computation under 5 U.S.C. 8415(d).

(f) While an employee who does not hold a primary or secondary position is detailed or temporarily promoted to such a position, the additional withholdings and agency contributions will not be made.

(g) While an employee who holds a primary or secondary position is detailed or temporarily promoted to a position that is not a primary or secondary position, the additional withholdings and agency contributions will continue to be made.

§ 842.1006 Mandatory separation.

(a) Except as provided in paragraph (d) of this section, the mandatory separation provisions of 5 U.S.C. 8425 apply to customs and border protection officers, including those in secondary positions. A mandatory separation under 5 U.S.C. 8425 is not an adverse action under part 752 of this chapter or a removal action under part 359 of this chapter.

(b) Exemptions from mandatory separation are subject to the conditions set forth under 5 U.S.C. 8425. An exemption may be granted at the sole discretion of the head of the employing agency or by the President in accordance with 5 U.S.C. 8425(c).

(c) In the event that an employee is separated mandatorily under 5 U.S.C. 8425, or is separated for optional retirement under 5 U.S.C. 8412 (d) or (e), and OPM finds that all or part of the minimum service required for entitlement to immediate annuity was in a position that did not meet the requirements of a primary or secondary position and the conditions set forth in this subpart or, if applicable, in part 831 of this chapter, such separation will be considered erroneous.

(d) The customs and border protection officer mandatory separation provisions of 5 U.S.C. 8425 do not apply to an individual first appointed as a customs and border protection officer before July 6, 2008.

§ 842.1007 Review of decisions.

(a) The final decision of the agency head denying an individual's request for approval of a position as a rigorous, secondary, or air traffic controller position made under § 842.1003(a) may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

(b) The final decision of the agency head denying an individual coverage while serving in an approved secondary position because of failure to meet the conditions in § 842.1003(b) may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

§ 842.1008 Oversight of coverage determinations.

(a) Upon deciding that a position is a customs and border protection officer, the U.S. Department of Homeland Security must notify OPM (Attention: Director, Planning and Policy Analysis, or such other official as may be designated) stating the title of each position, the occupational series of the position, the number of incumbents, whether the position is primary or secondary, and, if the position is a primary position, the established maximum entry age, if one has been established. The Director of OPM retains the authority to revoke the agency head's determination that a position is a primary or secondary position.

(b) The U.S. Department of Homeland Security must establish and maintain a file containing all coverage determinations made by the agency head under § 842.1003(a) and (b), and all background material used in making the determination.

(c) Upon request by OPM, the U.S. Department of Homeland Security will make available the entire coverage determination file for OPM to audit to ensure compliance with the provisions of this subpart.

(d) Upon request by OPM, the U.S. Department of Homeland Security must submit to OPM a list of all covered positions and any other pertinent information requested.

§ 842.1009 Elections of Retirement Coverage, exclusions from retirement coverage, and proportional annuity computations.

(a) *Election of coverage.* (1) The U.S. Department of Homeland Security must provide an individual who is a customs and border protection officer on December 26, 2007, with the opportunity to right to elect to be treated as a customs and border protection officer under section 535(a) and (b) of the Department of Homeland Security Appropriations Act, 2008, Public Law 110–161, 121 Stat. 2042).

(2) An election under this paragraph (a) is valid only if made on or before June 22, 2008.

(3) An individual eligible to make an election under this paragraph (a) who fails to make such an election on or before June 22, 2008, is deemed to have elected to be treated as a customs and border protection officer for retirement purposes.

(b) *Exclusion from coverage.* The provisions of this subpart and any other specific reference to customs and border protection officers in this part do not apply to employees who on December 25, 2007, were law enforcement officers, under subpart H of this part or subpart I of part 831, within U.S. Customs and Border Protection. These employees cannot elect to be treated as a customs and border protection officer under paragraph (a), nor can they be deemed to have made such an election.

(c) *Proportional annuity computation.* The annuity of an employee serving in a primary or secondary customs and border protection officer position on July 6, 2008, must, to the extent that its computation is based on service rendered as a customs and border protection officer on or after that date, be at least equal to the amount that would be payable—

(1) To the extent that such service is subject to the Civil Service Retirement System, by applying section 8339(d) of title 5, United States Code, with respect to such service; and

(2) To the extent such service is subject to the Federal Employees' Retirement System, by applying section 8415(d) of title 5, United States Code, with respect to such service.

[FR Doc. 2010–24496 Filed 9–30–10; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 704

RIN 3133–AD80

Corporate Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed Interpretive Ruling and Policy Statement 10–XX.

SUMMARY: The NCUA Board is proposing to adopt an Interpretive Ruling and Policy Statement (IRPS) setting forth the requirements and process for chartering corporate federal credit unions.

DATES: Comments must be received on or before November 1, 2010.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web site: http://www.ncua.gov/Resources/RegulationsOpinionsLaws/ProposedRegulations.aspx.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include "[Your

name] Comments on "Notice of Proposed Rulemaking for Corporate FCU Chartering" in the e-mail subject line.

• *Fax:* (703) 518–6319. Use the subject line described above for e-mail.

• *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

• *Hand Delivery/Courier:* Same as mail address.

Public Inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/Resources/RegulationsOpinionsLaws/ProposedRegulations.aspx* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Lisa Henderson, Staff Attorney, Office of General Counsel, at the address above or telephone: (703) 518–6540; or Dave Shetler, Deputy Director, Office of Corporate Credit Unions, at the address above or telephone: (703) 518–6640.

SUPPLEMENTARY INFORMATION:

A. Background

NCUA recently finalized changes to its Corporate Credit Union Rule, 12 CFR part 704. These changes, as well as NCUA's other efforts to resolve the problems created by the legacy assets remaining in the corporate credit union system, are likely to result in a fundamental restructuring of the corporate credit union system. As part of this restructuring, NCUA believes that some groups of natural person credit unions may wish to form new corporate credit unions.

NCUA first issued guidance on chartering corporate federal credit unions (corporate FCUs) in 1982, but withdrew this guidance and never reissued it. *See* NCUA Interpretive Ruling and Policy Statement (IRPS) 82–6. In light of the impending changes to the corporate system, NCUA is now reissuing chartering guidance in the form of a new proposed IRPS. The proposed IRPS explains the requirements for prospective new corporate FCUs and NCUA's standards for evaluating applications and will assist credit union officials in assessing the feasibility of a new corporate charter. The proposed IRPS also lists timeframes for NCUA action on corporate charter applications.

The proposal requires charter applicants submit various information to NCUA, including:

• A detailed business plan;

• NCUA Form 4001, the Federal Credit Union Organization Report;

• NCUA Forms 9500 and 9501, regarding federal share insurance for member accounts;

• NCUA Form 4012, containing key biographical information and authorization of a background check and credit check for each prospective board member, credit and supervisory committee member, and senior management employee; and

• NCUA Form 4008, the credit union's organization certificate.

The proposed IRPS also includes detailed timelines for processing a charter application.

B. Comment Period and Charter Applications Submitted Before IRPS Is Finalized

The Board is proposing this IRPS with a 30-day comment period rather than NCUA's standard 60-day comment period. The Board believes that this proposal is neither novel nor complex, and that 30 days should be sufficient for all parties interested in commenting. Any charter application submitted before this IRPS is finalized should conform to the requirements of the proposed IRPS, and NCUA will process applications under the terms of the proposed IRPS until the IRPS is finalized. The possibility of impending charter applications further supports the Board's perceived need for a shorter comment period and a quicker finalization of the IRPS.

C. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (those under $10 million in assets). The proposed IRPS only applies to corporate credit unions, all of which have assets well in excess of $10 million. Accordingly, the proposed IRPS will not have a significant economic impact on a substantial number of small credit unions and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden. 44 U.S.C. 3507(d); 5 CFR part 1320. For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. The Office of Management and Budget (OMB) has approved the current information collection requirements in part 704 and assigned them control number 3133–0129.

The proposed IRPS contains an additional information collection in the form of an application requirement. Any group of persons creating a new federally chartered corporate credit union must apply for NCUA's approval. As required by the PRA, NCUA is submitting a copy of this proposed IRPS to OMB for its review and approval. Persons interested in submitting comments with respect to the information collection aspects of the proposed IRPS should submit them to OMB at the address noted below.

1. Estimated PRA Burden

The following describes the application requirements in the proposed IRPS that create manhour burdens:

a. Form 4001 and Business Plan

The proposed IRPS requires applicants for a corporate FCU charter to submit Form 4001, which lists the prospective credit union's officers, directors and basic information about proposed operations. Form 4001 also requires applicants to submit a business plan. For corporate credit union charter applications, the business plan must address the following items:

• Mission statement;

• Analysis of market conditions (*i.e.,* economic prospects for the corporate credit union and availability of proposed financial services from alternative depository institutions);

• Summary of survey results and/or customer base analysis;

• Proposed financial services to be offered;

• How and when services are to be implemented;

• Anticipated corporate credit union staffing and credentials of key employees;

• Physical facility—office and equipment;

• Proposed recordkeeping, data processing, and communications systems and/or vendors;

• Budget for the first three years;

• Semiannual pro-forma financial statements for the first three years,

including a listing of the assumptions used to develop the financial statements;

- Goals for the number of members and shares under various scenarios;
- Projected break-even or date of achieving independent operations;
- Source of funds to pay expenses during the initial setup and early months of operation;
- Written policies for shares, lending, investments, funds management, capital accumulation as required by part 704, payment systems, and EDP;
- Plan for continuity—directors, committee members, and senior management;
- Evidence of commitment (*i.e.,* letters and/or contracts used to substantiate projections); and
- Services and marketing strategies for financial and correspondent services, including the ability of the proposed corporate credit union to efficiently deliver these products.

While the precise time necessary to prepare the business plan will vary with the intended complexity and activities of the proposed corporate credit union, NCUA estimates that on average, preparation of Form 4001 and an acceptable business plan will require 300 hours.

b. Form 4012, Report of Official or Employee

NCUA requires each prospective board member, members of key committees, and senior management employees to submit this form providing basic biographical information and authorizing NCUA to conduct a background and credit check. Because the form is straightforward and applicants are likely to have most of the information requested in other formats, such as resumes, NCUA estimates completion of the form will take no more than one hour for each individual required to submit the form.

c. Forms 9500 and 9501, Insurance Forms

NCUA requires the prospective chief executive officer and recording officer to submit Form 9500 to certify that the prospective board has adopted a resolution that the prospective FCU will apply for federal share insurance. NCUA requires the chair and the chief financial officer to submit Form 9501 to apply for federal share insurance. NCUA estimates completion of both these forms will require no more than one hour per charter applicant.

d. Form 4008, Organization Certificate

Prospective organizers must also submit an organization certificate listing the credit union's name and names and contact information of the initial subscribers. NCUA estimates that collection of the required information and completion of this form should require no more than two hours per charter applicant.

2. Summary of Collection Burden

NCUA estimates the total information collection burden represented by the proposal, as follows:

Estimated annual number of respondents: 1 corporate FCU charter applicant.

Preparation of Form 4001 and business plan: 1 charter applicant × 300 hours = 300 hours.

Preparation of NCUA Form 4012: 1 charter applicant × 25 individual officials, committee members and employees per applicant × 1 hour per individual = 25 hours.

Preparation of NCUA Forms 9500 and 9501: 1 charter applicant × 1 hour = 1 hour.

Preparation of NCUA Form 4008: 1 charter applicant × 2 hours = 2 hours.

Total estimated annual burden hours: 328 hours.

The NCUA considers comments by the public on this proposed collection of information in:

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the NCUA, including whether the information will have a practical use;
- Evaluating the accuracy of the NCUA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

The Paperwork Reduction Act requires OMB to make a decision concerning the collection of information contained in the proposed regulation between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the NCUA on the proposed regulation.

Comments on the proposed information collection requirements should be sent to: Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Washington, DC 20503; Attention: NCUA Desk Officer, with a copy to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order.

The proposed IRPS would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed IRPS will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

By the National Credit Union Administration Board on September 24, 2010.

Mary F. Rupp,

Secretary of the Board.

Authority: 12 U.S.C. 1753, 1754, 1758, 1766.

Corporate Federal Credit Union Chartering Guidelines

I—Goals of NCUA Corporate Chartering Guidelines

These guidelines are intended to achieve the following goals:

- Uphold the provisions of the Federal Credit Union Act (Act);
- Promote safety and soundness within the credit union industry; and
- Provide quality services to members.

NCUA will consider the above criteria as the primary factors in determining whether to approve a corporate federal credit union (FCU) charter. In unusual circumstances, NCUA may consider

other information in deciding if a charter should be approved, such as other federal law or public policies.

II—Subscribers

Seven or more natural person representatives of natural person credit unions (NPCUs)—"the subscribers"—must present to NCUA for approval a sworn organization certificate stating at a minimum:

- The name of the proposed corporate FCU;
- The location of the proposed corporate FCU;
- The names and addresses of the subscribers to the certificate and the number of shares subscribed by each;
- The initial par value of the shares; and
- The proposed field of membership.

False statements on any of the required documentation filed in obtaining an FCU charter may be grounds for federal criminal prosecution.

III—Economic Advisability

A—General

Before chartering a corporate FCU, NCUA must be satisfied that the institution will be viable and that it will provide needed services to its members. NCUA will conduct an independent investigation of each charter application to ensure that the proposed corporate credit union can be successful. In general, the success of any credit union depends on: (a) The character and fitness of management; (b) the depth of the members' support; and (c) present and projected market conditions.

B—Proposed Management's Character and Fitness

The Act requires NCUA to ensure that the subscribers of federal charters are of good "general character and fitness." In addition, employees and officials must be competent, experienced, honest, and of good character.

NCUA will conduct background and credit investigations on prospective officials and employees, and the reports must establish each applicant's character and ability to effectively handle financial matters. Factors that may lead to disapproval of a prospective official or employee include criminal convictions, indictments, and acts of fraud and dishonesty. Other factors, such as serious or unresolved past due credit obligations and bankruptcies disclosed during credit checks, may also disqualify an individual.

NCUA also needs reasonable assurance that the management team will have the requisite skills—particularly in leadership, accounting, funds management, and payment systems risk—and the commitment to dedicate the time and effort needed to make the proposed corporate FCU a success.

Section 701.14 of NCUA's Rules and Regulations sets forth the procedures for NCUA approval of officials of newly chartered FCUs, including corporate FCUs. If the application of a prospective official or employee to serve is not acceptable to NCUA's Director, Office of Corporate Credit Unions (OCCU), the group can propose an alternate to act in that individual's place. If the charter applicant feels it is essential that the disqualified individual be retained, the individual may appeal the OCCU's decision to the NCUA Board. If an appeal is pursued, action on the application may be delayed. If the appeal is denied by the NCUA Board, an applicant acceptable to NCUA must be provided before the charter can be approved.

C—Member Support

An important chartering consideration is the degree of support from the field of membership. The charter applicant must demonstrate a sufficient customer base from which to draw business in the form of membership applications, capital and share commitments, and commitments to use the corporate FCU's services. The applicant must provide surveys and/or written commitments certifying to this potential membership base and capital commitment to the levels required by Part 704 of NCUA's Rules and Regulations. Although NCUA may work with a newly chartered corporate on a plan to meet the retained earnings requirements of Part 704, the newly chartered corporate must have a viable plan to solicit and maintain sufficient contributed capital. Generally, the plan must show how the corporate FCU will keep its total capital at 4 percent or more of its moving daily average net assets at all times beginning on the date NCUA issues the charter.

D—Present and Future Market Conditions—Business Plan

The ability to provide effective service to members, compete in the marketplace, and adapt to changing market conditions are key to the survival of any enterprise. Before NCUA will charter a corporate credit union, a charter applicant must submit a business plan based on realistic and supportable projections and assumptions. The business plan should contain, at a minimum, the following elements:

(1) Mission statement;

(2) Analysis of market conditions (i.e., economic prospects for the corporate credit union and availability of proposed financial services from alternative depository institutions);

(3) Summary of survey results and/or customer base analysis;

(4) Proposed financial services to be offered;

(5) How and when services are to be implemented;

(6) Anticipated corporate credit union staffing and credentials of key employees;

(7) Physical facility—office and equipment;

(8) Proposed recordkeeping, data processing, and communications systems and/or vendors;

(9) Budget for the first three years;

(10) Semiannual pro-forma financial statements for the first three years, including a listing of the assumptions used to develop the financial statements;

(11) Goals for the number of members and shares under various scenarios;

(12) Projected break-even or date of achieving independent operations;

(13) Source of funds to pay expenses during the initial setup and early months of operation;

(14) Written policies for shares, lending, investments, funds management, capital accumulation as required by Part 704, payment systems, and EDP;

(15) Plan for continuity—directors, committee members, and senior management;

(16) Evidence of commitment (i.e., letters and/or contracts used to substantiate projections); and

(17) Services and marketing strategies for financial and correspondent services, including the ability of the proposed corporate credit union to efficiently deliver these products.

IV—Organizing a Corporate Federal Credit Union

The subscribers must submit the following documentation to the NCUA Office of Corporate Credit Unions (OCCU) for processing:

(1) NCUA Form 4001—Federal Credit Union Investigation Report.

(2) NCUA Form 4012—Report of Officials and Agreement to Serve. This form documents general background information for each official and employee of the proposed corporate credit union. Each designee must complete and sign this form. In completing the form, subscribers may disregard any reference to "common bond." In addition, where Section B.2 of the form requires a potential interest

survey sample of at least 250 potential members, subscribers may use a sample of at least 30 potential members.

(3) NCUA Form 4008—Organization Certificate. This document establishes the seven criteria required of subscribers by the Act and is signed by the subscribers and notarized. This document should be executed in duplicate.

(4) NCUA Form 9501—Certification of Resolutions. This document certifies the board of the proposed corporate credit union has resolved to apply for federal insurance of member's accounts and has authorized the chief executive officer and chief financial officer to execute the Application and Agreements for Insurance of Accounts. Both the chief executive officer and recording officer of the proposed corporate credit union must sign this certification.

(5) NCUA Form 9500—Application and Agreements for Insurance of Accounts. This document contains agreements FCUs must comply with in order to obtain NCUA insurance coverage of member accounts. The document must be completed and signed by both the chief executive officer and chief financial officer.

V—Name Selection

It is the responsibility of the corporate FCU organizers to ensure that the proposed corporate FCU name does not constitute an infringement on the name of any corporation in its trade area. This responsibility also includes researching any service marks or trademarks used by any other corporation (including credit unions) in its trade area. NCUA will ensure, to the extent possible, that the corporate credit union's name:

- Is not already being officially used by another FCU;
- Will not be confused with NCUA or another federal or state agency, or with another credit union; and
- Does not include misleading or inappropriate language.

The last three words in the name of every credit union chartered by NCUA must be "Federal Credit Union."

VI—NCUA Review

A—General

OCCU will conduct an independent investigation of the corporate credit union's charter application to assess the economic and long-term viability of the proposed corporate credit union. OCCU field staff will conduct the review and, if necessary, perform an on-site contact with selected officials and others having an interest in the proposed corporate credit union.

The review will include evaluation of proposed management's experience and suitability, commitment of proposed officials, and assessment of economic viability. OCCU field staff may also be called upon to assist subscribers in the proper completion of required forms and the Organization Certificate—NCUA Form 4008.

OCCU field staff will thoroughly analyze the prospective corporate credit union's business plan for realistic projections, attainable goals, and time commitment. Any concerns will be reviewed with the subscribers and discussed with prospective officials.

NCUA will follow the timeline set forth below in processing corporate charter applications:

1. Within 30 days of receipt of the charter package, OCCU field staff will meet with the proposed officials and management team to evaluate the adequacy of management and the information provided and to discuss the FCU's ability to begin operations and meet their financial projections if the charter is approved.

2. On completion of all required reviews, but no later than 60 days after the meeting described above, OCCU field staff will make a recommendation to the OCCU Director regarding the charter application. The recommendation may include provisional requirements to be completed prior to final approval of a corporate FCU charter.

3. Within 30 days of receiving OCCU field staff recommendation, an OCCU analyst will determine if the application package can be forwarded to the NCUA Board for appropriate action, or if it should be returned to the subscribers. The subscribers will receive written notification of this decision.

4. Within 60 days after receipt of a complete application that addresses all of OCCU's concerns, the NCUA Board will vote on the proposed charter. If the charter is approved, the officials must sign a "Letter of Understanding and Agreement" (LUA) before the corporate credit union can commence operations. This LUA will impose certain operational restrictions, require compliance with NCUA's Rules and Regulations and adoption of the standard Corporate FCU Bylaws, and contain several financial performance milestones that the new charter must meet, consistent with Part 704.

B—Finalization of New Charter

If NCUA approves the charter application, the subscribers, as their final duty, will elect the board of directors for the newly chartered corporate FCU. The new board of directors will subsequently appoint the supervisory committee. The corporate FCU must then submit a report of officials to OCCU.

[FR Doc. 2010–24659 Filed 9–30–10; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0952; Directorate Identifier 2010–NM–131–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–201, –202, –203, –223, and –243 Airplanes; Airbus Model A330–300 Series Airplanes; and Airbus Model A340–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

[T]he FAA published SFAR 88 (Special Federal Aviation Regulation 88).

By mail referenced 04/00/02/07/01–L296 of March 4th, 2002 and 04/00/02/07/03–L024 of February 3rd, 2003 the JAA [Joint Aviation Authorities] recommended to the National Aviation Authorities (NAA) the application of a similar regulation.

The aim of this regulation is to require * * * a definition review against explosion hazards.

* * * * *

Failure of the auxiliary power unit (APU) bleed leak detection system could result in overheat of the fuel tank located in the horizontal stabilizer and ignition of the fuel vapors in that tank, which could result in a fuel tank explosion and consequent loss of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by November 15, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.

• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; e-mail *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0952; Directorate Identifier 2010–NM–131–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0089, dated May 10, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> [T]he FAA published SFAR 88 (Special Federal Aviation Regulation 88).
>
> By mail referenced 04/00/02/07/01–L296 of March 4th, 2002 and 04/00/02/07/03–L024 of February 3rd, 2003 the JAA [Joint Aviation Authorities] recommended to the National Aviation Authorities (NAA) the application of a similar regulation.
>
> The aim of this regulation is to require all holders of type certificates for transport aircraft certified after 01 January 1958 with a capacity of 30 passengers or more, or a payload of 3,402 kg or more, to carry out a definition review against explosion hazards.
>
> To be compliant with SFAR88/JAA INT/POL 25/12 requirements, this AD requires the installation of the updated FWC [flight warning computer] software standard which ensures correct operation of the APU bleed leak detection system before each flight.

Failure of the auxiliary power unit (APU) bleed leak detection system could result in overheat of the fuel tank located in the horizontal stabilizer and ignition of the fuel vapors in that tank, which could result in a fuel tank explosion and consequent loss of the airplane. You may obtain further information by examining the MCAI in the AD docket.

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European states who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

Airbus has issued the service information identified in the table below.

RELEVANT SERVICE INFORMATION

Airbus Service Bulletin—	Revision—	Dated—
A330–31–3125	Original	December 31, 2008.
A330–31–3146, including Appendix 01	01	May 5, 2010.
A340–31–4111	Original	February 5, 2007.
A340–31–4125	01	December 9, 2008.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 53 products of U.S. registry. We also estimate that it would take about 5 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $22,525, or $425 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Airbus: Docket No. FAA–2010–0952; Directorate Identifier 2010–NM–131–AD.

Comments Due Date

(a) We must receive comments by November 15, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342 and –343 airplanes, all manufacturer serial numbers except those on which Airbus modification 51790 has been embodied in production or Airbus Service Bulletin A330–31–3066, A330–31–3082, A330–31–3093, or A330–31–3105 has been embodied in service; certificated in any category.

(2) Airbus Model A340–211, –212, –213, –311, –312, and –313 airplanes, all

manufacturer serial numbers; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 31: Instruments.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

[T]he FAA published SFAR 88 (Special Federal Aviation Regulation 88).

By mail referenced 04/00/02/07/01–L296 of March 4th, 2002 and 04/00/02/07/03–L024 of February 3rd, 2003 the JAA [Joint Aviation Authorities] recommended to the National Aviation Authorities (NAA) the application of a similar regulation.

The aim of this regulation is to require * * * a definition review against explosion hazards.

* * * * *

Failure of the auxiliary power unit (APU) bleed leak detection system could result in overheat of the fuel tank located in the horizontal stabilizer and ignition of the fuel vapors in that tank, which could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Actions

(g) Within 6 months after the effective date of this AD, do the applicable actions specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) For Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342 and –343 airplanes: Install flight warning computer (FWC) software standard T3 (part number (P/N) LA2E20202T30000) on both FWCs, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–31–3146, including Appendix 01, Revision 01, dated May 5, 2010.

(2) For Model A340–211, –212, –213, –311, –312, and –313 airplanes: Install FWC software standard L11 (P/N LA2E0060D110000) on both FWCs, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340–31–4125, Revision 01, dated December 9, 2008.

(h) Prior to or concurrently with accomplishing the corresponding requirements of paragraph (g) of this AD, install FWC software standard T2–0 in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–31–3125, dated December 31, 2008 (for Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342 and –343 airplanes).

(i) Prior to or concurrently with accomplishing the corresponding requirements of paragraph (g) of this AD, install FWC software standard L10–1 in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340–31–4111, dated February 5, 2007 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes).

(j) Actions done before the effective date of this AD in accordance with Airbus Service Bulletin A330–31–3146, dated February 2, 2010; or A340–31–4125, dated October 27, 2008; are acceptable for compliance with the corresponding requirements of paragraph (g) of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(k) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(l) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0089, dated May 10, 2010, and the service information identified in Table 1 of this AD, for related information.

TABLE 1—RELATED SERVICE INFORMATION

Airbus Service Bulletin—	Revision—	Dated—
A330–31–3125	Original	December 31, 2008.
A330–31–3146, including Appendix 01	01	May 5, 2010.
A340–31–4111	Original	February 5, 2007.
A340–31–4125	01	December 9, 2008.

Issued in Renton, Washington on September 23, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–24711 Filed 9–30–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0955; Directorate Identifier 2010–NM–013–AD]

RIN 2120–AA64

Airworthiness Directives; 328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–100 and –300 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> During maintenance on a 328–100 aeroplane, a crack was found on a trim tab fitting assembly. The cause of the cracking was identified as stress corrosion.
>
> This condition, if not corrected, could lead to in-flight failure of the tab fitting, possibly resulting in loss of control of the aeroplane.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by November 15, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact 328 Support Services GmbH, Global Support Center, P.O. Box 1252, D–82231 Wessling, Federal Republic of Germany; telephone +49 8153 88111 6666; fax +49 8153 88111 6565; e-mail *gsc.op@328support.de;* Internet *http://www.328support.de.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1503; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0955; Directorate Identifier 2010–NM–013–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0266, dated December 17, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> During maintenance on a 328–100 aeroplane, a crack was found on a trim tab fitting assembly. The cause of the cracking was identified as stress corrosion.
>
> This condition, if not corrected, could lead to in-flight failure of the tab fitting, possibly resulting in loss of control of the aeroplane.
>
> To address this unsafe condition, the TC [type certificate] holder has developed new aileron trim tab fittings and rudder spring tab fitting, using a material that is more resistant to stress corrosion. The improved material rudder spring tab fittings were introduced on the production line for the Model 328–300 and for 328–100 aeroplanes with a s/n [serial number] higher than 3098.
>
> For the reasons described above, this AD requires the * * * replacement of [certain] aileron trim tab fittings and [certain] rudder spring tab fitting[s].

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

328 Support Services GmbH has issued Service Bulletins SB–328–27–488 (for Model 328–100 airplanes), and SB–328J–27–237 (for Model 328–300 airplanes), both dated August 25, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 33 products of U.S. registry. We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $2,252 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $91,146, or $2,762 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH): Docket No. FAA–2010–0955; Directorate Identifier 2010–NM–013–AD.

Comments Due Date

(a) We must receive comments by November 15, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to 328 Support Services GmbH (Type Certificate previously held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–100 and –300 airplanes, certificated in any category, as specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model 328–100 airplanes, all serial numbers, with part number (P/N) 001B576A2101000 left-hand (LH) or P/N 001B576A2101003 right-hand (RH) aileron trim tab fittings installed, or P/N 001A554A1711000 rudder spring tab fitting installed.

(2) Model 328–300 airplanes, all serial numbers, with P/N 001B576A2101000 (LH) or P/N 001B576A2101003 (RH) aileron trim tab fittings installed.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During maintenance on a 328–100 aeroplane, a crack was found on a trim tab fitting assembly. The cause of the cracking was identified as stress corrosion.

This condition, if not corrected, could lead to in-flight failure of the tab fitting, possibly resulting in loss of control of the aeroplane.

* * * * *

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Actions

(g) For Model 328–100 airplanes: Within 6 months after the effective date of this AD, replace the aileron trim tab fittings P/N 001B576A2101000 (LH) and P/N 001B576A2101003 (RH) with P/N 001B576A2101004 (LH) and P/N 001B576A2101007 (RH) respectively; and replace the rudder spring tab fitting P/N 001A554A1711000 with a P/N 001A554A1711006; in accordance with the Accomplishment Instructions of 328 Support Services Service Bulletin SB–328–27–488, dated August 25, 2009.

(h) For Model 328–300 airplanes: Within 6 months after the effective date of this AD, replace the aileron trim tab fittings P/N 001B576A2101000 (LH) and P/N 001B576A2101003 (RH) with P/N 001B576A2101004 (LH) and P/N 001B576A2101007 (RH) respectively, in accordance with the Accomplishment Instructions of 328 Support Services Service Bulletin SB–328J–27–237, dated August 25, 2009.

(i) After replacing the fittings as specified in paragraphs (g) and (h) of this AD, do not install P/N 001B576A2101000 (LH) or P/N 001B576A2101003 (RH) aileron trim tab fittings, or P/N 001A554A1711000 rudder spring tab fittings, on any airplane.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(j) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International

Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Groves, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1503; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(k) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2009–0266, dated December 17, 2009; and 328 Support Services Service Bulletins SB–328–27–488 and SB–328J–27–237, both dated August 25, 2009; for related information.

Issued in Renton, Washington, on September 23, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–24716 Filed 9–30–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1098; Directorate Identifier 2008–NM–108–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes. The original NPRM would have required adding two new indicator lights on the P10 panel to inform the captain and first officer of a low pressure condition in the left and right override/jettison pumps of the center wing tanks. The original NPRM would also have required replacing the left and right override/jettison switches on the M154 fuel control module on the P4 panel with improved switches and doing the associated wiring changes. The original NPRM would have also required a revision to the maintenance program to incorporate airworthiness limitation No. 28–AWL–22. The original NPRM resulted from fuel system reviews conducted by the manufacturer. This action revises the original NPRM by adding a revision to the airplane flight manual to advise the flightcrew what to do in the event that the pump low pressure light on the flight engineer's panel does not illuminate when the pump is selected off; and requiring, for certain airplanes, installation of a mounting bracket for the new indicator lights. We are proposing this supplemental NPRM to prevent uncommanded operation of the override/jettison pumps of the center wing tanks, and failure to manually shut off the override/jettison pumps at the correct time, either of which could lead to an ignition source inside the center wing tank. This condition, in combination with flammable fuel vapors, could result in a center fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this supplemental NPRM by October 26, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Douglas Bryant, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6505; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2008–1098; Directorate Identifier 2008–NM–108–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued a notice of proposed rulemaking (NPRM) (the "original NPRM") to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes. That original NPRM was published in the **Federal Register** on October 16, 2008 (73 FR 61369). That original NPRM proposed to require adding two new indicator lights on the P10 panel to inform the captain and first officer of a low pressure condition in the left and right override/jettison pumps of the center wing tanks. The original NPRM also proposed to require replacing the left and right override/jettison switches on the M154 fuel control module on the P4 panel with improved switches and doing the associated wiring changes. The original NPRM also proposed to require a revision to the maintenance program to incorporate airworthiness limitation No. 28–AWL–22.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the two commenters.

Request To Revise the Airplane Flight Manual (AFM)

Boeing requests that the original NPRM be revised to add a requirement to revise Section 3, "Normal Procedures," of the AFM to require actions by the flight engineer in the event that the pump low pressure light on the flight engineer's panel does not illuminate when the pump is selected off.

We agree that this supplemental NPRM should be revised to require including this information in the AFM. However, we disagree with the specific wording and AFM section proposed by Boeing. In evaluating Boeing's request, we found that there are two causes for an override/jettison pump to run dry. The actions proposed by the original NPRM were intended to prevent an uncommanded-on event that could result in the override/jettison pump running dry, which could lead to an ignition source in the center wing fuel tank. We found that the original proposed actions would address events where the pumps run dry for extended periods of time as might happen when the flight engineer does not shut off the pump at the appropriate time.

However, since the cause of the uncommanded-on event still exists, we find that the AFM must be revised to provide instructions to the flightcrew in the event of a relay failure which leaves the fuel pump powered on after the pump has been switched off (uncommanded-on). We have determined that more precise wording must be used in the supplemental NPRM and that the wording should be added to Section 1, "Certificate Limitations," of the AFM.

Therefore, we have added a new paragraph (i) to this supplemental NPRM and re-identified subsequent paragraphs. We have also revised the Costs of Compliance section of this supplemental NPRM to include the estimated costs for this new action. In addition, we revised the unsafe condition statement to include the additional cause.

Request To Reference Later Revision of Service Bulletin Cited in Original NPRM

Northwest Airlines (NWA) requests that we reference updated service information (*i.e.,* Boeing Service Bulletin 747–28A2288, Revision 1, dated January 21, 2010), instead of Boeing Alert Service Bulletin 747–28A2288, dated March 20, 2008, which was referenced in the original NPRM as the appropriate source of service information for doing the required actions. NWA notes that steps 3.B.46.b.(1) through 3.B.46.b.(11) of Boeing Alert Service Bulletin 747–28A2288, dated March 20, 2008, do not state when the two new installed LOW PRESS lights on the P10 panel come on. NWA explains that if the LOW PRESS lights on the P10 panel are not wired correctly, and those steps are used, the lights could be illuminated properly in the 'Test' mode, but might not illuminate in the actual non-'test' mode with the override/jettison pump switch in the ON position. NWA states that Boeing responded to this concern and stated that the original issue of the alert service bulletin would be revised and would reference actions that are the same as those provided in AWL No. 28–AWL–22 for the functional tests.

Since we published the original NPRM, Boeing has published Boeing Service Bulletin 747–28A2288, Revision 1, dated January 21, 2010. We agree to reference the updated service bulletin as the appropriate source of service information for accomplishing the installation of indicator lights and replacement of switches required by this supplemental NPRM. Boeing has clarified Steps 3.B.44.b.(1) through 3.B.44.b.(11) of Boeing Service Bulletin 747–28A2288, Revision 1, dated January 21, 2010.

In addition, Boeing has also included installation instructions (which include installing a mounting bracket) of the LOW PRESS indicator lights for airplanes that do not have the warning panel (*i.e.,* the P10 panel) installed, and revised the airplane groups.

We have revised paragraphs (c) and (g) of this supplemental NPRM to reference Boeing Service Bulletin 747–28A2288, Revision 1, dated January 21, 2010. For certain airplanes, we also revised paragraph (g) of this supplemental NPRM to require adding a mounting bracket.

Request To Revise Summary and Discussion Sections of Original NPRM

Boeing requests that we revise the Summary and Discussion sections of the original NPRM to add additional detail to the description of required actions.

For the Summary section, Boeing suggests that the text be revised to point out:

- The redundancy in functionality between the two P4 panel indicator lights and the new indicator lights added to the P10 panel;
- The different configurations of the P10 panel (which means that for some airplanes, a bracket would also be installed to provide a mounting surface for the new indicator lights); and
- To explain which flightcrew member is responsible for responding to indications of a pump uncommanded-on event.

For the Discussion section, Boeing also suggests that the text be revised to point out the redundancy in functionality between the two P4 panel indicator lights and the new indicator lights added to the P10 panel. Boeing suggests that, in addition, the text should be revised to provide further details on the similarities and differences between the indicator lights on the P10 and P4 panels; information on a switch replacement for the P4 panel; and further detail on how and when the indicator lights turn on and off along with a detailed description of how a flight engineer should respond to the indicator lights.

We agree that the sections of text need to be clarified. The Summary section of an AD is intended to provide only a brief summary of the AD. Therefore, we have not revised the Summary section of this supplemental NPRM. Also, while the Discussion section is the appropriate section for the detailed information that Boeing proposes, the Discussion section from the original NPRM is not repeated in this supplemental NPRM.

Request To Revise the Work-Hour Estimate

NWA requests that the work-hour estimate to accomplish the original NPRM be increased from the 28 work-hours estimated in the original NPRM to 56.75 work-hours. NWA states that Boeing Alert Service Bulletin 747–28A2288, dated March 20, 2008, does not include a work-hour estimate for accomplishing access and closeup actions provided in BAE Service Bulletin 65B46124–28–03, dated March 28, 2007. NWA points out that the BAE service bulletins, referenced in the original NPRM (and the following table) as additional sources of guidance, provide an estimate of 10 work-hours for access and closeup actions.

BAE SYSTEMS SERVICE BULLETINS

BAE Systems Service Bulletin—	Dated—
65B46124-28-01	February 16, 2006.
65B46124-28-02	March 28, 2007.
65B46124-28-03	March 28, 2007.
65B46214-28-01	February 16, 2006.
65B46214-28-02	March 28, 2007.
65B46214-28-03	March 28, 2007.

We agree to revise the work-hour estimate. However, we do not agree to include incidental costs such as access and closeup. Boeing Service Bulletin 747–28A2288, Revision 1, dated January 21, 2010, provides an estimate of 28 work-hours to accomplish the proposed modification. The BAE service bulletins referenced in that Boeing service bulletin as additional sources of guidance each provide an estimate of 2 additional work-hours to accomplish the modification actions specified in Boeing Service Bulletin 747–28A2288, Revision 1, dated January 21, 2010. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs such as the time required to gain access and closeup, time necessary for planning, or time necessitated by other administrative actions. Those incidental costs, which might vary significantly among operators, are almost impossible to calculate. We cannot provide specific information regarding the cost of parts from BAE to do the proposed modification. The parts costs will likely vary depending on the airplane group. However, we can reasonably estimate that the cost of the parts from BAE will be at least between $100 and $200 per airplane, depending on airplane group. We specifically invite the submission of comments and other data regarding the costs of this proposed AD.

We have revised the estimate to between 30 and 32 work-hours, depending on airplane group. Also, Boeing Service Bulletin 747–28A2288, Revision 1, dated January 21, 2010, revises the parts cost estimate provided in the original issue of that service bulletin. We have revised the parts costs estimate in the Costs of Compliance section of this supplemental NPRM accordingly.

Incorrect Numbers

AWL No. 28–AWL–22 of Section D of the Boeing 747–100/200/300/SP Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–13747–CMR, Revision March 2008, contains an incorrect section number. Where the AWL states "28–31–00," the correct section number is "28–42–00." Boeing is aware of this discrepancy and plans to issue a revision. We have included this information in paragraph (h) of this AD.

Boeing Service Bulletin 747–28A2288, Revision 1, dated January 21, 2010, contains an incorrect sub-section number and incorrect part numbers. Where Boeing Service Bulletin 747–28A2288, Revision 1, dated January 21, 2010, states "20–60–00," the correct sub-section number is "28–60–06." Where Figures 22 through 32 of Boeing Service Bulletin 747–28A2288, Revision 1, dated January 21, 2010, state certain part numbers for a nut, a bolt, and a washer (BACN10JC06CD, BACS12HN06–10, and NAS1149D0632J respectively), the correct part numbers are BACN10NW1, BACS12HN04–6 (for a screw instead of a bolt), and NAS1149DN416J, respectively. Boeing is aware of these discrepancies and plans to issue a revision. We have included this information in paragraph (g) of this AD.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

We are proposing this supplemental NPRM because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design. Certain changes described above expand the scope of the original NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this supplemental NPRM.

Costs of Compliance

We estimate that this proposed AD would affect 185 airplanes of U.S. registry. The average labor rate per work-hour is $85. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work-hours	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Boeing Service Bulletin 747–28A2288, Revision 1.	Between 30 and 32	Between $2,768 and $2,868.	Between $5,318 and $5,588.	185	Between $983,830 and $1,033,780.
AFM revision	1	None	$85	185	$15,725

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This

proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866,

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

The Boeing Company: Docket No. FAA–2008–1098; Directorate Identifier 2008–NM–108–AD.

Comments Due Date

(a) We must receive comments by October 26, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes, certificated in any category; as identified in Boeing Service Bulletin 747–28A2288, Revision 1, dated January 21, 2010.

Note 1: This AD requires revisions to certain operator maintenance documents to include a new inspection. Compliance with this inspection is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this inspection, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (1) of this AD. The request should include a description of changes to the required inspection that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Unsafe Condition

(e) This AD results from fuel system reviews conducted by the manufacturer. The Federal Aviation Administration is issuing this AD to prevent uncommanded operation of the override/jettison pumps of the center wing tanks, and failure to manually shut off the override/jettison pumps at the correct time, either of which could lead to an ignition source inside the center wing tank. This condition, in combination with flammable fuel vapors, could result in a center fuel tank explosion and consequent loss of the airplane.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Installation of Indicator Lights and Replacement of Switches

(g) Within 36 months after the effective date of this AD: Add two new indicator lights on the P10 panel to inform the captain and first officer of a low pressure condition in the left and right override/jettison pumps of the center wing tanks; and, for airplanes that do not have the warning panel (P10 panel) installed, add a mounting bracket; and replace the left and right override/jettison switches on the M154 fuel control module on the P4 panel with improved switches; and do the associated wiring changes. Accomplish these actions by doing all of the applicable actions specified in the Accomplishment Instructions of Boeing Service Bulletin 747–28A2288, Revision 1, dated January 21, 2010, except where that service bulletin states "20–60–00," the correct sub-section number is "28–60–06," and as described in Table 1 of this AD.

TABLE 1—PART NUMBER CORRECTION

Part name	Part number specified in Figures 22 through 32 of Boeing Service Bulletin 747–28A2288, Revision 1, dated January 21, 2010	Part name of correct part	Correct part number
Nut	BACN10JC06CD	Nut	BACN10NW1
Bolt	BACS12HN06–10	Screw	BACS12HN04–6
Washer	NAS1149D0632J	Washer	NAS1149DN416J

Note 2: For airplanes equipped with certain M154 fuel control modules, paragraph 2.C.2 of Boeing Service Bulletin 747–28A2288, Revision 1, dated January 21, 2010, refers to the BAE Systems service bulletins identified in Table 2 of this AD, as applicable, as additional sources of guidance for replacing the switches.

TABLE 2—ADDITIONAL SOURCES OF GUIDANCE

Service bulletin	Date
BAE Systems Service Bulletin 65B46124-28-01	February 16, 2006.
BAE Systems Service Bulletin 65B46124-28-02	March 28, 2007.
BAE Systems Service Bulletin 65B46124-28-03	March 28, 2007.
BAE Systems Service Bulletin 65B46214-28-01	February 16, 2006.
BAE Systems Service Bulletin 65B46214-28-02	March 28, 2007.
BAE Systems Service Bulletin 65B46214-28-03	March 28, 2007.

Maintenance Program Revision

(h) Concurrently with accomplishing the actions required by paragraph (g) of this AD, revise the maintenance program by incorporating Airworthiness Limitation (AWL) No. 28–AWL–22 of Section D of the Boeing 747–100/200/300/SP Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–13747–CMR, Revision March 2008. Where the AWL states "28–31–00," the correct section number is "28–42–00."

Airplane Flight Manual (AFM) Revision

(i) Concurrently with accomplishing the actions required by paragraph (g) of this AD, revise Section 1, "Certificate Limitations," of the applicable Boeing 747 AFM to include the following statement. This may be done by inserting a copy of this AD into the AFM.

"When the center tank override jettison pumps are selected off, the amber pump low pressure lights on the Flight Engineer's panel should illuminate and remain on. If a pump low pressure light on the Flight Engineer's panel does not illuminate, open the associated pump circuit breaker."

Note 3: When a statement identical to that in paragraph (i) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

No Alternative Inspections or Inspection Intervals

(j) After accomplishing the action specified in paragraph (h) of this AD, no alternative inspections or inspection intervals may be used unless the inspections or inspection intervals are approved as an AMOC in accordance with the procedures specified in paragraph (l) of this AD.

Terminating Action for Maintenance Program Revision

(k) Incorporating AWL No. 28–AWL–22 into the maintenance program in accordance with paragraph (g) of AD 2008–10–07, Amendment 39–15513, or AD 2008–10–07 R1, Amendment 39–16070, terminates the action required by paragraph (h) of this AD.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Douglas Bryant, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6505; fax (425) 917–6590. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on September 20, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–24717 Filed 9–30–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0953; Directorate Identifier 2010–NM–010–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Corporation Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Model MD–90–30 airplanes. This proposed AD would require repetitive high frequency eddy current inspections for cracking on the hinge bearing lugs of the left and right sides of the center section ribs of the horizontal stabilizer, and related investigative and corrective actions if necessary. This proposed AD results from reports of cracks found on either the left or right (or in one case, both) sides of the center section ribs of the horizontal stabilizer. We are proposing this AD to detect and correct cracking in the hinge bearing lugs of the center section of the left and right ribs, which could result in failure of the hinge bearing lugs and consequent inability of the horizontal stabilizer to sustain the required loads.

DATES: We must receive comments on this proposed AD by November 15, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5233; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0953; Directorate Identifier 2010–NM–010–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received seven reports of cracks found on either the left or right (or in one case, both) sides of the center section ribs of the horizontal stabilizer. These cracks were located on the aft face of the hinge bearing lugs on the horizontal stabilizer. Cracks were reported on MD–90 airplanes that had accumulated 9,051 to 21,183 total flight hours, and 8,939 to 20,893 total flight cycles. The cause of the cracking has not been determined. Undetected cracking in the hinge bearing lugs of the center section of the left and right ribs, if not corrected, could result in failure of the hinge bearing lugs and consequent inability of the horizontal stabilizer to sustain the required loads.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin MD90–55A016, Revision 1, dated February 17, 2010. Boeing Alert Service Bulletin MD90–55A016, Revision 1, dated February 17, 2010, describes procedures for doing repetitive high frequency eddy current (HFEC) inspections for cracking on the hinge bearing lugs on the aft face of the horizontal stabilizer center section on the left and right ribs, and doing applicable related investigative and corrective actions. The related investigative action is measuring the crack length. The corrective actions include blending out cracks and replacing the rib of the center section of the horizontal stabilizer. For airplanes on which a blend out is done, Boeing Alert Service Bulletin MD90–55A016, Revision 1, dated February 17, 2010, describes procedures for doing repetitive HFEC inspections for cracking of the blend out. For airplanes on which the replacement is done, Boeing Alert Service Bulletin MD90–55A016, Revision 1, dated February 17, 2010, describes procedures for doing repetitive HFEC inspections for cracking of the replaced horizontal stabilizer rib.

For the initial HFEC inspection, Boeing Alert Service Bulletin MD90–55A016, Revision 1, dated February 17, 2010, specifies a compliance time of before the accumulation of 7,200 total flight cycles or within 1,505 flight cycles after the original issue date of Boeing Alert Service Bulletin MD90–55A016, Revision 1, dated February 17, 2010, whichever occurs later.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and Service Bulletin."

Differences Between the Proposed AD and Service Bulletin

For Condition 2A specified in Boeing Alert Service Bulletin MD90–55A016, Revision 1, dated February 17, 2010, the service bulletin specifies doing repetitive inspections of the blend out but did not identify corrective actions when cracks are found during those inspections. This proposed AD would require replacing the horizontal stabilizer center section rib when cracks are found during inspections of the blend out. We have coordinated this difference with Boeing.

For Condition 2B specified in Boeing Alert Service Bulletin MD90–55A016, Revision 1, dated February 17, 2010, the service bulletin specifies doing repetitive inspections of the replaced horizontal stabilizer center section rib at intervals not to exceed 1,680 flight cycles. This proposed AD would require doing an inspection of the replaced horizontal stabilizer center section rib and all applicable corrective actions and repetitive inspections (for Condition 1, the repetitive interval is 1,680 flight cycles; for Condition 2A, the repetitive interval is 400 flight cycles).

Interim Action

We consider this proposed AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

Costs of Compliance

We estimate that this proposed AD would affect 16 airplanes of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $2,720, or $170 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866,

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

McDonnell Douglas Corporation: Docket No. FAA–2010–0953; Directorate Identifier 2010–NM–010–AD.

Comments Due Date

(a) We must receive comments by November 15, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas Corporation Model MD–90–30 airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 55: Stabilizers.

Unsafe Condition

(e) This AD results from reports of cracks found on either the left or right (or in one case, both) sides of the center section ribs of the horizontal stabilizer. The Federal Aviation Administration is issuing this AD to detect and correct cracking in the hinge bearing lugs of the center section of the left and right ribs, which could result in failure of the hinge bearing lugs and consequent inability of the horizontal stabilizer to sustain the required loads.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Repetitive Inspections and Corrective Actions for Cracking

(g) At the applicable time in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin MD90–55A016, Revision 1, dated February 17, 2010, except as required by paragraph (n) of this AD, do a high frequency eddy current (HFEC) inspection for cracking on the hinge bearing lugs of the left and right sides of the center section ribs of the horizontal stabilizer, and do all applicable related investigative actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–55A016, Revision 1, dated February 17, 2010. Do all applicable related investigative actions before further flight.

(h) If during any inspection required by paragraph (g) of this AD, no cracking is found, repeat the inspection required by paragraph (g) of this AD thereafter at intervals not to exceed 1,680 flight cycles.

(i) If during any inspection required by paragraph (g) or (h) of this AD, any crack is found having a length between Points 'A' and 'B' less than or equal to 0.15 inch and crack length between Points 'C' and 'D' less than or equal to 0.05 inch, as identified in Boeing Alert Service Bulletin MD90–55A016, Revision 1, dated February 17, 2010: Before further flight, blend out the crack; and within 1,000 flight cycles after doing the blend out, do an HFEC inspection of the blend out on the center section rib hinge bearing lug; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–55A016, Revision 1, dated February 17, 2010. Repeat the HFEC inspection of the blend out thereafter at intervals not to exceed 400 flight cycles until the replacement specified by paragraph (j) is done.

(j) If any cracking is detected during any inspection required by paragraph (i) of this AD, before further flight, replace the horizontal stabilizer center section rib with a new horizontal stabilizer center section rib, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–55A016, Revision 1, dated February 17, 2010.

(k) If during any inspection required by paragraph (g) or (h) of this AD, any crack is found having a length between Points 'A' and 'B' greater than 0.15 inch or crack length between Points 'C' and 'D' greater than 0.05 inch, as identified in Boeing Alert Service Bulletin MD90–55A016, Revision 1, dated February 17, 2010: Before further flight, replace the horizontal stabilizer center section rib with a new horizontal stabilizer center section rib, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–55A016, Revision 1, dated February 17, 2010.

(l) For any airplane having a horizontal stabilizer center section rib replaced during the actions required by paragraph (j) or (k) of this AD: Before the accumulation of 7,200 total flight cycles on the new horizontal stabilizer center section rib, do the actions required by paragraph (g) of this AD, and do all applicable actions specified in paragraphs (h), (i), (j), and (k) of this AD.

Credit for Actions Accomplished According to Previous Issue of Service Bulletin

(m) Actions accomplished before the effective date of this AD according to Boeing Alert Service Bulletin MD90–55A016, dated December 16, 2009, are considered acceptable for compliance with the corresponding actions required by paragraphs (g), (h), (i), (j), and (k) of this AD.

Exceptions to the Service Bulletin

(n) Where Boeing Alert Service Bulletin MD90–55A016, Revision 1, dated February 17, 2010, specifies a compliance time "after the original issue date on the service bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, Los Angeles ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5233; fax (562) 627–5210.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on September 23, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–24715 Filed 9–30–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0951; Directorate Identifier 2010–NM–107–AD]

RIN 2120–AA64

Airworthiness Directives; Learjet Inc. Model 45 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Model 45 airplanes. This proposed AD would require a general visual inspection for damage of wiring (including chafing, pinched wires, and exposed wires) and correct routing of wires in the left and right circuit breaker panels, and related investigative and corrective actions if necessary. This proposed AD results from reports of wire damage on the pilot and copilot circuit breaker panels caused by a short circuit between chafed wires. We are proposing this AD to detect and correct damaged or misrouted wires, which could result in a short circuit and the loss of systems associated with the wiring (including fire suppression function for one engine and essential avionics systems).

DATES: We must receive comments on this proposed AD by November 15, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942; telephone 316–946–2000; fax 316–946–2220; e-mail *ac.ict@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kevin Schwemmer, Aerospace Engineer, Electrical Systems and Avionics, ACE–119W, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4174; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0951; Directorate Identifier 2010–NM–107–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received reports of a wire failure associated with the pilot and copilot circuit breaker panel that could result in toxic gases in the crew compartment. Wire damage caused by a short circuit and subsequent burning of wires have been reported on four Model 45 airplanes. In all four incidents, the wire damage was associated with the 28 volts direct current (VDC) power for the fire-suppression system. This condition, if not corrected, could result in wire damage caused by a short circuit, which could result in the loss of systems associated with the wiring (including fire suppression function for one engine and essential avionics systems).

Relevant Service Information

We have reviewed Bombardier Alert Service Bulletin A40–24–11, dated November 16, 2009; and Bombardier Alert Service Bulletin A45–24–16, dated November 16, 2009. The service information describes procedures for doing a general visual inspection for damage of wiring (including chafing, pinched wires, and exposed wires) and correct routing of wires in the left and right circuit breaker panels, and related investigative and corrective actions, if necessary. The related investigative action is doing a general visual inspection for arcing damage on the mounting brackets of the forward circuit breaker panel. Depending on inspection findings, the corrective actions are replacing damaged (chafed, pinched, or exposed) wires, and re-routing any incorrectly routed wires; and contacting the manufacturer for repair instructions and doing the repair.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and Service Bulletin."

Differences Between the Proposed AD and Service Bulletin

Although Bombardier Alert Service Bulletin A40–24–11, dated November 16, 2009; and Bombardier Alert Service Bulletin A45–24–16, dated November 16, 2009; specify that operators may contact the manufacturer for disposition of certain repair conditions, this proposed AD would require operators to repair those conditions using a method approved by the FAA.

Costs of Compliance

We estimate that this proposed AD would affect 339 airplanes of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $28,815, or $85 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866,

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Learjet Inc.: Docket No. FAA–2010–0951; Directorate Identifier 2010–NM–107–AD.

Comments Due Date

(a) We must receive comments by November 15, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Learjet Inc. Model 45 airplanes, certificated in any category; having serial numbers identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Serial numbers 45–2001 through 45–2114 inclusive, 45–2116 through 45–2120 inclusive, 45–2122, 45–2125, and 45–2126.

(2) Serial numbers 45–005 through 45–380 inclusive, 45–382 through 45–391 inclusive, 45–393 through 45–396 inclusive, 45–398, 45–400, 45–401, and 45–403.

Subject

(d) Air Transport Association (ATA) of America Code 24: Electrical power.

Unsafe Condition

(e) This AD results from reports of wire damage on the pilot and copilot circuit breaker panels caused by a short circuit between chafed wires. The Federal Aviation Administration is issuing this AD to detect and correct damaged or misrouted wires, which could result in a short circuit and the loss of systems associated with the wiring (including fire suppression function for one engine and essential avionics systems).

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection and Corrective Action

(g) Within 50 flight hours after the effective date of this AD: Do a general visual inspection for damage of wiring and correct routing of wires in the left and right circuit breaker panels, and all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A40–24–11, dated November 16, 2009; or Bombardier Alert Service Bulletin A45–24–16, dated November 16, 2009; as applicable; except if arcing damage is found on the mounting brackets of the forward circuit breaker panel, before further flight, repair in accordance with a method approved by the Manager, Wichita Aircraft Certification Office, FAA. Do all applicable related investigative and corrective actions before further flight.

Note 1: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Kevin Schwemmer, Aerospace Engineer, Electrical Systems and Avionics, ACE–119W, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4174; fax (316) 946–4107.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on September 24, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–24713 Filed 9–30–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0954; Directorate Identifier 2010–NM–078–AD]

RIN 2120–AA64

Airworthiness Directives; Hawker Beechcraft Corporation (Type Certificate Previously Held by Raytheon Aircraft Company; Beech Aircraft Corporation) Model 400A and 400T Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Model 400A, and 400T airplanes. This proposed AD would require a detailed inspection for proper sealant of the left and right pylon firewall structures, and corrective actions if necessary. This proposed AD results from reports of missing sealant on the left and right pylon firewall structures. We are proposing this AD to detect and correct missing sealant on the left and right pylon firewall structures, which, in the event of an engine fire, could result in flames penetrating the seams in the firewall between the engine and the aft fuselage, and a subsequent uncontrolled fire in the aft fuselage.

DATES: We must receive comments on this proposed AD by November 15, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Hawker Beechcraft Corporation, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085; telephone 316–676–8238; fax 316–676–6706; e-mail *tmdc@hawkerbeechcraft.com;* Internet *https://www.hawkerbeechcraft.com/*

service_support/pubs. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Thomas Teplik, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4196; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0954; Directorate Identifier 2010–NM–078–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received reports of missing sealant on the left and right pylon firewall structures. The sealant may not have been applied on the firewall at the seams in production. Pylon firewall structures that do not have this sealant do not meet the applicable design intent. In the event of an engine fire, flames could penetrate the seams in the firewall between the engine and the aft fuselage. Missing or inadequate sealant, if not corrected, combined with the event of an engine fire could result in an uncontrolled fire in the aft fuselage.

Relevant Service Information

We have reviewed Hawker Beechcraft Mandatory Service Bulletin SB 54–3946, Revision 2, dated February 2010. This service bulletin describes procedures for doing an inspection of the left and right pylon for coverage of firewall sealant on the seams, and corrective actions. While Hawker Beechcraft Mandatory Service Bulletin SB 54–3946, Revision 1, dated May 2009, provides the procedures for doing the inspection of the left and right pylon for coverage of firewall sealant on the seams and applying sealant, it does not specify the dimensions of the sealant. Corrective actions include cleaning, sealing, or recoating affected areas; and recoating sealant. Figure 4 of Hawker Beechcraft Mandatory Service Bulletin SB 54–3946, Revision 2, dated February 2010, contains the specifications of the sealant depth.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and Service Information."

Differences Between the Proposed AD and Service Information

Hawker Beechcraft Mandatory Service Bulletin SB 54–3946, Revision 2, dated February 2010, specifies a compliance time of the next scheduled inspection, but no later than 12 months after the date of the service bulletin revision. This proposed AD would require a compliance time of within 200 flight hours or within 12 months after the effective date of this AD, whichever occurs first. The service bulletin also does not specify what type of inspection to perform. This AD requires that a detailed inspection be performed.

Costs of Compliance

We estimate that this proposed AD would affect 165 airplanes of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $14,025, or $85 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866,

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Hawker Beechcraft Corporation (Type Certificate Previously Held by Raytheon Aircraft Company; Beech Aircraft Corporation): Docket No. FAA–2010–0954; Directorate Identifier 2010–NM–078–AD.

Comments Due Date

(a) We must receive comments by November 15, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Hawker Beechcraft Corporation (Type Certificate previously held by Raytheon Aircraft Company; Beech Aircraft Corporation), certificated in any category; as identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model 400A airplanes having serial numbers RK–337 through RK–484, RK–486 through RK–570 inclusive, RK–572, RK–573, and RK–575 through RK–577 inclusive.

(2) Model 400T airplane having serial number TX–13.

Subject

(d) Air Transport Association (ATA) of America Code 54: Nacelles/Pylons.

Unsafe Condition

(e) This AD results from reports of missing sealant on the left and right pylon firewall structures. The Federal Aviation Administration is issuing this AD to detect and correct missing sealant on the left and right pylon firewall structures, which, in the event of an engine fire, could result in flames penetrating the seams in the firewall between the engine and the aft fuselage, and a subsequent uncontrolled fire in the aft fuselage.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection and Corrective Action

(g) Within 200 flight hours or 12 months after the effective date of this AD, whichever occurs first: Do a detailed inspection for appropriate coverage of firewall sealant of the left and right pylon firewall structure, as specified in the figures of Hawker Beechcraft Mandatory Service Bulletin SB 54–3946, Revision 2, dated February 2010, and all applicable corrective actions; in accordance with the Accomplishment Instructions of Hawker Beechcraft Mandatory Service Bulletin SB 54–3946, Revision 2, dated February 2010. Do all applicable corrective actions before further flight.

Note 1: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Thomas Teplik, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4196; fax (316) 946–4107.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on September 23, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–24714 Filed 9–30–10; 8:45 am]

BILLING CODE 4910–13–P

INTERNATIONAL TRADE COMMISSION

19 CFR Part 210

Rules of Adjudication and Enforcement

AGENCY: International Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States International Trade Commission ("Commission") proposes to amend its Rules of Practice and Procedure concerning rules of general application, adjudication, and enforcement. The amendments are necessary to gather more information on public interest issues arising from complaints filed with the Commission requesting institution of an investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337. The intended effect of the proposed amendments is to aid the Commission in identifying investigations that require further development of public interest issues in the record, and to identify and develop information regarding the public interest at each stage of the investigation.

DATES: To be assured of consideration, written comments must be received by 5:15 p.m. on November 30, 2010.

ADDRESSES: You may submit comments, identified by docket number MISC–032, by any of the following methods:

—*Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

—*Agency Web Site: http://www.usitc.gov.* Follow the instructions for submitting comments on the web site at *http://www.usitc.gov/secretary/edis.htm.*

—*E-mail: james.worth@usitc.gov.* Include docket number MISC–032 in the subject line of the message.

—*Mail:* For paper submission. U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436.

—*Hand Delivery/Courier:* U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436. From the hours of 8:45 a.m. to 5:15 p.m.

Instructions: All submissions received must include the agency name and docket number (MISC–032), along with a cover letter stating the nature of the commenter's interest in the proposed rulemaking. All comments received will be posted without change to *http://www.usitc.gov,* including any personal information provided. For paper copies, a signed original and 14 copies of each set of comments should be submitted to Marilyn R. Abbott, Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436.

Docket: For access to the docket to read background documents or comments received, go to *http://www.usitc.gov* and/or the U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: James Worth, telephone 202–205–3065, or Megan Valentine, telephone, 202–708–2301, Office of the General Counsel, United States International Trade Commission. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.*

SUPPLEMENTARY INFORMATION: The preamble below is designed to assist readers in understanding these proposed amendments to the Commission Rules. This preamble provides background information, a regulatory analysis of the proposed amendments, a section-by-section explanation of the proposed amendments to part 210, and a description of the proposed amendments to the rules. The Commission encourages members of the public to comment, in addition to any other comments they wish to make on the proposed amendments, on whether the language of the proposed amendments is sufficiently clear for users to understand.

If the Commission decides to proceed with this rulemaking after reviewing the comments filed in response to this notice, the proposed rule revisions will be promulgated in accordance with the applicable requirements of the Administrative Procedure Act ("APA") (5 U.S.C. 553), and will be codified in 19 CFR part 210.

Background

Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. This rulemaking seeks to improve provisions of the Commission's existing Rules of Practice and Procedure. The Commission proposes amendments to its rules covering investigations under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) ("section 337") in order to increase the efficiency of its section 337 investigations.

This rulemaking effort began in 2010, as part of an effort to gather information on the public interest at an earlier stage in the investigation, and to aid the Commission in determining when to delegate part of the development of the record on the public interest to the administrative law judge. The Commission invites the public to comment on all of these proposed rules amendments. In any comments, please consider addressing whether the language of the proposed amendments is sufficiently clear for users to understand. In addition please consider addressing how the proposed rules amendments could be improved, and/or offering specific constructive alternatives where appropriate.

Consistent with its ordinary practice, the Commission is issuing these proposed amendments in accordance with the applicable requirements of section 553 of the APA. This procedure entails the following steps: (1) Publication of a notice of proposed rulemaking; (2) solicitation of public comments on the proposed amendments; (3) Commission review of public comments on the proposed amendments; and (4) publication of final amendments at least thirty days prior to their effective date.

Regulatory Analysis of Proposed Amendments to the Commission's Rules

The Commission has determined that the final rules do not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and thus do not constitute a significant regulatory action for purposes of the Executive Order.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is inapplicable to this rulemaking because it is not one for which a notice of final rulemaking is required under 5 U.S.C. 553(b) or any other statute. Although the Commission has chosen to publish a notice of proposed rulemaking, these proposed regulations are "agency rules of procedure and practice," and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b).

These proposed rules do not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999).

No actions are necessary under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) because the proposed rules will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments.

The proposed rules are not major rules as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). Moreover, they are exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (Pub. L. 104–121) because they concern rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

The amendments are not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), because it is part of an administrative action or investigation against specific individuals or entities. 44 U.S.C. 3518(c)(1)(B)(ii).

Subpart C—Pleadings

Sections 210.12 and 210.13

Section 210.12 generally provides the requirements for a complaint, and § 210.13 generally provides requirements for responses to the complaint. To obtain information from the complainant on the existence and nature of any public interest issues raised by the complaint at the time of its filing, the Commission proposes adding a paragraph (a)(12) to § 210.12 to require that the complainant provide in the complaint specific information regarding any public interest issues arising from the complaint. The complaint should address how issuance of an exclusion order and/or a cease and desist order in this investigation could affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. In particular, the complaint should:

- Explain how the articles potentially subject to the orders are used in the United States;
- Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;
- Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and
- Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

The Commission further proposes adding a paragraph (k) to § 210.12 to provide that, when a complaint is filed, the Secretary to the Commission will publish a notice in the **Federal Register** soliciting comments from the public and/or the proposed respondents on any public interest issues arising from the complaint.

Similarly, to obtain information from respondents on the existence and nature of any public interest issues arising from the complaint at the time of the response to the complaint, the Commission proposes adding a new paragraph (b)(4) to § 210.13(b) to require the respondents to respond to the public interest issues raised by the complaint. Respondents may also address any comments received from the public with respect to the public interest.

Subpart G—Determinations and Actions Taken

Sections 210.50

Section 210.50 provides that the Commission, in the event of a violation of section 337, shall consider the appropriateness of an exclusion order or a cease and desist order in light of the public interest factors; the Commission must also determine whether, and in what amount, bonding is appropriate. Thus, in the event of a violation of section 337, it is the responsibility of the Commission to make determinations regarding remedy, the public interest, and bonding. Section 210.50(a)(4) provides that the Commission may receive submissions from the parties and the public on these issues. Section 210.50(b)(1) provides that the administrative law judge shall take evidence with respect to the issues of remedy and bonding, but not with respect to the public interest unless the Commission orders otherwise. The Commission proposes to amended § 210.50(b)(1) to also provide that if the Commission orders the administrative law judge to take evidence on the public interest, the administrative judge shall address the public interest in the recommended determination under § 210.42(a)(1)(ii) and that the extent of the taking of discovery by the parties shall be at the discretion of the presiding administrative law judge. The Commission proposes to add language to § 210.50(a)(4) to provide that, after the service of the recommended determination on remedy by the presiding administrative law judge, the parties are instructed to submit to the Commission within 30 days any information relating to the public interest, including any updates to the information provided in the complaint and response as required by the proposed amendments to §§ 210.12 and 210.13.

List of Subjects in 19 CFR Part 210

Administrative practice and procedure, Business and industry, Customs duties and inspection, Imports, Investigations.

For the reasons stated in the preamble, the United States International Trade Commission proposes to amend 19 CFR part 210 as follows:

PART 210—ADJUDICATION AND ENFORCEMENT

1. The authority citation for part 210 continues to read as follows:

Authority: 19 U.S.C. 1333, 1335, and 1337.

Subpart C—Pleadings

2. Amend § 210.12 by adding paragraphs (a)(12) and (k) to read as follows:

§ 210.12 The complaint.

(a) * * *

(12) *Provide specific information regarding the public interest.* Address how issuance of an exclusion order and/or a cease and desist order in this investigation could affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. In particular,

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

* * * * *

Publication of notice of filing. When a complaint is filed, the Secretary to the Commission will publish a notice in the **Federal Register** soliciting comments from the public and/or proposed respondents on any public interest issues arising from the complaint and potential exclusion and/or cease and desist orders. Members of the public and proposed respondents may provide specific information regarding the public interest in a written submission not to exceed five pages to the Secretary to the Commission within five days of publication of notice of the filing of a complaint. Members of the public and proposed respondents may address how issuance of an exclusion order and/or a cease and desist order in this investigation could affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. In particular, members of the public and proposed respondents may:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

3. Amend § 210.13 by adding a paragraph (b)(4) to read as follows:

§ 210.13 The response.

* * * * *

(b) * * *

Provide additional information on the public interest, as well as respond to the issues raised by the complaint as set forth in § 210.12(a)(12). The response may also address any comments received from members of the public with respect to the public interest pursuant to § 210.12(k).

* * * * *

Subpart G—Determinations and Actions Taken

3. Amend § 210.50 by revising paragraphs (a)(4) and (b)(1) to read as follows:

§ 210.50 Commission action, the public interest, and bonding by respondents.

* * * * *

(a) * * *

(4) Receive submissions from the parties, interested persons, and other Government agencies and departments with respect to the subject matter of paragraphs (a)(1), (a)(2), and (a)(3) of this section. After a recommended determination on remedy is certified by the presiding administrative law judge, the parties are instructed to submit to the Commission, within 30 days from service of the recommended determination, any information relating to the public interest, including any updates to the information requested by §§ 210.12(a)(12) and 210.13(b)(4). Members of the public may also submit information with respect to the public interest.

(b) * * *

(1) With respect to an administrative law judge's ability to take evidence or other information and to hear arguments from the parties and other interested persons on the issues of appropriate

Commission action, the public interest, and bonding by the respondents for purposes of an initial determination on temporary relief, see §§ 210.61, 210.62, and 210.66(a). For purposes of the recommended determination required by § 210.42(a)(1)(ii), an administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons on the issues of appropriate Commission action and bonding by the respondents. Unless the Commission orders otherwise, an administrative law judge shall not take evidence on the issue of the public interest for purposes of the recommended determination under § 210.42(a)(1)(ii). If the Commission orders the administrative law judge to take evidence with respect to the public interest, the extent of the taking of discovery by the parties shall be at the discretion of the presiding administrative law judge.

* * * * *

By order of the Commission.

Issued: September 27, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–24563 Filed 9–30–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF STATE

22 CFR Part 62

[Public Notice: 7077]

RIN 1400–AC67

Exchange Visitor Program—Fees and Charges

AGENCY: U.S. Department of State.

ACTION: Proposed rule with request for comment.

SUMMARY: The U.S. Department of State (Department) is proposing to revise its Fees and Charges assessed for providing Exchange Visitor Program (EVP) services to recoup the Department's costs associated with operating all aspects of the Exchange Visitor Program.

DATES: The Department will accept comments from the public through November 30, 2010.

ADDRESSES: You may submit comments, identified by any of the following methods:

- Persons with access to the Internet will be able to view and comment on the rule and supporting documentation, including the supporting cost study, by going to the Regulations.gov Web site *http://www.regulations.gov/search/Regs/home.html#home,* and searching on docket ID DOS–2010–0214.
- *Mail (paper, disk, or CD–ROM submissions):* U.S. Department of State, Office of Designation, SA–5, Floor 5, 2200 C Street, NW., Washington, DC 20522
- *E-mail: JExchanges@state.gov.* You must include the title and RIN (1400–AC67) in the subject line of your message.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Deputy Assistant Secretary for Private Sector Exchange, U.S. Department of State, SA–5, Floor 5, 2200 C Street, NW., Washington, DC 20522, 202–632–2805, or email at *jexchanges@state.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of Section 810 of the United States Information and Educational Exchange Act of 1948, as amended, 22 U.S.C. 1475e, and the Independent Offices Appropriations Act of 1952 (IOAA), 31 U.S.C. 9701, and following the guidelines set forth in Office of Management and Budget (OMB) Circular No. A–25, user fees for Exchange Visitor Program Services were adopted for the first time in 2000. Regulations adopting sufficient fees to recover the full cost of its administrative processing of requests for designation, redesignation, and for requests by program participants for certain services for which application is required were adopted. OMB Circular No. A–25 directs the Agency review of fees and services every two years.

The current fee for an application for designation or an application for redesignation is $1,748.00 and the fee for foreign national exchange participants requesting individual program services, including a change of program category, program extension, reinstatement, etc. is currently $246.00 per request. The Department proposes amendment of both fees to: $2,700 and $233.00 respectively. The new proposed fee for either program designation or redesignation will increase by $952 (redesignation is required every two years) while the fee assessed program participants will decrease by $13.00. The increase in program designation and redesigantion requests is necessary to recoup the costs of application reviews, requests for amendments to program designations, and allotment requests, as well as the cost for enhanced compliance programs, regulatory review and development, outreach and general program administration, as explained below. These changes are necessary because the current fee for program designation and redesignation applications was calculated on a unit cost basis that assumed and projected a larger number of such applications than has proven to be received.

	Current	Proposed	Increase/Decrease
Designation/Redesignation	$1,748.00	$2,700.00	$952
Individual Applications	246.00	233.00	−$13

The U.S. Department of State designates U.S. government, academic, and private sector entities to conduct educational and cultural exchange programs pursuant to a broad grant of authority provided by the Mutual Educational and Cultural Exchange Act of 1961, as amended (Fulbright-Hays Act), 22 U.S.C. 2451 *et seq.*; the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(J); the Foreign Affairs Reform and Restructuring Act of 1998, Public Law 105–277; as well as other statutory enactments, Reorganization Plans and Executive Orders. Under those authorities, 1,226 sponsor organizations facilitate the entry of more than 300,000 exchange participants each year.

The Fulbright-Hays Act is the organic legislation underpinning the entire Exchange Visitor Program. Section 101 of that Act sets forth the purpose of the Act, viz., "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchange * * *." The Act authorizes the President to provide for such exchanges when he considers that it would strengthen international cooperative relations. The language of the Act and its legislative history make it clear that Congress considered international educational and cultural exchanges to be a significant part of the public diplomacy efforts of the President in connection with his Constitutional prerogatives in conducting foreign affairs.

On September 27, 1999, the United States Information Agency (USIA) issued an interim final rule on the adoption of fees for all requests for an

extension, change of category, reinstatement, or program designation as well as for non-routine requests for the then Form IAP–66. This rule was to be effective on January 1, 2000. The September 27, 1999 interim final rule was amended by a rule dated October 7, 1999 (4 FR 54538), and also by a second rule dated January 5, 2000 (65 FR 352). Those amendments were required due to the consolidation of USIA into the Department of State.

User fees were adopted for the first time under the authority of Section 810 of the United States Information and Educational Exchange Act of 1948, as amended, 22 U.S.C. 1475e, and the Independent Offices Appropriations Act of 1952 (IOAA), 31 U.S.C. 9701, and following the guidelines set forth in Office of Management and Budget (OMB) Circular No. A–25. Following the consolidation of USIA operations and two regulatory amendments, the Interim Final Rule and the fees established under this rule became Final on April 14, 2000, 65 FR 20083.

In 2006, the Department examined its current Exchange Visitor Program fee structure for compliance with applicable laws and policies, and to determine the appropriate level of fees given the expansion of the offices providing services. This analysis was grounded on the guiding principles set forth in the legislative framework and authorities cited above, namely, that user fees should be fair and reflect the full cost to perform the service; and that services performed on behalf of distinct, identifiable beneficiaries (versus the public at large) should, to the extent possible, be self-sustaining. As a result of the review, it was determined that both additional fee categories and increased fees were required, and the Department published a final rule on November 1, 2007 (72 FR 61800), which became effective December 3, 2007.

The 2007 fee rule identified the program redesignation process as a separate and identifiable service for which the cost of such service should be recouped. This fee is collected from some 1226 academic, governmental, and private sector sponsor organizations. This fee also includes the cost of services arising from a program sponsor's requests for amendments to programs, allotment requests, and updates of information, as well as the costs for program compliance, regulatory review and development, outreach, and general program administration. Also established in the 2007 fee rule were fees charged to foreign national exchange participants for services provided on an individual basis and for the sole benefit of the exchange participant. (i.e., requests for exchange visitor status changes of program category, extension beyond maximum duration, requests for reinstatement, requests to update the Student and Exchange Visitor Information System (SEVIS) status, and similar requests). The fees received for these individual services also include an apportioned share of costs for regulatory review and development, outreach, and general program administration.

The Department began its biennial review of these established fees in 2009 by publishing a solicitation for services to conduct a fee study. Deloitte and Touche was awarded a contract. The new proposed fee structure was conducted under the guidelines set forth in OMB Circular A–25, as well as the Statement of Federal Finance and Accounting Standards No. 4 (SFFAS 4). In accordance with SFFAS 4, the Department used an "activity-based costing" (ABC) approach to develop a sustainable cost model to align the costs of the program to the specific services performed on behalf of program sponsors and other program stakeholders. Activity-based costing is a method of identifying the work that is performed, how resources are consumed by that work, and how that work contributes to the production of required outputs. The ABC methodology enabled the development of a bottom-up budget that factored in forecasts for expected demand of program services in the years when the fees are effective and would provide the program with adequate resources to meet that future program demand. This fee study relates only to services provided in the administration of the Exchange Visitor Program. The fee study is available for review at *http://exchanges.state.gov/jexchanges.*

Results of Fiscal Year 2010 Fee Study

Full Cost

One of the most critical elements in building the cost models to determine user fees is to identify all of the sources and the appropriate amounts of costs to be included in the analysis. According to the legislative and regulatory guidance as documented in the legal framework, user charges should be based on the full cost to the government of providing the services or things of value. OMB Circular A–25 defines full cost as all direct and indirect costs to any part of the Federal government of providing a good, resource, or service. These costs include, but are not limited to, an appropriate share of:

- Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement.
- Physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment.
- Management and supervisory costs.
- Costs of enforcement, collection, research, establishment of standards, and regulation, including any required environmental impact statements.

The generally accepted government accounting practices for managerial cost accounting, published in SFFAS 4, provide the standards for cost definition, recognition, accumulation and assignment as they relate to the recognition of full cost. These standards have been applied to the determination of what costs to include in or exclude from the Exchange Visitor Program fees.

Cost Model Structure

Model Overview

In summary, the Cost Accounting Model takes cost data input into the "Civilian Pay Cost Data", "Activity Model Cost Pools", and "Other Cost Pools" modules, assigns direct costs or allocates indirect and General and Administrative (G&A) costs using ratios derived from the "SEVIS & FTE (Full Time Equivalent) Data" module, and then uses the direct, indirect, and G&A cost pools to calculate the two recommended user fees for the Fiscal Year (FY) 2011–2012 time frame.

The Cost Accounting Model contains eleven modules described in detail in the following sections. Most modules include an FY 2011 tab and an FY 2012 tab, given the need to enter separate data for each fiscal year. The three modules that only have one tab are "Home", "SEVIS & FTE Data", and "Final EVP Fees FY 2011–2012". The modules are sequenced to follow the general flow of calculations performed by the model.

Home

The "Home" module is displayed when the user opens the model. This module also provides hyperlinks to support navigation to the other areas of the model.

Civilian Pay Cost Data FY 2011 & FY 2012

This module allows the user to enter Civilian Pay data for Private Sector Exchange personnel by General Schedule (GS) Level. The Civilian Pay data entered is then escalated for benefits. This calculation is detailed further in the Cost Accounting Model Data Sources section.

Activity Model Cost Pools FY 2011 & FY 2012

This module allows the user to enter Labor Survey results by personnel position in the form of percentages. It then multiplies those percentages by the escalated salary calculated in the "Civilian Pay Cost Data" module to create Activity Model Cost Pools. Finally, this module includes a self-check feature to verify the completeness and accuracy of user entries.

Other Cost Pools FY 2011 & FY 2012

This module allows the user to enter all other costs associated with the EVP, including the following:

- Bureau of Educational and Cultural Affairs, Private Sector Exchange (ECA/EC) non-labor costs
- Bureau of Educational and Cultural Affairs (ECA) labor costs
- Bureau of Educational and Cultural Affairs (ECA) non-labor costs
- Department of State labor costs
- Department of State non-labor costs

SEVIS & FTE Data

There is only one tab for the "SEVIS & FTE Data" module. It allows the user to input SEVIS historical data for Calendar Year (CY) 2007 through CY 2009, as well as FY 2008 and FY 2009 FTE historical data for the following organizational areas:

- Bureau of Educational and Cultural Affairs, Private Sector Exchange, Office of Designation (ECA/EC/D) and Office of Exchange Coordination and Compliance (ECA/EC/ECC)
- Human Resources
- Support Services
- IIP Budget Office (Bureau of International Information Programs)
- ECA Budget Office
- Program Management Office
- Bureau of Educational and Cultural Affairs (ECA)
- Department of State

It then uses these inputs to calculate SEVIS activity projections for Applications for Designation, Applications for Redesignation, and Exchange Visitor Administration Applications for CY 2010 through CY 2012, and FTE projections for FY 2011 and FY 2012. SEVIS and FTE data projections are necessary to create ratios for indirect and G&A cost allocation to each fee later in the model.

Cost Assignment & Allocation FY 2011 & FY 2012

This module pulls the data from the previous modules in order to assign direct costs or allocate indirect or G&A costs to each fee. The method for allocating indirect and general and administrative (G&A) cost took into account the volume of services supported by each user fee in terms of SEVIS activity counts. These activity counts can also be viewed as the services procured by the user fees. The method in which the cost is allocated varies by cost pool:

(1) For direct costs, the full cost is assigned to the fee for which it is determined to be a direct cost.

(2) For indirect costs, the full cost in each indirect cost pool is split and each portion is then assigned to the appropriate user fee. This splitting and assignment process is also referred to as cost allocation. This process is accomplished by multiplying the total indirect cost by the ratio of *Total Fee-Related SEVIS Activity Counts to Total SEVIS Activity Counts.* For example, in order to determine the amount of an indirect cost to be applied to the Application Fee, the full indirect cost was multiplied by the ratio of *Total Application Fee-Related SEVIS Activity Counts to Total Activity Counts.* This allocates the appropriate fraction of the total indirect cost to the Application Fee. The same would be done with the ratio of *Total Administrative Fee-Related SEVIS Activity Counts to Total Activity Counts* to determine the complimentary fraction of the indirect cost to be allocated to the Administrative Fee. In so doing, the full indirect cost is appropriately allocated to the two user fees.

For G&A cost, not all G&A cost is allocated to the two EVP user fees since G&A costs support the entire Department not just the cost of the activities supporting the EVP. Deloitte allocated appropriate portions of total G&A cost to the EVP by either FTE ratios or manual percentage as follows:

- For ECA/EC non-labor G&A costs, the full cost was multiplied by the ratio of *ECA/EC/D and ECA/EC/ECC FTEs plus the Bureau's Executive Office FTEs* to *ECA FTEs.*
- For ECA labor G&A costs, two separate methods were applied:

—For ECA Front Office labor G&A costs, the ECA provided manual percentages, as these costs represent specific staff positions that support the EVP but not in a full-time capacity.

—For all other ECA labor G&A costs, the full G&A labor cost was multiplied by the ratio of *ECA/EC/D and ECA/EC/ECC FTEs* to *ECA FTEs minus three.* The ECA FTE number is subtracted by three because the cost for those three positions is already accounted for in the ECA Front Office labor G&A costs detailed above.

- For ECA non-labor G&A costs, the full non-labor G&A cost was multiplied by the ratio of *ECA/EC/D and ECA/EC/ECC FTEs* to *ECA FTEs.*
- For Department labor and non-labor G&A costs, the full non-labor G&A cost was multiplied by the ratio of *ECA/EC/D and ECA/EC/ECC FTEs* to *Department FTEs.*

After completing the calculations just described, the resulting portions of the full G&A costs are allocated to each of the fees in the same way indirect costs are allocated, using SEVIS activity ratios.

The following information depicts the above described assignment and allocation of costs.

User Fee Cost Pools FY 2011 & FY 2012

This module pulls data from the "Cost Assignment & Allocation" module and groups it into total direct, indirect, and G&A cost pools. It then divides each of those cost pool amounts by the total projected SEVIS activity units to determine each fee's direct, indirect, and G&A components. It also sums each of these cost components to provide the total for each user fee for FY 2011 and FY 2012. Finally, this module includes a self-check feature to verify the completeness and accuracy of user entries.

Final EVP Fees FY 2011–2012

This module adds the total costs and SEVIS Activity Units for FY 2011 and FY2012 from the "User Fee Cost Pools" module in order to provide fees that are based on a two-year fee lifecycle consistent with the EVP regulatory framework requiring current Program Sponsors to apply for Redesignation status every two years. It also includes a self-check feature to verify the completeness and accuracy of user entries.

Cost Accounting Model Data Sources

Civilian Pay Cost Data

For the data input in the "Civilian Pay Cost Data" module, ECA provided Deloitte with each ECA/EC/D and ECA/EC/ECC employee's GS level, and then Deloitte used the Step 5 salary assumption for each level to determine the salary to be entered for each employee. This figure was then escalated by 36.25% to capture benefits. This percentage is the guidance given for average benefits escalation in *OMB Circular A–76 Performance of Commercial Activities, Attachment C—Calculating Public-Private Competition Costs.*

Activity Model Cost Pools

The only data input in the "Activity Model Cost Pools" module is the Labor Survey results. This input was

accomplished by converting the hours each respondent recorded for their position and for each activity they performed during the Labor Survey into percentages of FTEs.

Other Cost Pools

For the data input in the "Other Cost Pools" module, ECA provided Deloitte with budgetary data.

- Deloitte used the following methods to derive ECA/EC non-labor costs:

—Costs associated with the new On-site Review and Site Visit travel functions were identified in close consultation with ECA/EC senior management. Appropriate estimates were developed for FY 2011 and FY 2012. See the On-site Review and Site Visit Travel Cost Estimate section below.

—ECA provided Deloitte with FY 2009 actual expenses for all other ECA/EC Non-Labor costs. The FY 2009 Actuals were then escalated by 3% per year to determine FY 2011 and FY 2012 cost estimates.

- Deloitte used the following methods to derive ECA labor costs:

—For ECA Front Office costs for the Deputy Assistant Secretary for Private Sector Exchange, the Senior Advisor to the Deputy Assistant Secretary, and the Special Assistant to the Deputy Assistant Secretary, Deloitte assumed CY 2010 SES–II pay for the DAS and GS15, Step 5 pay for the Senior Advisor and GS13, Step 5 for the Special Assistant. These salaries were escalated by 36.25% for benefits, and then escalated by 3% per year for CY 2011 and CY 2012 estimates.

—For all other ECA labor costs, Deloitte obtained the 2010 Total Department Budget from the *Department of State Budget in Brief—Fiscal Year 2010* and pro-rated that figure by FTEs, and escalated by 3% per year for FY 2011 and FY 2012 estimates.

- For ECA non-labor costs, ECA/EC approved the use of the FY 2010 estimates projected by Grant Thornton in its 2006 *Exchange Visitor Program Fee Study—Final Report (Draft).* This figure was then escalated by 3% per year for FY 2011 and FY 2012 estimates.

- For Department labor costs, Deloitte assumed GS–15, Step 5 pay with 36.25% benefits escalation for all Categories. These figures were then escalated by 3% per year for FY 2011 and FY 2012 estimates.

- For Department non-labor costs, Deloitte obtained the Total Department-wide GSA Rents from the *Department of State Budget in Brief—Fiscal Year 2010.* This figure was then escalated by 3% per year for FY 2011 and FY 2012 estimates.

SEVIS & FTE Data

ECA/EC provided Deloitte with historical CY 2007 through CY 2009 SEVIS activity counts associated with each user fee, as well as historical ECA and ECA/EC FTE counts. Deloitte obtained historical Department FTE levels from the *Department of State Congressional Budget Justification—Fiscal Year 2010.* Deloitte used this data to determine projected SEVIS and FTE data in the following manner:

- For SEVIS data projections, the following method was developed and approved by ECA/EC:

—ECA/EC provided CY 2007 through CY 2009 data.

—CY 2009 data cutoff of 16 December 2009 required data adjustment from 350 to 365 days.

—CY 2007 through CY 2009 data was averaged and a 2% rate of growth was applied to determine CY 2010.

—CY 2011 and CY 2012 were each projected with a 2% growth rate over the previous year.

- For all FTE data projections, Deloitte obtained FY 2008–2010 Department FTE levels from the *Department of State Congressional Budget Justification—Fiscal Year 2010.* Deloitte calculated a 6.91% average growth rate from FY 2008 through FY 2010 for Department total FTEs. For fiscal years in each of the below organizational areas where FTE data was unavailable, each was projected using this 6.91% growth rate year over year. ECA/EC approved of this projection method.

—For ECA/EC/D and ECA/EC/ECC FTEs, ECA/EC provided FY 2009 through 2011 data; Deloitte used the above method to project FY 2012.

—For the ECA and International Information Programs (IIP) Support Offices (ECA–IIP/EX), the *ECA–IIP/EX Organizational Chart (September 2009)* provided FY 2009 data; Deloitte used the above method to project FY 2010 through FY 2012.

—For ECA FTEs, ECA provided FY 2009 data; Deloitte used the above method to project FY 2010 through FY 2012.

—For Department FTEs, the *Department of State Congressional Budget Justification—Fiscal Year 2010* provided FY 2008 through 2010 data; Deloitte used the above method to project FY 2011 through FY 2012.

Travel Cost Estimate

Deloitte, in close consultation with ECA/EC/D and ECA/EC/ECC, developed a travel cost estimate for Site Visits and On-site Reviews. These two general categories of travel by government officials to Program Sponsor locations will be performed during the FY 2011 and FY 2012 time frame for which the user fees recommended in this report are effective. Site Visits are performed by government officials with entities applying for Designation as an EVP Sponsor. On-site Reviews will take the form of a Liaison Visit, a Redesignation Review, or a Compliance Review. These three types of On-site Reviews are covered in more detail below. Site Visits and On-site Reviews, which will be the responsibility of ECA/EC/D and ECA/EC/ECC respectively, require travel to the potential sponsor or sponsor's place of business. In addition to travel to the sponsors' offices, pre-planning analysis and post-travel reporting will be completed.

Site Visit Travel Cost Estimate

In developing the Site Visit Travel Cost Estimate, Deloitte took the top 25 states by Program Sponsor activity (exchange visitor participant) levels as recorded in SEVIS. In addition to using the top 25 states, Deloitte also included other states to provide an accurate picture across the United States. These assumptions were made because, unlike the On-site Review process, Site Visits are planned for entities applying for Designation. Since the cities and states where the potential Program Sponsors will come from are unknown, this method was developed to provide an accurate estimate for costs, while capturing most of the states.

Deloitte mapped appropriate city and state locations based on the above analysis and in consultation with ECA/EC for use in determining per diem, airfare, car rental, and miscellaneous costs in the same manner as the On-site Review Travel Cost Estimate. Deloitte escalated FY 2011 and FY 2012 by 3% to give a more accurate cost for those fiscal years.

Through discussions with ECA/EC, Deloitte set the number of Site Visit travelers to two per trip and concluded that the travelers would range from the GS 9 to 14 levels and include Program Specialists, Program Coordinators and Program Officers. Deloitte also concluded that procedures for pre-visit preparations would also be developed in close coordination with knowledgeable Program Officers and Compliance Officers.

On-site Review Travel Cost Estimate

The On-site Review travel cost estimate is based on visiting the top 20 Private Sector Program Sponsors and the top 20 Academic and Government Program Sponsors according to Program Sponsor activity (exchange visitor

participant) levels as documented in SEVIS.

Deloitte determined roundtrip airfare, per diem, rental car, and miscellaneous expense costs for single or multiple destination trips. Deloitte used the per diem rates for FY 2010 found on the GSA Web site. Deloitte also conducted research for roundtrip airfare and car rental prices using the *kayak.com* search engine. Deloitte added all costs, including a set cost for miscellaneous items to cover fees for airline tickets, copying, business calls, etc., to provide a total trip cost. Total trip costs were added together to provide a Total Travel Cost Estimate. Deloitte escalated FY 2011 and FY 2012 per diem rates as well as airfare and car rental prices by 3% each year to provide a more accurate cost for those fiscal years.

The number of travelers for On-site Reviews depends largely on the type of visit or the Program Sponsor. The three types of On-site Reviews that any given sponsor could receive are:

- Liaison Visits
- Redesignation Reviews
- Compliance Reviews.

The primary purpose of a Liaison Visit is to provide ECA/EC with an opportunity for outreach and consultation with Program Sponsors. GS levels of staff conducting these types of visits can vary depending on the purpose of visit and the size of the Program Sponsor. Liaison Visits should include meeting key Program Sponsor staff and touring facilities, and they may last from a half day to one full day. Staff conducting these visits may range from the GS 12 to GS 15 levels, depending on the primary purpose.

The primary purpose of a Redesignation Review is to determine the Program Sponsor's continued eligibility and/or suitability as a designated sponsor. Redesignation Reviews may last from one to two days and should require the participation of both one or more Program Officers and one or more Compliance Officers, usually at the GS 12 to 13 levels, but may also include the GS 9 to 11 levels and the GS 14 level.

The primary purpose of a Compliance Review is to visit Program Sponsors whose performance and compliance with program regulations has come under question. Experience shows that Compliance Reviews may last from two to five days and usually require the participation of both one or more Program Officers and one or more Compliance Officers, with perhaps a supporting Program Coordinator or Program Specialist.

Regulatory Findings

Administrative Procedure Act

The Department of State is of the opinion that the Exchange Visitor Program is a foreign affairs function of the U.S. Government and that rules implementing this function are exempt from § 553 (Rulemaking) and § 554 (Adjudications) of the Administrative Procedure Act (APA). The U.S. Government supervises programs that invite foreign nationals to come to the United States to participate in exchange visitor programs, either directly or through private sector program sponsors or grantees. When problems occur, the U.S. Government often has been, and likely will be, held accountable by foreign governments for the treatment of their nationals, regardless of who is responsible for the problems.

The purpose of this rule is to set the fees that will fund the office Exchange Visitor Program services to 1,226 sponsor organizations and 350,000 exchange Visitor Program participants. These services include oversight and compliance with program requirements as well as the monitoring of programs to ensure the health, safety and well-being of foreign nationals entering the United States (these exchange programs and participants are often funded by the U.S. Government) under the aegis of the Exchange Visitor Program and in furtherance of its foreign relations mission. The Department of State represents that failure to protect the health and well-being of these foreign nationals and their appropriate placement with reputable organizations will have direct and substantial adverse effects on the foreign affairs of the United States.

Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department is publishing this rule as a proposed rule, with a 60-day provision for public comment and without prejudice to its determination that the Exchange Visitor Program is a foreign affairs function.

Regulatory Flexibility Act/Executive Order 13272: Small Business

As discussed above, the Department believes that this proposed rule is exempt from the provisions of 5 U.S.C. 553, and that no other law requires the Department to give notice of proposed rulemaking. Accordingly the Department believes that this proposed rule is not subject to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) or Executive Order 13272, § 3(b).

Nevertheless, the Department has examined the potential impact of this proposed rule on small entities. Entities conducting student exchange programs are classified under code number 6117.10 of the North American Industry Classification System. Some 5,573 for-profit and tax-exempt entities are listed as falling within this classification. Of this total number of so-classified entities, 1,226 are designated by the Department of State as sponsors of an exchange visitor program, designated as such to further the public diplomacy mission of the Department and U.S. Government through the conduct of people to people exchange visitor programs. Of these 1,226 Department designated entities, 933 are academic institutions and 293 are for-profit or tax-exempt entities. Of the 933 academic institutions designated by the Department, none are believed to meet the definition of small entity for Regulatory Flexibility Act analysis purposes. The RFA utilizes the SBA's definition of "small entities" for educational institutions, which are for-profit entities that have annual revenues of less than $7 million. The RFA defines "small organizations" as any not-for-profit educational institution that is independently owned or operated and not dominant in its field. Of the 293 for-profit or tax-exempt entities designated by the Department, 131 have annual revenues of less than $7 million, thereby falling within the analysis purview of the Regulatory Flexibility Act. Although, as stated above, the Department is of the opinion that the Exchange Visitor Program is a foreign affairs function of the United States Government and, as such, that this proposed rule is exempt from the rulemaking provisions of section 553 of the APA, given the projected costs (detailed below) to the approximately 131 small entities designated to conduct exchange visitor programs, the Department has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Department asks the public to comment on the agency's estimates of the numbers of small entities and/or the economic impact of this rule on small businesses.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the

Unfunded Mandates Reform Act of 1995.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by 5 U.S.C. 804 for the purposes of Congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

As discussed above, the Department is of the opinion that the Exchange Visitor Program is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866. However, the Department has nevertheless reviewed this proposed regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order. The Department has examined the economic benefits, costs, and transfers associated with this proposed rule, and declares that educational and cultural exchanges are both the cornerstone of U.S. public diplomacy and an integral component of American foreign policy. Though the benefits of these exchanges to the United States and its people cannot be monetized, the Department is nonetheless of the opinion that these benefits outweigh the costs associated with this proposed rule. The Department projects the cost to the government of providing Exchange Visitor Program services to be $3.4 million annually. This rule will provide an estimated $3.4 million annually that will support the operations of the Office of Designation, including funds for designation and redesignation, for individual exchange participant services, and the appropriate share of costs for regulatory review and development, outreach, and general program administration. These costs are divided amongst the 1,226 designated sponsors who will account for $2.7 million of the total $6.8 million over the next two years, with foreign national exchange participants requesting individual-based program services accounting for the remaining $4.1 million. The actual increase in annual costs per designated sponsor is $462 which represents a total annual increase of $378,302. The cost to foreign national exchange participants requesting program services has been decreased by $13 per transaction. Though the costs are borne by sponsors and exchange visitors, a benefit-cost study considers these costs to be economic transfers, since money is "transferred" from sponsors and applicants to the Department of State, but society as a whole has not gained or lost any resources in this transaction. Thus, the Department of State has identified $3.4 million in economic transfers associated with this rule. The Department has not identified any monetized benefits or costs, though it believes that the revenue generated by these fees and charges will enable the Department to administer an effective program and is essential to continuing to support and strengthen the United States' foreign policy goal of promoting mutual understanding between the people of the United States and other countries.

Executive Order 12988

The Department has reviewed this regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Orders 12372 and 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

Paperwork Reduction Act

The information collection requirements contained in this proposed rulemaking are pursuant to the Paperwork Reduction Act, 44 U.S.C. chapter 35 and OMB Control Number 1405–0147, expiring on September 30, 2010.

List of Subjects in 22 CFR Part 62

Cultural Exchange Program.

Accordingly, 22 CFR part 62 is proposed to be amended as follows:

PART 62—EXCHANGE VISITOR PROGRAM

1. The authority citation for part 62 is revised to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431–1442, 2451 *et seq.;* Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105–277, Div. G, 112 Stat. 2681 *et seq.;* Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168; the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. 104–208, Div. C, 110 Stat. 3009–546, as amended; Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT), Pub. L. 107–56, Sec. 416, 115 Stat. 354; and the Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. 107–173, 116 Stat. 543.

2. Section 62.17 is revised to read as follows:

§ 62.17 Fees and charges.

(a) *Remittances.* Fees prescribed within the framework of 31 U.S.C. 9701 must be submitted as directed by the Department and must be in the amount prescribed by law or regulation.

(b) *Amounts of fees.* The following fees are prescribed.

(1) For filing an application for program designation and/or redesignation (Form DS–3036)—$2,700.00.

(2) For filing an application for exchange visitor status changes (*i.e.,* extension beyond the maximum duration, change of category, reinstatement, reinstatement-update, SEVIS status, ECFMG sponsorship authorization, and permission to issue)—$233.00.

Stanley S. Colvin,

Deputy Assistant Secretary for Private Sector Exchange, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–24687 Filed 9–30–10; 8:45 am]

BILLING CODE 4710–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R09–OAR–2010–0491; FRL–9209–4]

Designation of Areas for Air Quality Planning Purposes; State of Arizona; Pinal County; PM_{10}

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 107(d)(3) of the Clean Air Act, EPA is proposing to redesignate from "unclassifiable" to "nonattainment" an area generally covering the western half of Pinal County, Arizona, for the 1987 national ambient air quality standard for particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}), and therefore also proposing to revise the boundaries of the existing "rest of state" unclassifiable area. EPA's proposal to establish this new PM_{10} nonattainment area, referred to as "West Pinal," is based on numerous recorded violations of the PM_{10} standard at various monitoring sites within the county. EPA's proposed boundaries would encompass all land geographically located within Pinal County west of the north-south line defined by the boundary between Townships 10E and 11E, but excluding the main reservation of the Tohono O'odham Nation (TON) and excluding the Apache Junction portion of the existing Phoenix PM_{10} nonattainment area. San Carlos Apache lands, which are located in the eastern quarter of the county, would be excluded from the proposed nonattainment area along with the rest of the eastern half of the county. If finalized as proposed, the new "West Pinal" PM_{10} nonattainment area would be classified as "moderate" by operation of law. The effect of this action would be to establish and delineate a new PM_{10} nonattainment area within Pinal County and thereby to impose certain planning requirements on the State of Arizona to reduce PM_{10} concentrations within this area, including, but not limited to, the requirement to submit, within 18 months of redesignation, a revision to the Arizona state implementation plan that provides for attainment of the PM_{10} standard as expeditiously as practicable but no later than the end of the sixth calendar year after redesignation. Lastly, EPA is deferring action on the status of certain tribal lands located within this area, including the tribal lands of the Ak-Chin Indian Community and the Gila River Indian Community, as well as TON's Florence Village and San Lucy Farm, pending further consultation with the affected tribes.

DATES: Any comments must arrive by November 1, 2010.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2010–0491, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: vagenas.ginger@epa.gov.*

3. *Mail or deliver:* Ginger Vagenas (Air-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas, EPA Region IX, (415) 972–3964, *vagenas.ginger@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

I. Background

On July 1, 1987, EPA revised the national ambient air quality standards (NAAQS or "standards") for particulate matter (52 FR 24634), replacing total suspended particulates as the indicator for particulate matter with a new indicator called PM_{10} that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers.[1] In order to attain the NAAQS for 24-hour PM_{10}, an air quality monitor cannot measure levels of PM_{10} greater than 150 micrograms per cubic meter ($\mu g/m^3$) more than once per year on average over a consecutive three-year period. The rate of expected exceedances, therefore, indicates whether a monitor attains the air quality standard.

Most of Pinal County, Arizona, including the area that is the subject of today's action, was included in the "rest of state" area, which was designated "unclassifiable" for PM_{10} by operation of law upon enactment of the 1990 amendments to the Clean Air Act (CAA or "Act").[2] *See* section 107(d)(4)(B)(iii). The PM_{10} designations established by operation of law under the CAA, as amended in 1990, are known as "initial" designations. The CAA grants EPA the authority to change the designation of, or "redesignate," such areas in light of changes in circumstances. More specifically, CAA section 107(d)(3) authorizes EPA to revise the designation of areas (or portions thereof) on the

[1] The 1987 PM_{10} standard included a 24-hour (150 micrograms per cubic meter ($\mu g/m^3$)) and an annual standard (50 $\mu g/m^3$). In 2006, EPA revoked the annual standard. *See* 71 FR 61144 (October 17, 2006) and 40 CFR 50.6.

[2] While most of Pinal County was designated "unclassifiable," two PM_{10} planning areas that extend into Pinal County were designated under the CAA, as amended in 1990, as "nonattainment:" The Phoenix planning area, which includes the Apache Junction area within Pinal County; and the Hayden/Miami planning area, which includes the northeastern portion of the county. See 56 FR 11101 (March 15, 1991); 56 FR 56694 (November 6, 1991); and 57 FR 56762 (November 30, 1992). In 2007, we approved a redesignation request by the State of Arizona to split the Hayden/Miami PM_{10} nonattainment area into two separate PM_{10} nonattainment areas. *See* 72 FR 14422 (March 28, 2007). Today's proposed action would not affect these pre-existing PM_{10} nonattainment areas. EPA codifies area designations in 40 CFR part 81. The area designations for the State of Arizona are codified at 40 CFR 81.303.

basis of air quality data, planning and control considerations, or any other air-quality-related considerations that EPA deems appropriate. Pursuant to CAA section 107(d)(3), EPA in the past has redesignated certain areas in Arizona to nonattainment for the PM_{10} NAAQS, including the Payson and Bullhead City areas. *See* 56 FR 16274 (April 22, 1991); and 58 FR 67334 (December 21, 1993).

II. EPA's Decision to Address PM_{10} Violations Monitored in Pinal County Through Redesignation

As noted above, EPA has the authority under CAA section 107(d)(3) to redesignate areas (or portions thereof) on the basis of air quality data, planning and control considerations, or any other air-quality-related considerations. Last year, under CAA section 107(d)(3)(A), EPA notified the Governor of Arizona and tribal leaders of the four Indian Tribes (whose Indian country is located entirely, or in part, within Pinal County) that the designation for Pinal County, and any nearby areas that may be contributing to the monitored violations in Pinal County, should be revised. Our decision to initiate the redesignation process stemmed from review of 2006–2008 ambient PM_{10} monitoring data from PM_{10} monitoring stations within the county that showed widespread, frequent, and in some instances, severe, violations of the PM_{10} standard.[3]

Table 1, below, presents a summary of the latest available quality-assured PM_{10} monitoring data (2007–2009). A map showing the location of the monitors is included in our Technical Support Document (TSD), contained in the docket for this rulemaking.

TABLE 1—PINAL COUNTY—PM_{10} AIR QUALITY MONITORING DATA, 2007–2009

Site name	AQS* ID	PM_{10} Expected exceedances** 2007–2009
Apache Junction***	04–021–3002–1	0
Casa Grande	04–021–0001–1	0
	04–021–0001–3	4.7
Combs School (Queen Creek)	04–021–3009–3	17.6
Coolidge	04–021–3004–1	2
Cowtown (southeast of Maricopa)	04–021–3013–1	112.9
	04–021–3013–3	139.8
Eloy	04–021–3014–1	0
Mammoth	04–021–3006–1	0
Marana (Pinal Air Park)	04–021–3007–1	0
Maricopa	04–021–3010–3	12.6
Pinal County Housing/PCH (approx. 11 miles east of Casa Grande)	04–021–3011–1	6.5
	04–021–3011–2	5.9
	04–021–3011–3	15.6
Riverside (Kearny)	04–021–3012–1	0
Stanfield (approx. 15 miles west of Casa Grande)	04–021–3008–1	16.4
	04–021–3008–3	17.8
Bapchule (Gila River Indian Community monitors)	04–021–7004–1	6.6
	04–021–7004–2	7.9

*AQS (Air Quality System) is an EPA database of ambient air quality.
**The 24-hour PM_{10} standard is met when the 3-year average of the expected exceedances is equal to or less than one.
***The Apache Junction site is located in the existing Phoenix PM_{10} nonattainment area.

As shown in Table 1, the data from 2007–2009 reveal violations at the PM_{10} monitors located in Queen Creek, Casa Grande, Coolidge, Cowtown (which is southeast of Maricopa), Maricopa, Stanfield, at the Pinal County Housing Complex (which is east of Casa Grande, roughly half-way between Coolidge and Eloy), and within the Gila River Indian Reservation. Expected annual exceedances (of the 150 $\mu g/m^3$ 24-hour standard) at these monitoring sites range from two (at Coolidge) to more than 100 (at Cowtown). (For the purposes of comparison, the NAAQS is met when the 3-year average of the expected exceedances is equal to or less than one.) Maximum 24-hour concentrations measured at a number of these sites (such as Cowtown, Maricopa and Stanfield) can be more than two to three times the level of the standard. In light of the widespread, frequent, and severe violations of the PM_{10} standard monitored at various monitoring sites in Pinal County, EPA continues to believe that the SIP planning and control requirements that are triggered by redesignation of an area to nonattainment for the PM_{10} NAAQS would be the most appropriate means to ensure that this air quality problem is remedied.

Section III of this document describes the State of Arizona's recommendation with respect to the boundaries of this new PM_{10} nonattainment area, and section IV of this document summarizes EPA's review of the State's recommendation and rationale for EPA's proposed boundaries. Section V describes the Indian Tribes' recommendations and our corresponding responses. Section VI describes our proposed action and the corresponding CAA planning requirements that would thereby be triggered.

III. State of Arizona's Recommendation for Boundaries for New Nonattainment Area

Pursuant to section 107(d)(3)(B) of the Act, the Governor of Arizona responded to EPA's October 14, 2009 notification that the PM_{10} designation of Pinal County, and any nearby areas that may be contributing to violations in Pinal County, should be revised. The Governor responded in a letter dated

[3] In a letter dated October 14, 2009, EPA notified the State of Arizona that the PM_{10} designation in Pinal County should be revised. EPA notified the tribal leaders of the Ak-Chin Indian Community, Gila River Indian Community, San Carlos Apache Tribe, and Tohono O'odham Nation by letters dated December 30, 2009.

March 23, 2010 in which the Governor recommended a partial-county nonattainment area.[4]

The boundaries of the prospective PM_{10} nonattainment area recommended by the Governor of Arizona encompass a portion of central and western Pinal County, and form an area that resembles a backwards "L."[5] See figure 2 of EPA's TSD for a map of both the State's recommended boundaries as well as EPA's proposed boundaries. The state-recommended area includes all or most of the cities of Maricopa, Coolidge, Casa Grande and the Pinal County portion of the town of Queen Creek, as well as the western-most portion of the town of Florence and the northern-most portion of the city of Eloy. It includes an area that at its western-most boundary includes nearly all of the City of Maricopa. The southern boundary is defined by a line that coincides approximately with Interstate 8. The area continues to the east for approximately 35 miles where it extends to the north, including portions of Florence and Coolidge, and the Pinal County portion of Queen Creek, and terminates just south of Apache Junction. The eastern boundary is defined by the north-south line between Townships 8E and 9E. The northern boundary follows the county line south from the Apache Junction area and then follows the boundary of the Gila River Indian Reservation to close back around to the recommended western boundary. See the Governor's March 23, 2010 letter for the legal description of the State's recommended boundaries by township and range and for an enclosed map illustrating this area.

In support of the Governor's recommendation, on March 26, 2010, the Arizona Department of Environmental Quality (ADEQ) submitted to EPA a technical report entitled, "Arizona Air Quality Designations, Technical Support Document, Boundary Recommendation for the Pinal County 24-hour PM_{10} Nonattainment Area (March 15, 2010)," (herein referred to as ADEQ's "technical report"). ADEQ's technical report compiles and evaluates information addressing nine factors[6] derived from and discussed in EPA guidance on designation criteria; see citation on page 2 of ADEQ's technical report to Memorandum from Robert J. Meyers, EPA Acting Assistant Administrator, "Area Designations for the Revised 24-Hour Fine Particle National Ambient Air Quality Standard," dated June 8, 2007.

ADEQ points to a number of elements that it believes support the recommended boundaries. Specifically, ADEQ claims that its recommended area would include: all of the violating monitors; the majority of PM_{10} emissions generated within the county; the vast majority of the county's population; the rapidly growing urbanized and developed areas, high-traffic Interstate corridors and areas with the highest employment densities; the significant growth areas along Interstates 8 and 10; and the agricultural basin where stagnation conditions are known to impact PM_{10} concentrations. ADEQ also believes that its recommended redesignation would maintain jurisdictional cohesiveness. To buttress its recommended exclusion of eastern Pinal County from the new nonattainment area, ADEQ compares these factors as they apply to western Pinal County with those for eastern Pinal County. ADEQ asserts that in contrast to the western portion of Pinal County, the eastern portion has no violating monitors, contains few emissions sources (other than certain major sources that are already included in an existing PM_{10} nonattainment area), is largely undeveloped and has limited growth potential. As set forth below in more detail, while EPA believes this characterization applies to the eastern half of Pinal County, EPA also believes that the western portion that should be redesignated is far more extensive than the State's recommendation.

IV. EPA's Review of the State's Recommendation and Rationale for Proposed Boundaries

CAA section 107(d)(1)(A) generally defines a nonattainment area as any area that does not meet, or that contributes to ambient air quality in a nearby area that does not meet, the national primary or secondary ambient air quality standard for the relevant pollutant. Thus, in reviewing the State's recommended boundaries, EPA has considered not only areas where violations of the relevant NAAQS have been monitored, but also that contribute to such violations.

EPA guidance[7] provides for the use of "a qualitative analysis of the area of representativeness of the monitoring station, together with the consideration of terrain, meteorology, and sources of emissions * * *" in defining nonattainment area boundaries for PM_{10}. Consistent with that guidance, EPA generally recommends that States identify nonattainment area boundaries based on the weight of evidence of the following factors and other relevant information:

—Air quality data;
—Pollutant emissions;
—Population density and degree of urbanization;
—Traffic and commuting patterns;
—Growth;
—Meteorology;
—Geography and topography;
—Jurisdictional boundaries; and
—Level of control of emissions sources.

See, e.g., Memorandum from Robert J. Meyers, EPA Acting Assistant Administrator, "Area Designations for the Revised 24-Hour Fine Particle National Ambient Air Quality Standard," dated June 8, 2007. EPA also looks to the same kinds of factors in the context of redesignations. *See, e.g.,* EPA's proposed (73 FR 22307, at 22308–22310, April 25, 2008) and final approval (73 FR 66759, November 12, 2008) of a state request to redesignate the San Joaquin Valley PM_{10} nonattainment area. In addition, CAA section 107(d)(3)(A) allows EPA, in redesignating areas to nonattainment, to take into consideration "any other air-quality-related considerations." In its technical report, ADEQ refers to the nine factors in developing the State's recommended boundaries for the new PM_{10} nonattainment area. In the following paragraphs, we review and evaluate ADEQ's nine factor analysis.

Air Quality Data. ADEQ's technical report summarizes 2006–2008 PM_{10} monitoring data from 12 monitoring sites within Pinal County. Most of the monitoring sites are located in the west central portion of the county (Maricopa, Cowtown, Stanfield, Casa Grande, Pinal County Housing Complex, and Coolidge). Two are located in the southern portion (Eloy and Pinal Air Park); two are located in the northern portion [Apache Junction and Combs School (located in Queen Creek)]; and two are located in the far eastern portion of the county (Riverside and Mammoth). The Apache Junction and Riverside

[4] Letter from Jan Brewer, Governor of Arizona, to Jared Blumenfeld, Regional Administrator, EPA Region IX, dated March 23, 2010.

[5] The Governor explicitly excludes Indian country, which is appropriate given that the State of Arizona is not authorized to administer programs under the CAA in the affected Indian country. The "backwards L" shape of the recommended area is partly explained by this exclusion because the recommended area partially surrounds Indian country.

[6] The nine factors considered in ADEQ's technical report are air quality data, emissions data, population density and degree of urbanization, traffic and commuting patterns, growth rates and patterns, meteorology, geography/topography, jurisdictional boundaries, and level of control of emission sources.

[7] PM_{10} SIP Development Guideline, EPA–450/2–86–001, June 1987.

monitoring sites are located within existing PM_{10} nonattainment areas.

Based on 2006–2008 data, ADEQ finds six of the monitoring sites to be in violation of the PM_{10} NAAQS. EPA has updated this monitoring information by reviewing 2007–2009 data. Although we find that these data are largely consistent with the data presented by ADEQ, the more recent data set shows seven violating monitors (not counting the PM_{10} monitoring site on the Gila River Indian Reservation) rather than six. Coolidge is the additional monitoring site that is newly violating based on the more recent data set. In its technical report, ADEQ notes that its proposed boundaries include the locations of all of the violating monitors within Pinal County. While we agree that Arizona's proposed boundaries do in fact include all of the violating monitors (*i.e.,* other than the monitoring site located within the Gila River Indian Reservation and those located within existing PM_{10} nonattainment areas), we disagree with ADEQ's contention that its proposed boundaries include all areas that do not experience violations but nonetheless contribute to the violations that are recorded at the monitoring sites based on an evaluation of the other eight factors as discussed in the following paragraphs.

Emissions Data. ADEQ developed an annual emissions inventory of PM_{10} sources in the county for the year 2007 for the purpose of defining a boundary for the new nonattainment area. ADEQ's inventory relies on a number of different data sources, assumptions, and methods (including EPA's MOBILE model and compilation of emissions factors (AP–42)) to calculate annual PM_{10} emissions in the county. ADEQ's inventory points to fugitive emissions from vehicular traffic on paved and unpaved roads as the single largest source category, followed in importance by agricultural sources (including concentrated animal feeding operations), industrial sources, and construction. ADEQ's technical report includes maps that show the relative distribution of emissions generated within the county using 4-kilometer grid cells. *See* in particular the following maps in the State's technical report: Figure 3–3 on page 8 (all PM_{10} sources) and figure 3–4 on page 11 (paved and unpaved on-road sources). The maps show that PM_{10} emissions in the county are concentrated in the western half of the county, with the highest emissions densities in the west central portion of the county. In contrast, the eastern half of the county (outside of the existing nonattainment areas) is characterized predominantly by the lowest category of emissions densities (*i.e.,* 0 to 20 tons per year per 4-kilometer grid). *See* page 8 of ADEQ's technical report.

While EPA finds that the PM_{10} emissions inventory for Pinal County and ADEQ's corresponding maps are helpful in defining the boundaries of the new nonattainment area, we do not believe that they justify ADEQ's conclusions about its recommended boundaries. ADEQ claims that the emissions inventory and maps demonstrate that sources in the eastern and southern regions of the county do not "significantly contribute" to violations in the other regions of the county. *See* page ES–3 of ADEQ's technical report. EPA notes, however, that CAA section 107(d)(1)(A) defines a nonattainment area as one that does not meet, or that "contributes to" ambient air quality in a nearby area that does not meet the NAAQS. The definition of nonattainment areas is not limited to areas that, in ADEQ's words, "significantly" contribute to a violating area. Moreover, ADEQ's maps show that areas immediately to the east and south of the recommended area (but still within the western half of the county) include the same types of emissions sources, with similar emissions densities, as those that predominate within the recommended area. For example, figure 3–3 (page 8 of State's technical report) shows emissions densities similar to those estimated within the State's recommended boundaries to the east in Coolidge and Florence, as well as south to Eloy. In addition, figures 3–4, 3–7, and 3–10 (on pages 11, 14, and 17, respectively, of the State's technical report) illustrate the locations of unpaved roads (with average daily traffic volumes greater than 100) and show that higher relative concentrations of PM_{10} emissions from such sources as vehicle entrainment of dust over paved and unpaved roads, tilling and harvesting, and concentrated animal feeding operations (CAFOs) extend to central, and south central Pinal County. Thus, the emissions inventory data and related maps do not support the State's recommended boundaries but rather argue for a larger nonattainment area consisting of the western half of the county.

In contrast, EPA's proposed boundaries include all of the areas for which emissions data show relatively higher PM_{10} emissions from the types of sources contributing the most to the overall PM_{10} emissions inventory. For instance, based on the information sources described above in the State's technical report, EPA's proposed boundaries include the areas of relatively higher emissions densities in and around Coolidge, Florence, and Eloy that reflect the same types of PM_{10}-generating activities (vehicle entrainment of dust over paved and unpaved roads, tilling and harvesting, and CAFOs) as found within the smaller nonattainment area boundaries recommended by the State.

Population density, degree of urbanization, growth rate and patterns. This factor reflects EPA's belief that the size, density, and location of population can be indicative of emissions activity that contributes to violations of the PM_{10} NAAQS in an area. ADEQ's technical report presents population growth and density figures for municipalities in Pinal County. The data show that Pinal County has grown dramatically over the past decade (nearly doubling from a population of approximately 180,000 in 2000 to nearly 360,000 in 2008). EPA independently collected and reviewed population-related information and notes that the populations of the largest cities and towns in the western half of the county, such as (the city of) Maricopa (2008 population of approximately 46,000), Casa Grande (41,000), Apache Junction (33,000), Florence (21,000), and Eloy (13,000), contrast sharply with much smaller populations in the largest cities and towns in the eastern half of the county, including Superior (3,000), Kearny (3,000), and Mammoth (3,000). *See* page 14 of EPA's TSD.

ADEQ also submitted maps showing population densities both under current conditions and projections for the year 2030 when the population of Pinal County is anticipated to exceed 1,000,000. Under existing conditions, higher population densities are found in the west central portion of the county, but there are also population centers in the northern (Apache Junction and Queen Creek) and southern portions (Eloy) of the county. ADEQ's maps show that future growth is expected to be concentrated in the Interstate 8 and 10 corridors, which extend through the west central and southern portions of the county, although a certain amount of growth is also expected in the Falcon Valley area farther to the east.

In its technical report, ADEQ concludes that the eastern and southern portions of the county are largely undeveloped and have very low population densities, and finds that this information provides support for the State's recommended boundaries. However, like the emissions data discussed above, we believe that the data do not justify the restricted nature of the State's recommended boundaries, which exclude much of the western half of the County. Specifically, EPA

believes that the State's recommended exclusion of areas in the eastern and southern sections of the western half of the county is contradicted by evidence showing that land use development in Pinal County extends further east and south than the State's recommended boundaries. For example, the State's recommended boundaries fail to include the agricultural and more urbanized uses in and around Eloy and the future growth areas along the two Interstate corridors. See figures 3–13 and 3–14 from the State's technical report. In contrast, EPA's proposed boundaries would include all of the western half of Pinal County (excluding TON's main reservation and the Apache Junction portion of the Phoenix PM_{10} nonattainment area) and thereby would include the areas with relatively higher population densities and most of the areas where significant levels of growth are expected.

Traffic and commuting patterns. This factor considers the commuting patterns of residents in, and commuters to, Pinal County. More specifically, this factor considers the number of commuters in each surrounding county who drive to Pinal County, the percent of total commuters in each county who commute to Pinal County, the percent of total commuters in each county who commute into the statistical area in which Pinal County is located, as well as the total vehicle miles traveled (VMT) for each county.

ADEQ's technical report (page 23) presents statistics from the 2000 census quantifying the number of commuters from each county within the State of Arizona to jobs within Pinal County, and the number of commuters residing in Pinal County to jobs in Maricopa and Pima counties. The data from 2000 indicate that approximately 10,000 commuters, or roughly 20% of total commuters to jobs within Pinal County, reside outside of Pinal County. Conversely, approximately 36,000 (roughly 80%) of commuters travel solely within Pinal County. Almost 80% of the out-of-county commuters reside to the north in Maricopa County, and nearly all remaining out-of-county commuters commuting to Pinal County reside to the south in Pima County. Moreover, nearly 40% of commuters residing in Pinal County work in either Maricopa or Pima counties, whereas 60% of commuters residing in Pinal County also work in Pinal County.

EPA independently reviewed these same data and observed that the principal route for traffic through Pinal County (serving in-county as well as out-of-county commuters) is Interstate 10, which bisects the western half of the county and connects metropolitan Phoenix (largely in Maricopa County) to the north with metropolitan Tucson (in Pima County) to the south. ADEQ cites traffic and commuting patterns as a factor supporting the exclusion of the eastern half of the county from the new nonattainment area. While EPA agrees that it is reasonable to distinguish between the eastern and western halves of the county, EPA believes that the data indicate that the entire western half of the county, and not a small portion of it, as the State recommends, should be redesignated to nonattainment. Thus, EPA finds that traffic and commuting patterns do not make a case for the state's recommendation, but rather lend support to the creation of a larger nonattainment area generally encompassing the western half of the County. *See* figure 3–17 from the State's technical report, which shows much higher employment densities projections for year 2030 in the western half of the county than those in the eastern half but which also show higher employment densities east and south of the State's recommended boundaries (but still within the western half of the county).

Meteorology. Generally, the analysis of meteorology looks to wind data for evidence that emissions originating from areas in certain locations relative to violating monitors may be more prone to contribute than emissions originating from sources located elsewhere. ADEQ's technical report describes the dynamics responsible for region-wide weather patterns and the associated winds blowing across Arizona, as well as the frequent occurrence of "drainage" winds, which occur when large-scale weather influences wane. ADEQ describes how steep pressure gradients result from strong high pressure building over the western United States and low pressure to the east. As the high pressure builds, a steep pressure differential is created that causes strong winds over Arizona to entrain and transport dust from in-county and out-of-county sources. These can cause elevated PM_{10} concentrations. ADEQ also notes however, that not all exceedances of the PM_{10} standard are wind-related and that stagnation conditions in the fall and winter occur when cold air and the absence of winds trap ambient PM_{10} in the lower atmosphere. ADEQ notes that the region of the county most impacted by stagnation conditions is the western agricultural basin.

The State recommends including the agricultural basin region of the county where stagnation conditions are known to impact PM_{10} concentrations. While we agree that the new nonattainment area should include the agricultural basin region where stagnation conditions occur, we find that the State's recommended boundaries do not in fact accomplish this. As shown on page 14 of the ADEQ's technical report, the agricultural basin region of the county, roughly defined based on tilling and harvesting emissions within the county, lies in the western half of the county, and also extends south of Interstate 10 towards the southern county line. Moreover, as discussed in the following paragraph, a review of available wind data supports the inclusion of areas to the south and east of the violating monitors (*i.e.,* beyond the State's recommended boundaries) based on the prevalence of winds from the southeast quadrant.

EPA has considered the information provided by ADEQ but also reviewed available wind data for Pinal County and finds that winds are similar throughout central and western Pinal County in that the predominant wind directions are from the southeast quadrant. See figure 10 of EPA's TSD. (We note that winds blow out of the north and northwest far less frequently, making transport of PM_{10} from the metropolitan Phoenix area unlikely under most circumstances.) In this instance, the predominance of southeast winds support boundaries that extend south and east of the violating monitors because PM_{10} sources, including agricultural activities and unpaved roads, are found in those directions. EPA's recommended boundaries encompass the types of sources that are believed to cause or contribute to the monitored violations and that are located east and south of the violating monitors, whereas the State's recommended boundaries largely exclude these sources. *See* figure 2 (PM_{10} monitors, ADEQ's recommended nonattainment area boundary, and EPA's proposed nonattainment area boundary), figure 4 (Pinal County agriculture, cattle operations, and unpaved roads), and figure 5 (ADEQ's map illustrating the distribution of emissions in Pinal County) from EPA's TSD.

Lastly, EPA recognizes that high wind events do occur in Pinal County, and that some of these events may result in monitored particulate matter exceedances that qualify as caused by exceptional events under EPA's exceptional events rule.[8] However, as

[8] On March 22, 2007, EPA adopted a final rule, *Treatment of Data Influenced by Exceptional Events,* to govern the review and handling of certain air quality monitoring data for which the normal

ADEQ itself acknowledges, even if EPA were eventually to determine that all of the exceedances that ADEQ has flagged are caused by "exceptional events," the area would still clearly be in violation of the PM_{10} NAAQS.

Geography/Topography. The geography/topography factor evaluates physical features of the land that might have an effect on the airshed, and therefore, on the distribution of particulate matter over an area. In its technical report, ADEQ describes the topography of Pinal County in terms of a broad basin, low in elevation (roughly 1,200 feet in elevation), surrounded on all sides by mountain ranges. ADEQ finds that topographic considerations support the State's inclusion of the basin region of the county, which is characterized by open-ended valleys with few topographic barriers, within the recommended boundaries. Conversely, ADEQ finds that topographic considerations support the State's exclusion from the recommended boundaries of the eastern portion of the county, which is characterized by rough terrain and steep mountain ranges reaching over 7,000 feet in elevation.

EPA too has considered topography and generally agrees with ADEQ's description of the topography of Pinal County. We believe that the various mountain ranges found on each side of the county inhibit transport of PM_{10} (which is largely crustal in composition—*see* figure 6 of EPA's TSD) from outside the county to the violating monitors within the county. Within the county itself, we believe that the mountains in the eastern quarter of the county, which rise to approximately 6,000 feet near the eastern borders with Gila and Graham counties, inhibit intra-county transport from sources located in the eastern quarter to the violating monitors. *See* figure 11 of EPA's TSD. (The portion of the San Carlos Apache Reservation that lies within Pinal County is located in the eastern quarter of the county.)

However, the existence of the steep mountain ranges in the eastern quarter of the County does not justify ADEQ's recommendation to exclude from redesignation a much larger section of the western half of the County. EPA believes that, taking other factors into account, the western half of the County, located in the basin region that features few topographic barriers, should be redesignated to nonattainment. Indeed, it is arguable that topography alone would lend support to redesignating a far larger area than EPA is proposing, one that would encompass the entire county, excepting only the eastern quarter. However, EPA believes that topography when evaluated in the context of the various other factors, supports redesignation of the western half of the county, rather than the much more restricted boundaries that ADEQ suggests.

Jurisdictional Boundaries. The analysis of jurisdictional boundaries evaluates the planning and organizational structure of an area to determine if the implementation of controls in a potential nonattainment area can be carried out in a cohesive manner. ADEQ's technical report notes the absence of any certified metropolitan planning organization (MPO) for Pinal County and the exclusion of Indian country from the State's recommendation. As such, ADEQ concludes that the State's recommended boundaries maintain jurisdictional cohesiveness requiring no new institutional arrangements for accomplishing required tasks.

EPA also considered the planning and organizational structure of the State of Arizona and Pinal County (cities, towns, and unincorporated areas), but also took into account Indian country, to ensure that the implementation of controls within the prospective nonattainment area could be carried out in a cohesive manner. ADEQ exercises overall jurisdiction over environmental programs in the State of Arizona (*i.e.,* excluding Indian country). Under state law, ADEQ has the responsibility for preparing air quality attainment and maintenance plans in Pinal County. With respect to permitting and enforcement, the Pinal County Air Quality Control District (AQCD or "District") has jurisdiction over most types of stationary sources operating, or proposing to locate, within Pinal County, but state law retains ADEQ's statewide jurisdiction over certain types of stationary sources (smelters, refineries, coal-fired power plants, and agricultural operations). Neither ADEQ nor the District have jurisdiction within Indian country.

In its technical report, ADEQ notes that five cities and towns (Casa Grande, Coolidge, Eloy, Florence, and City of Maricopa), as well as a portion of a sixth (Queen Creek) are located in central and western Pinal County. ADEQ indicates that the incorporated boundaries of these municipalities have been taken into account in developing the nonattainment area boundaries. However, EPA's review of the incorporated boundaries of these municipalities (*see, e.g.,* figure 2 of EPA's TSD) shows that the State's recommended boundaries omit portions of the City of Maricopa and Coolidge, and most of Florence and Eloy. In contrast, EPA's proposed nonattainment area boundaries encompass all of these cities and towns, where most of the county's population resides. Inclusion of entire cities and towns within the nonattainment area boundaries would facilitate attainment planning to the extent that such local governments will ultimately be relied upon for development and/or implementation of specific PM_{10} control measures.

Level of Control of Emission Sources. The level of control factor looks at the emissions controls currently implemented in each area. As a general matter, most existing and proposed stationary sources within Pinal County (excluding Indian country) are subject to the generally applicable prohibitory rules and permitting requirements established by the Pinal County AQCD, or, in the case of certain types of stationary sources (smelters, refineries, coal-fired power plants, and agricultural operations), State prohibitory rules and permitting requirements established by ADEQ.

Pinal County AQCD has established rules for dust abatement purposes that apply within a subarea of Pinal County established under state law (Arizona Revised Statutes section 49–541) and referred to as "Area A." Within Pinal County, "Area A" generally refers to an area encompassing the Pinal County portions of Apache Junction and Queen Creek. Pinal County has also adopted a number of ordinances that are also intended to reduce dust generated within "Area A." These include ordinances placing restrictions on residential fireplaces, leaf blowers, open burning, vehicle commute trips, and vehicle idling. For one township located within "Area A," the township included in the Phoenix Area PM_{10} nonattainment area (*i.e.,* Township 1 north, range 8 east; referred to as "Apache Junction"), Pinal County AQCD has adopted further dust abatement rules.[9] The State's recommended boundaries include a portion, but not all, of "Area A." In contrast, EPA's proposed boundaries for the new nonattainment area would encompass

planning and regulatory processes are not appropriate. Under the rule, EPA may exclude data from use in determinations of National Ambient Air Quality Standard (NAAQS) exceedances and violations if a state demonstrates that an "exceptional event" caused the exceedances, and satisfies other criteria set forth by the rule. *See* 72 FR 13560.

[9] The township referred to as Apache Junction would be unaffected by our proposed action and would remain part of the Phoenix planning area, which is designated as a "serious" PM_{10} nonattainment area.

all of "Area A," thereby facilitating review and modification of these existing PM_{10} emissions controls within the broader SIP attainment planning context.

Conclusion. CAA section 107(d)(3)(C) provides that after notifying the Governor of State of its intent to redesignate an area, EPA shall promulgate the redesignation, if any, of the area or portion thereof, submitted by the Governor, "making such modifications as EPA may deem necessary. * * *" Pursuant to CAA section 107(d)(3), we have reviewed the State's recommendation (dated March 23, 2010) and related technical report (submitted on March 26, 2010).

Both EPA and the State agree that sources outside of the county do not contribute to PM_{10} violations at the violating monitors within the county, and that sources in the eastern half of the county do not contribute to the violating monitors (which are concentrated in the central and western portions of the county). But while EPA and the State both use the nine-factor analysis for evaluation of the prospective nonattainment area boundaries, we reach quite different conclusions.

As explained above, and more fully in EPA's TSD, EPA does not believe that the State's recommended boundaries encompass the full geographic area from which emissions-generating activities contribute to the monitored PM_{10} violations. More specifically, we believe that the Governor's recommended boundaries, which cut through municipalities and contiguous expanses of agricultural fields, exclude sources that have been identified as dominant sources of PM_{10} and that are contributing to elevated levels of PM_{10} at violating monitors.

We believe that our proposed boundaries, which are defined as all land geographically located within Pinal County west of the north-south line defined by the boundary between Townships 10E and 11E, but excluding TON's main reservation and excluding the existing Apache Junction portion of the existing Phoenix PM_{10} nonattainment area, encompass the areas in which PM_{10} violations are being monitored, as well as the areas that contribute to the monitored violations, and that they are thus consistent with the definition of nonattainment areas in CAA section 107(d)(1)(A). Our conclusion is based on EPA's analysis of the factors as set forth in the body of this document and in further detail in the TSD. In sum, we base our proposed boundaries on the following considerations: (1) Monitored violations occur in the west, central and northern portions of the western half of the county, not in the eastern half (*i.e.,* outside of existing PM_{10} nonattainment areas); (2) the emissions from agricultural operations, feedlots, dairies, and other cattle operations, as well as roads, are concentrated in the western half of the county; (3) population densities are much greater in the western half of the county than in the eastern half and growth is expected to be concentrated primarily along the Interstate corridors that extend through the western half of the county; (4) Interstate 10, which connects Pinal County with the employment centers in metropolitan Phoenix and Tucson, bisects the western half of Pinal County; (5) predominant southeasterly winds support inclusion of PM_{10} sources in areas to the south and east of the violating monitors; (6) the western half of Pinal County encompasses the incorporated boundaries of all of the cities in Pinal County (Apache Junction, Casa Grande, Coolidge, Eloy, Maricopa), as well as the larger towns (Florence and Queen Creek) thereby potentially facilitating implementation of future control measures; and (7) dust abatement measures already in effect in "Area A" (within Pinal County) can readily be applied, as necessary and appropriate, throughout the other portions of the western half of Pinal County. A map comparing the State's recommended boundaries to EPA's proposed boundaries is included as figure 2 in our TSD.

EPA therefore deems it necessary and appropriate to propose boundaries that differ from the State's recommended boundaries and that we believe better satisfy air quality data, planning, control and other air-quality-related considerations. CAA Section 107(d)(3). Under CAA section 107(d)(3)(C), EPA must notify the State whenever EPA intends to modify State recommendations concerning boundaries for areas to be redesignated, at least 60 days prior to EPA promulgation of final redesignations. EPA intends to notify the State of Arizona of our proposed action soon after this notice is signed.

V. EPA's Review of Recommendations From Affected Indian Tribes

Ak-Chin Indian Community. The Ak-Chin Indian Community is located in western Pinal County, and is included in the existing "rest of state" unclassifiable area for PM_{10}. The Ak-Chin Indian Community does not operate a PM_{10} monitoring site, but lies in proximity to several PM_{10} monitoring sites that do monitor violations of the PM_{10} NAAQS (*e.g.,* the Maricopa and Cowtown sites). In a letter dated September 2, 2010 the Ak-Chin Indian Community responded to EPA's December 30, 2009 letter concerning the PM_{10} designation of Pinal County with a recommendation that the Ak-Chin lands be designated attainment/unclassifiable. We have offered formal consultation to the Ak-Chin Indian Community and have decided to defer action on redesignation of the Ak-Chin Indian Community for PM_{10} to allow time for formal consultation to occur and for further consideration of this issue as part of that process. If in the future EPA decides to take action to redesignate the Ak-Chin Indian Community, the Agency will do so in a separate rulemaking.

Gila River Indian Community. The Gila River Indian Community (GRIC) is a community located on 374,000 acres in south central Arizona. Approximately one-third of GRIC lies within Maricopa County and two-thirds lies within Pinal County. The Maricopa County portion of GRIC is included in the Phoenix Area PM_{10} nonattainment area. The Pinal County portion of GRIC is included in the existing "rest of state" unclassifiable area for PM_{10}. GRIC operates a PM_{10} monitoring site in the Pinal County portion of its lands and GRIC's monitor has recorded a number of PM_{10} exceedances. *See* table 1 above in this document. However, GRIC has flagged a significant number of these exceedances as caused by "exceptional events" under EPA's exceptional event rule (50 CFR 50.14), and EPA has not yet taken action to determine whether any of these data should be excluded on that basis from consideration in a redesignation action. In October 2009, EPA approved GRIC's application for treatment in the same manner as a state for the purposes of CAA section 107(d) air quality designations. More recently, we proposed approval of GRIC's submitted tribal implementation plan. *See* 75 FR 48880, August 12, 2010.

As noted above, on December 30, 2009, EPA notified GRIC that the PM_{10} designation for Pinal County should be revised. GRIC first indicated orally, and later confirmed in a letter dated May 27, 2010, that the community would not be making a recommendation for PM_{10} until formal consultation is conducted. By letter dated April 30, 2010, EPA responded to GRIC's oral request with an offer of formal consultation. As with the Ak-Chin Indian Community, we have decided to defer action on a decision whether to redesignate GRIC to allow time for formal consultation to occur and for further consideration of this issue as part of that process. In

addition, the deferral for GRIC will provide EPA with the time necessary to address the exceptional events issues. If in the future EPA decides to undertake redesignation of the Pinal County portion of the Gila River Indian Community, the Agency will do so in a separate rulemaking.

San Carlos Apache Tribe. The San Carlos Apache Reservation extends over a portion of eastern Pinal County, as well as portions of Gila and Graham counties. A section of the Pinal County portion of the San Carlos Apache Reservation lies in the existing Hayden PM_{10} nonattainment area. The rest of the Pinal County portion of the reservation is located within the "rest of state" unclassifiable area for PM_{10}. The San Carlos Apache Tribe did not respond to EPA's December 30, 2009 letter concerning the PM_{10} designation in Pinal County.

For the reasons discussed in section IV of this document, we believe that emissions sources in the eastern half of Pinal County do not contribute to violations monitored in the western half of the county, and thus are proposing only that the western half of the county (excluding TON's main reservation and the Apache Junction portion of the existing Phoenix PM_{10} nonattainment area) be redesignated to nonattainment. Given that the San Carlos Tribe's Indian country extends only into far eastern Pinal County, we propose to retain the Tribe's current designations for the PM_{10} standard (*i.e.,* a portion remains in the existing Hayden PM_{10} nonattainment area, and a portion remains in the existing "rest of state" unclassifiable area).

Tohono O'odham Nation. The Tohono O'odham Nation (TON) extends over portions of Pima, Maricopa and Pinal counties. TON's main reservation covers much of southwestern Pinal County and extends over portions of Pima and Maricopa counties. TON's lands also include a small area (approximately 25 acres), known as Florence Village, which is located approximately two miles west of the town of Florence in central Pinal County, and a 3,200-acre parcel east of the main reservation called San Lucy Farm. With the exception of a small portion of TON included within the existing Rillito PM_{10} nonattainment area (which is located in Pima County), TON is included in the "rest of state" unclassifiable area for PM_{10}.

In a letter dated February 11, 2010, TON responded to EPA's December 30, 2009 letter concerning the PM_{10} designation in Pinal County with a recommendation that the TON land within Pinal County be designated attainment/unclassifiable for PM_{10}. With respect to the main reservation in southwestern Pinal County, we agree with TON's recommendation and are proposing a nonattainment area with boundaries that exclude TON's main reservation. We agree with TON's recommendation in this regard because (1) the closest violating monitors (Stanfield and Casa Grande) are located in the midst of the county's agricultural basin, well north of TON's main reservation; (2) the types of emissions sources believed to be responsible for the PM_{10} violations, such as agricultural operations, feedlots, and dairies (*see* figure 4 of EPA's TSD), as well as roads, are largely absent from TON; (3) the population density of TON is very low, and is an order of magnitude less than the average population density of Pinal County (*see* table 5 of EPA's TSD); and (4) TON is a separate sovereign not subject to state or county jurisdiction thereby complicating planning and implementation issues. We conclude therefore that TON's main reservation is not contributing to the PM_{10} violations monitored elsewhere in Pinal County and propose to exclude TON from the new nonattainment area. Under this proposal, the designation of TON's main reservation would remain unchanged, *i.e.*, it would remain part of the "rest of state" unclassifiable area for PM_{10}.

As to Florence Village and San Lucy Farm, EPA is deferring redesignation to allow for further consultation with TON. If in the future EPA decides to take action to redesignate TON's Florence Village and San Lucy Farm, the Agency will do so in a separate rulemaking.

VI. Proposed Action and Request for Public Comment

Pursuant to section 107(d)(3) of the Clean Air Act and based on our evaluation of air quality data, planning, control and other air-quality-related information and considerations, and our review of the Governor's recommendation, EPA is proposing to redesignate from "unclassifiable" to "nonattainment" an area generally covering the western half of Pinal County, Arizona, for the 1987 PM_{10} NAAQS and therefore to revise the boundaries of the existing "rest of state" unclassifiable area. EPA's proposal to establish this new PM_{10} nonattainment area, referred to as "West Pinal," is based on numerous recorded violations of the PM_{10} standard at various monitoring sites within the county, and on the other grounds set forth in this document and in the TSD.

EPA's proposed boundaries for the nonattainment area would encompass all of the area recommended by the State of Arizona, but would extend further to the east and south, and to a lesser degree, to the north and west. EPA's proposed boundaries would encompass all land geographically located within Pinal County west of the north-south line defined by the boundary between Townships 10E and 11E, but excluding TON's main reservation and excluding the Apache Junction portion of the existing Phoenix PM_{10} nonattainment area. If finalized as proposed, the new "West Pinal" PM_{10} nonattainment area would be classified as "moderate" by operation of law. *See* figure 2 of EPA's TSD for a map showing EPA's proposed boundaries.

We believe that our proposed boundaries as described above encompass the areas in which PM_{10} violations are being monitored, as well as the areas that contributes to the monitored violations, and that they are thus consistent with the definition of nonattainment areas in CAA section 107(d)(1)(A). Our conclusion is based on EPA's analysis of the factors as set forth in the body of this document and in further detail in the TSD. We find support for our proposed boundaries based on the following considerations: (1) Monitored violations occur in the west, central and northern portions of the western half of the county, not in the eastern half (*i.e.,* outside of existing PM_{10} nonattainment areas); (2) the emissions from agricultural operations, feedlots, dairies, and other cattle operations, as well as roads, are concentrated in the western half of the county; (3) population densities are much greater in the western half of the county than in the eastern half and growth is expected to be concentrated primarily along the Interstate corridors that extend through the western half of the county; (4) Interstate 10, which connects Pinal County with the employment centers in metropolitan Phoenix and Tucson, bisects the western half of Pinal County; (5) predominant southeasterly winds support inclusion of PM_{10} sources in areas to the south and east of the violating monitors; (6) the western half of Pinal County encompasses the incorporated boundaries of all of the cities in Pinal County (Apache Junction, Casa Grande, Coolidge, Eloy, Maricopa), as well as the larger towns (Florence and Queen Creek) thereby potentially facilitating implementation of future control measures; and (7) dust abatement measures already in effect in "Area A" (within Pinal County) can readily be applied, as necessary and appropriate, throughout the other

portions of the western half of Pinal County.

EPA has determined that activities occurring on the main Tohono O'odham Nation (TON) reservation are not causing or contributing to violations occurring in Pinal County and we are therefore proposing to exclude the main TON reservation from the new nonattainment area. San Carlos Apache lands, which are located in the eastern quarter of the county, would be excluded from the proposed nonattainment area along with the rest of the eastern half of the county. EPA is deferring its decision regarding redesignation of the Ak-Chin and Gila River Indian Community lands, as well as TON's Florence Village and San Lucy Farm, pending consideration of issues unique to tribal lands, completion of formal consultation with the tribal governments, and (in the case of GRIC) consideration of exceptional events flags. The existing Phoenix PM_{10} nonattainment area (including the Apache Junction portion of western Pinal County) would be unaffected by this action.

Areas redesignated as nonattainment, as proposed herein, are subject to the applicable requirements of part D, title I of the Act and will be classified as moderate by operation of law (see section 188(a) of the Act). Within 18 months of the redesignation, the State is required to submit to EPA an implementation plan for the area containing, among other things, the following requirements: (1) Provisions to assure that reasonably available control measures (including reasonably available control technology) are implemented within 4 years of the redesignation; (2) a permit program meeting the requirements of section 173 governing the construction and operation of new and modified major stationary sources of PM_{10}; (3) quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrates reasonable further progress, as defined in section 171(1), toward timely attainment; and (4) either a demonstration (including air quality modeling) that the plan will provide for attainment of the PM_{10} NAAQS as expeditiously as practicable, but no later than the end of the sixth calendar year after the area's designation as nonattainment, or a demonstration that attainment by such date is impracticable (*see, e.g.,* section 188(c), 189(a), 189(c), and 172(c) of the Act). We have issued detailed guidance on the statutory requirements applicable to moderate PM_{10} nonattainment areas [*see* 57 FR 13498 (April 16, 1992), and 57 FR 18070 (April 28, 1992)].

If we finalize the proposed redesignation, the State would also be required to submit contingency measures (for the new PM_{10} nonattainment area), pursuant to section 172(c)(9) of the Act, which are to take effect without further action by the State or EPA, upon a determination by EPA that an area has failed to make reasonable further progress or attain the PM_{10} NAAQS by the applicable attainment date (*see* 57 FR 13510–13512, 13543–13544). The EPA is proposing to establish a deadline for submission of contingency measures as called for in section 172(b) of the Act to coincide with the submittal date requirement for the other SIP elements discussed above, *i.e.,* 18 months after redesignation. Lastly, any new PM_{10} nonattainment area would be subject to EPA's general and transportation conformity regulations (40 CFR part 93, subparts A and B) upon the effective date of redesignation. *See* section 176(c) of the Act.

We will accept comments from the public on this proposal for thirty days from the date of publication of this notice, and will consider any relevant comments in taking final action on today's proposal.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA has determined that the redesignation to nonattainment proposed today, as well as the establishment of SIP submittal schedules, would result in none of the effects identified in Executive Order 12866, section 3(f). Under section 107(d)(3) of the Act, redesignations to nonattainment are based upon air quality considerations. The proposed redesignation, based upon air quality data showing that West Pinal is not attaining the PM_{10} standard and upon other air-quality-related considerations, does not, in and of itself, impose any new requirements on any sectors of the economy. Similarly, the establishment of new SIP submittal schedules would merely establish the dates by which SIPs must be submitted, and would not adversely affect entities.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et. seq.,* a redesignation to nonattainment under section 107(d)(3), and the establishment of a SIP submittal schedule for a redesignated area, do not, in and of themselves, directly impose any new requirements on small entities. *See Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327 (DC Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule). Instead, this rulemaking simply proposes to make a factual determination and to establish a schedule to require the State to submit SIP revisions, and does not propose to directly regulate any entities. Therefore, pursuant to 5 U.S.C. 605(b), EPA certifies that today's proposed action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

D. Unfunded Mandates Reform Act

Under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA has concluded that this proposed rule is not likely to result in the promulgation of any Federal mandate that may result in expenditures of $100 million or more for State, local or tribal governments in the aggregate, or for the private sector, in any one year. It is questionable whether a redesignation would constitute a Federal mandate in any case. The obligation for the state to revise its State Implementation Plan that arises out of a redesignation is not legally enforceable and at most is a condition for continued receipt of federal highway funds. Therefore, it does not appear that such an action creates any enforceable duty within the meaning of section 421(5)(a)(i) of UMRA (2 U.S.C. 658(5)(a)(i)), and if it does the duty would appear to fall within the exception for a condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I).

Even if a redesignation were considered a Federal mandate, the anticipated costs resulting from the mandate would not exceed $100 million to either the private sector or State, local and tribal governments. Redesignation of an area to nonattainment does not, in itself, impose any mandates or costs on the private sector, and thus, there is no private sector mandate within the meaning of section 421(7) of UMRA (2 U.S.C. 658(7)). The only cost resulting from the redesignation itself is the cost to the State of Arizona of developing, adopting, and submitting any necessary

SIP revision. Because that cost will not exceed $100 million, this proposal (if it is a federal mandate at all) is not subject to the requirements of sections 202 and 205 of UMRA (2 U.S.C. 1532 and 1535). EPA has also determined that this proposal would not result in regulatory requirements that might significantly or uniquely affect small governments because only the State would take any action as result of today's rule, and thus the requirements of section 203 (2 U.S.C. 1533) do not apply.

E. Executive Order 13132, Federalism

Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to redesignate an area for Clean Air Act planning purposes and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The area proposed for redesignation does not yet include, and EPA is deferring action on the Ak-Chin Indian Reservation, the Pinal County portion of the Gila River Indian Reservation, and TON's Florence Village and San Lucy Farm. In formulating its further action on these areas, EPA has been communicating with and plans to continue to consult with representatives of the Tribes, as provided in Executive Order 13175. Accordingly, EPA has addressed Executive Order 13175 to the extent that it applies to this action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This proposed rule is not subject to Executive Order 13045 ("Protection of Children from Environmental Health Risks") (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action based on health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. The EPA believes that the requirements of NTTAA are inapplicable to this action because they would be inconsistent with the Clean Air Act.

J. Executive Order 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Today's action proposes to redesignate an area to nonattainment for an ambient air quality standard. It will not have disproportionately high and adverse effects on any communities in the area, including minority and low-income communities.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, National parks, Particulate Matter, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 21, 2010.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2010–24683 Filed 9–30–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2010–0066; SW FRL–9208–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to grant a petition submitted by Exxon Mobil Beaumont Refining and Supply Company—Beaumont Refinery (Beaumont Refinery) to exclude (or delist) a certain solid waste generated by its Beaumont, Texas, facility from the lists of hazardous wastes. EPA used the Delisting Risk Assessment Software (DRAS) Version 3.0 in the evaluation of the impact of the petitioned waste on human health and the environment.

DATES: Comments must be received on or before November 1, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–RCRA–2010–0066 by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: peace.michelle@epa.gov.*

3. *Mail:* Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–C, 1445 Ross Avenue, Dallas, TX 75202.

4. *Hand Delivery or Courier.* Deliver your comments to: Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–C, 1445 Ross Avenue, Dallas, TX 75202. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: For further technical information concerning this document or for appointments to view the docket or the Beaumont Refinery facility petition, contact Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–C, 1445 Ross Avenue, Dallas, TX 75202, by calling (214) 665–7430 or by e-mail at *peace.michelle@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving Exxon Mobil's delisting petition as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in

response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: September 20, 2010.

Bill Luthans,

Acting Director, Multimedia Planning and Permitting Division.

[FR Doc. 2010–24572 Filed 9–30–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 216 and 252

Defense Federal Acquisition Regulation Supplement (DFARS); Electronic Ordering Procedures (DFARS Case 2009–D037)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement to address electronic business procedures for placing orders.

DATES: *Comment date:* Comments on this proposed rule should be submitted in writing to the address shown below on or before November 30, 2010, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2009–D037, using any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: dfars@osd.mil. Include DFARS Case 2009–D037 in the subject line of the message.

Fax: 703–602–0350.

Mail: Defense Acquisition Regulations System, *Attn:* Mr. Julian E. Thrash, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Julian E. Thrash, 703–602–0310.

SUPPLEMENTARY INFORMATION:

A. Background

DoD is proposing to add language to the DFARS to make electronic distribution procedures a routine part of order issuance. This case establishes a standard method for issuance of orders via electronic means. DoD currently has the capability to distribute orders electronically on a routine basis, and can post those orders centrally to a site any contractor can access.

DoD is proposing the following changes:

- Add the prescription at DFARS 216.506(a) to require a new clause 252.216–70XX, Ordering, in lieu of the clause at FAR 52.216–18, Ordering, in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated; and
- Add a new clause at DFARS 252.216–70XX, Ordering.

B. Regulatory Flexibility Act

This change may have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The objective of this rule is that, as the DoD now has the capability to distribute orders electronically on a routine basis and can post those orders centrally to a Web site that any contractor can access, the DFARS needs to provide language that will make those procedures a routine part of contract issuance. This rule will enable DoD to further the goals of the E–Government Act of 2002.

For Fiscal Year 2009, DoD made awards to 6,097 small business-unique Data Universal Numbering System (DUNS) numbers using the clause at FAR 52.216–18, Ordering. The benefit of this rule to small business is that it will make electronic distribution procedures a routine part of order issuance. This change will ultimately help improve the management and promotion of electronic Government services and processes, and establish a framework to improve public access to Government information and services. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2009–D037) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 216 and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 216 and 252 as follows:

1. The authority citation for 48 CFR parts 216 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 216—TYPES OF CONTRACTS

2. Amend section 216.506 by adding paragraph (a) to read as follows:

216.506 Solicitation provisions and contract clauses.

(a) Insert the clause at 252.216–70XX, Ordering, in lieu of the clause at FAR 52.216–18, in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Add section 252.216—70XX to read as follows:

252.216–70XX Ordering.

As prescribed in 216.506(a), use the following clause:

ORDERING (DATE)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the contract schedule. Such orders may be issued from _____ through _____ (*Insert dates*).

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c)(1) If issued electronically, the order is considered "issued" when a copy has been posted to the Electronic Document Access system, and notice has been sent to the Contractor.

(2) If mailed or transmitted by facsimile, a delivery order or task order is considered "issued" when the Government deposits the order in the mail or transmits by facsimile. Mailing includes transmittal by U.S. mail or private delivery services.

(3) Orders may be issued orally only if authorized in the schedule.

(End of clause)

[FR Doc. 2010–24386 Filed 9–30–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[Docket No. FWS-R9-MB-2010-0037]
[91200-1232-0000]

RIN 1018-AX24

Migratory Bird Permits; Revisions to the Waterfowl Permit Exceptions and Waterfowl Sale and Disposal Permits Regulations for Muscovy Ducks

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to revise the regulations regarding permit provisions for waterfowl. Specifically, we propose to revise certain permit provisions for the muscovy duck (*Cairina moschata*) at 50 CFR 21.14, 21.25, and 21.54. We take this action to address public concerns resulting from a final rule we published on March 1, 2010 (75 FR 9316), that revised the regulations for the muscovy duck. We request comments from the public on these proposed changes to the regulations.

DATES: Send comments on this proposal on or before December 30, 2010.

ADDRESSES: You may submit comments by either one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS-R9-MB-2010-0037.

• *U.S. Mail or hand delivery:* Public Comments Processing, Attn: FWS-R9-MB-2010-0037; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, Suite 222; Arlington, VA 22203-1610.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information that you provide. See the **Public Comments** section below for more information.

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703-358-1825.

SUPPLEMENTARY INFORMATION:

Background

The muscovy duck is native to Mexico, and Central and South America. However, the species has recently expanded its range into Hidalgo, Starr, and Zapata Counties in south Texas. As a result of this natural expansion into the United States, on March 1, 2010, we published a final rule (75 FR 9282) adding the muscovy duck (*Cairina moschata*) to the List of Migratory Birds protected under the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703–12).

The muscovy duck has been introduced through human intervention to many parts of the United States. These feral muscovy ducks may appear much different than the muscovy duck in its native range, but biologically they are still *Cairina moschata,* and thus are accorded the protection of the MBTA. To reduce the spread of muscovy ducks in the wild, 50 CFR 21.14(g) prohibits the release of captive-reared muscovy ducks to the wild.

On March 1, 2010, we also published a final rule that, among other things, established a control order to manage feral populations (75 FR 9316). The control order at 50 CFR 21.54 allows landowners and Federal, State, Tribal, and local wildlife management agencies, and their tenants, employees, or agents, to remove or destroy muscovy ducks (including hybrids of muscovy ducks), their nests, and eggs, anywhere outside their natural range, without a Federal migratory bird permit. Any muscovy duck removed live under this order must be: (1) placed with a facility where it will be maintained under conditions that will prevent its escape to the wild, (2) donated to public museums or public institutions for scientific or educational purposes, or (3) euthanized and disposed of by burying or incineration.

In that March 1, 2010, final rule (75 FR 9316), we also amended the regulations at 50 CFR 21 to prohibit sale, transfer, or propagation of muscovy ducks for hunting and any other purpose other than for sale as food. This action required revision of regulations governing permit exceptions for captive-reared migratory waterfowl other than mallard ducks and governing waterfowl sale and disposal permits, as well as the addition of the control order described above. We also rewrote the affected regulations to make them easier to understand.

After that final rule (75 FR 9316) was published, we were contacted by many individuals concerned about provisions in the rule that prohibit long-established muscovy duck activities, particularly keeping the ducks for exhibition, or as barnyard animals for personal consumption and egg production (rather than for sale as food). This document proposes changes to the regulations to address these concerns.

Specific Proposed Changes to 50 CFR 21.14

In 50 CFR 21.14, we would remove the requirement that muscovy ducks may not be acquired, possessed, propagated, sold, or transferred, except for sale as food. We would add the following provisions to the regulations:

- You do not need a permit to acquire, possess, or sell properly-marked, captive-reared muscovy ducks or their eggs;
- You may not release muscovy ducks to the wild or to any location used by wild ducks; and
- You may not sell or distribute muscovy ducks as pets. Muscovy ducks have been sold as pets and given as prizes, activities we intend to disallow. However, we do not consider muscovy show ducks to be pets.

When we published the proposed rule to change the regulations for muscovy ducks on August 22, 2008 (73 FR 49626), we were unaware that muscovy ducks are kept as barnyard animals, for consumption by their owners, and for egg production. We were not made aware of these issues until after our March 1, 2010, final rule was published (75 FR 9316). The changes we are proposing in this document would allow the continued keeping and production of muscovy ducks that were restricted by the March 1, 2010 final rule. We expect that these proposed regulations changes would have a very minimal impact on populations of wild ducks, and would facilitate

longstanding activities by muscovy duck owners.

We also propose editorial changes to reorganize the material in this section of the regulations, and to use simpler words and more straight-forward sentences in order to clarify, and use consistent terminology in, the requirements.

Specific Proposed Changes to 50 CFR 21.25

In 50 CFR 21.25, we would remove the specific restrictions for muscovy ducks, including:

- Disposing of muscovy ducks or eggs (see current § 21.25(b)(7));
- Limiting propagation of muscovy ducks only for sale as food (see current § 21.25(b)(8));
- Releasing muscovy ducks to the wild or transferring them for release to the wild (see current § 21.25(b)(8)(i)); and
- Selling or transferring muscovy ducks to be killed by shooting (see current § 21.25(b)(8)(ii)).

The proposed regulations at § 21.14 address these issues; therefore, these topics do not need to be repeated in § 21.25.

We would add the following provision to the regulations at § 21.25:

- You do not need a permit to acquire, possess, sell, or dispose of properly marked, captive-reared muscovy ducks or their eggs.

Like the changes we are proposing to § 21.14, these proposed changes would allow the continued keeping and production of muscovy ducks that were restricted by the March 1, 2010, final rule (75 FR 9316). We expect that these proposed regulations changes would have a very minimal impact on populations of wild ducks, and would facilitate longstanding activities by muscovy duck owners.

In § 21.25, we also propose to clarify the marking requirements for live or dead birds transferred or sold by referencing the requirements at § 21.13(b). This should help affected persons more easily understand, and comply with, the regulations.

We propose editorial changes that reorganize the material in this section of the regulations, and clarify regulatory requirements by using simpler words, more straight-forward sentences, and consistent terminology.

Specific Proposed Changes to 50 CFR 21.54

We would revise paragraph (c) to better address disposal of muscovy ducks removed from the wild.

Public Comments

We request comments or suggestions on this proposed rule from any interested parties. You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov, your entire comment*—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection at *http://www.regulations.gov, or by appointment, during normal business hours, at the U.S.* Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of our previous actions concerning this subject by mail (see **FOR FURTHER INFORMATION CONTACT**) or by visiting the *Federal eRulemaking Portal* at *http://www.regulations.gov.*

Required Determinations

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant, and has not reviewed this rule under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government;

(b) Whether the rule will create inconsistencies with other Federal agencies' actions;

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients; and

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104-121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. We have examined this proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action would not have a significant economic impact on a substantial number of small entities, because the changes we are proposing are intended primarily to reduce the spread of an invasive species little used in commercial endeavors.

This rule addresses captive-reared muscovy ducks that, for the most part, were already held when the species was added to our List of Migratory Birds at 50 CFR 10.13. We expect no significant economic impacts to result from a regulations change allowing possession and sale of these ducks to continue. Further, there would be very minimal costs, if any, associated with this regulations change. Consequently, we certify that because this proposed rule would not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This proposed rule is not a major rule under SBREFA (5 U.S.C. 804(2)). It would not have a significant impact on a substantial number of small entities.

a. This proposed rule would not have an annual effect on the economy of $100 million or more.

b. This proposed rule would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

c. This proposed rule would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This proposed rule would not "significantly or uniquely" affect small governments. A small government agency plan is not required. Actions under the proposed regulation would not affect small government activities in any significant way.

b. This proposed rule would not produce a Federal mandate of $100 million or greater in any year; i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings

In accordance with E.O. 12630, the rule would not have significant takings implications. This proposed rule would not contain a provision for taking of private property. Therefore, a takings implication assessment is not required.

Federalism

This proposed rule would not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. It would not interfere with the States' ability to manage themselves or their funds. This rule addresses captive-reared muscovy ducks that, for the most part, were already held when the species was added to our List of Migratory Birds at 50 CFR 10.13. Therefore, no significant economic impacts are expected to result from a regulations change allowing possession and sale of these ducks to continue.

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

We examined this proposed rule under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). There are no new information collection requirements associated with this proposed rule. We are not requiring any new permits, reports, or recordkeeping in this proposed rule. The FWS form we reference in the **Proposed Regulation Promulgation** section, FWS Form 3-186, Notice of Waterfowl Sale or Transfer, is approved under OMB Control Number 1018-0022, which expires November 30, 2010. An agency may not collect or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have analyzed this proposed rule in accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and part 516 of the U.S. Department of the Interior Manual (516 DM). The change we propose is to allow people and agencies to continue ongoing activities with muscovy ducks. We completed an Environmental Action Statement addressing these changes, in which we concluded that the proposed regulations change requires no additional assessment of potential environmental impacts.

Environmental Consequences of the Proposed Action

This proposal would allow some activities with captive-reared muscovy ducks that the current regulations prohibit. Because release of muscovy ducks to the wild is currently prohibited, and would remain prohibited under this proposal, the environmental consequences of the proposed regulations changes are negligible. However, because these regulation changes will allow possession of muscovy ducks for uses that were previously prohibited, the number of muscovy ducks held in captivity will likely be higher, which may lead to an increase in the number of muscovy ducks escaping into the wild.

Socioeconomic. This proposed rule would not have significant socioeconomic impacts.

Migratory bird populations. This proposed rule would not affect wild migratory bird populations.

Endangered and threatened species. The proposed rule would not affect endangered or threatened species or critical habitats.

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that "The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter" (16 U.S.C. 1536(a)(1)). It further states that the Secretary must "insure that any action authorized, funded, or carried out... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat" (16 U.S.C. 1536(a)(2)).

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American tribal Governments" (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian tribes and have determined that there are no potential effects. This proposed rule would not interfere with the tribes' ability to manage themselves or their funds or to regulate migratory bird activities on tribal lands.

Energy Supply, Distribution, or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 addressing regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under E.O. 13211, and would not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and record keeping requirements, Transportation, Wildlife.

For the reasons stated in the preamble, we propose to amend part 21 of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 21—MIGRATORY BIRD PERMITS

1. The authority for part 21 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703); Public Law 95-616, 92 Stat. 3112 (16 U.S.C. 712(2)); Public Law 106-108, 113 Stat. 1491, Note following 16 U.S.C. 703.

2. Revise § 21.14 to read as follows:

§ 21.14 Permit exceptions for captive-reared migratory waterfowl other than mallard ducks.

(a) You may acquire live or dead, captive-reared, properly marked migratory waterfowl of all species, other than muscovy ducks (*Cairina moschata*) or their eggs, only from a holder of a valid waterfowl sale and disposal permit in the United States. You may possess and transport such waterfowl species and any progeny or eggs for your use without a permit. You also may lawfully acquire such waterfowl species outside of the United States with appropriate permits (*see* § 21.21 of subpart C of this part). If you acquire captive-reared waterfowl or their eggs (other than muscovy ducks and their eggs) from a waterfowl sale and disposal permittee, you must retain the FWS

Form 3-186, Notice of Waterfowl Sale or Transfer, from the permittee for as long as you have the birds, eggs, or their progeny.

(b) All progeny of captive-reared birds or from eggs of captive-reared birds must be physically marked in accordance with § 21.13(b).

(c) With the exception of muscovy ducks, you may transfer or dispose of captive-reared birds or their eggs, whether alive or dead, to any other person only if you have a valid waterfowl sale and disposal permit (*see* § 21.25 of subpart C of this part).

(d) Lawfully-possessed and properly-marked birds may be killed, in any number, at any time or place, by any means except shooting. The birds may be killed by shooting only in accordance with all applicable hunting regulations governing the taking of like species from the wild (*see* part 20 of this subchapter).

(e) At all times during possession, transportation, and storage, until the raw carcasses of such birds are finally processed immediately prior to cooking, smoking, or canning, you must leave the marked foot or wing attached to each carcass, unless the carcass is marked as provided in § 21.13(b).

(f) *Muscovy ducks.* You do not need a permit to acquire, possess, or sell properly-marked, captive-reared muscovy ducks (*Cairina moschata*) or their eggs. You may not release captive-reared muscovy ducks to the wild or to any location used by wild ducks. You may not sell muscovy ducks to be hunted or released to the wild, sell them or distribute them as pets, or transfer them to anyone to be hunted or released to the wild. Nothing in this section shall be construed to permit the taking of live muscovy ducks or their eggs from the wild.

(g) Dealers in meat and game, hotels, restaurants, and boarding houses may serve or sell to their customers the carcass of any bird acquired from a holder of a valid waterfowl sale and disposal permit.

3. Amend § 21.25 as follows:

a. By redesignating paragraphs (a), (b), (c), (d), and (e) as paragraphs (b), (c), (d), (e), and (f);

b. By adding a new paragraph (a) to read as set forth below; and

c. By revising newly designated paragraphs (b) and (c) to read as set forth below.

§ 21.25 Waterfowl sale and disposal permits.

(a) *Prohibition on taking waterfowl from the wild.* You may not take migratory waterfowl or their eggs from the wild, except as provided for elsewhere in this subchapter.

(b) *Permit requirement.* You do not need a permit to acquire, possess, sell, or dispose of properly-marked, captive-reared mallard ducks (*Anas platyrhynchos*) or properly-marked, captive-reared muscovy ducks (*Cairina moschata*), or their eggs. You must have a waterfowl sale and disposal permit before you may lawfully sell, trade, donate, or otherwise dispose of other species of properly-marked, captive-reared migratory waterfowl or their eggs.

(c) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter B, waterfowl sale and disposal permits are subject to the following conditions:

(1) You may acquire waterfowl, other than mallard ducks or muscovy ducks, or their eggs, only from a person who has a valid waterfowl sale and disposal permit.

(2) You must physically mark all offspring hatched in captivity before they are 6 weeks of age in accordance with § 21.13(b), unless you hold them at a public zoological park or a public scientific or educational institution.

(3) Properly marked captive-reared birds may be killed, in any number, at any time or place, by any means except shooting. They may be killed by shooting only in accordance with all the applicable hunting regulations for the species (*see* part 20 of this subchapter).

(4) During possession, transportation, and storage, until the raw carcasses of such birds are finally processed immediately prior to cooking, smoking, or canning, the marked foot or wing must remain attached to each carcass. However, if you have a State license, permit, or authorization that allows you to sell game, you may remove the marked foot or wing from the raw carcasses if the number of your State license, permit, or authorization has been legibly stamped in ink on the back of each carcass and on the wrapping or container in which each carcass is maintained, or if each carcass is identified by a State band on a leg or wing pursuant to requirements of your State license, permit, or authorization.

(5) You may transfer or sell live or dead birds marked by a method listed in § 21.13(b), or their eggs, at any time or place.

(6) If you transfer captive-reared birds or their eggs, other than mallard ducks or muscovy ducks or their eggs, to another person, you must complete FWS Form 3-186, Notice of Waterfowl Sale or Transfer, and provide all information required on the form, plus the method or methods listed in § 21.13(b) by which the birds are marked.

(i) Give the original of the completed form to the person acquiring the birds or eggs.

(ii) Retain one copy in your files.

(iii) Attach one copy to the shipping container for the birds or eggs, or include it with shipping documents that accompany the shipment.

(iv) By the end of the month in which you complete the transfer, mail two copies to the Fish and Wildlife Service Regional Office that issued your permit.

* * * * *

4. Revise § 21.54(c) as follows:

(c) *Disposal of muscovy ducks.* Any muscovy duck removed live under this order must be: Any muscovy duck removed live under this order must be: (1) placed with a facility where it will be maintained under conditions that will prevent its escape to the wild, (2) donated to public museums or public institutions for scientific or educational purposes, or (3) euthanized and disposed of by burying or incineration. Any muscovy duck taken lethally under this order may be donated to a public museum or public institution for scientific or educational purposes. If it is not donated to a public museum or public institution, it must be disposed of by burying or incineration. You may not retain for personal use or consumption, offer for sale, or sell a muscovy duck removed under authority of this section, nor may you release it in any other location.

Dated: August 31, 2010

Eileen Sobeck,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2010–23139 Filed 9–30–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 100217098–0373–01]

RIN 0648–AY64

Taking and Importing Marine Mammals; Naval Explosive Ordnance Disposal School Training Operations at Eglin Air Force Base, Florida

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received an application from the U.S. Department of

the Air Force, Headquarters 96th Air Base Wing (U.S. Air Force), Eglin Air Force Base (Eglin AFB) for authorization to take marine mammals, by Level B harassment, incidental to Naval Explosive Ordnance Disposal School (NEODS) training operations, military readiness activities, at Eglin AFB, FL from approximately December, 2010, to November, 2015. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern the requested take and requesting information, suggestions, and comments on its proposed regulations. NMFS issued annual Incidental Harassment Authorizations pursuant to the MMPA for similar specified activities in 2005, 2006, 2007, and 2008. No activities have occurred to date.

DATES: Information, suggestions, and comments must be received no later than November 1, 2010.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov.*

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (*see* **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address. NMFS is current preparing a Draft Environmental Assessment in accordance with the National Environmental Policy Act (NEPA) as implemented by the regulations published by the Council on Environmental Quality (CEQ).

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–713–2289, ext. 172.

SUPPLEMENTARY INFORMATION:

Availability

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (*see* **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

Background

Paragraphs 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary), upon request, to allow for a period of not more than five years, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Alternatively, if the taking is limited to harassment an Incidental Harassment Authorization (IHA) is issued. Upon making a finding that an application for incidental take is adequate and complete, NMFS commences the incidental take authorization process by publishing in the **Federal Register** a notice of a receipt of an application for the implementation of regulations or a proposed IHA.

An authorization for the incidental takings may be granted if NMFS finds that the taking during the period of the authorization will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth to achieve the least practicable adverse impact.

NMFS has defined "negligible impact" in 50 CFR 216.103 as:

> * * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The National Defense Authorization Act of 2004 (NDAA) (Pub. L. 108–36) modified the MMPA by removing the "small numbers" and "specified geographic region" limitations and amended the definition of "harassment" as it applies to a "military readiness activity" to read as follows (Section 3(18)(B) of the MMPA):

> (i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or behavioral patterns are abandoned or significantly altered (Level B harassment).

Summary of Request

On November 6, 2009, NMFS received a letter from the U.S. Air Force requesting an authorization for the take of marine mammals incidental to NEODS training operations. These training operations are properly considered "military readiness activity" under the provisions of the NDAA. On January 15, 2010, NMFS published a Notice of Receipt (75 FR 2490) in the **Federal Register** for the U.S. Air Force's NEODS training operations and determined that its application was adequate and complete. The U.S. Air Force states and NMFS concurs that underwater explosive detonations could result in the take by harassment of marine mammals by exposing them to sound. The requested regulations would establish a framework for authorizing incidental take with future LOAs. These LOAs, if approved, would authorize the take, by Level B (behavioral) harassment, of Atlantic bottlenose dolphins (*Tursiops truncatus*) incidental to conducting NEODS training operations and testing at Eglin Gulf Test and Training Range (EGTTR) at property off Santa Rosa Island (SRI), Florida, in the northern Gulf of Mexico (GOM). Based on the application, pre-mitigation take would average approximately 10 animals per year; approximately 50 animals over the five year period. NMFS issued annual Incidental Harassment Authorizations (IHA) for almost identical activities in 2005 (70 FR 51341; August 30, 2005), 2006 (71 FR 60639; October 16, 2006), 2007 (72 FR 58290; October 15, 2007), and 2008 (73 FR 56800; September 30, 2008). The past missions have been delayed due to safety issues related to bringing demolition charges under a bridge. No missions have occurred to date under any of the IHAs. NEODS missions would involve underwater detonations of small, live explosive charges adjacent to inert mines. The NEODS training activities are classified as military readiness activities. The U.S. Air Force states that underwater detonation of the specified explosive charges may expose bottlenose dolphins

in the area to noise and pressure resulting in non-injurious temporary threshold shift (TTS) (temporary hearing loss).

Additional information on the NEODS training operations is contained in the application, which is available upon request (*see* **ADDRESSES**).

Description of the Proposed Specified Activities

Background

Potential impacts to listed species and habitat from NEODS testing are limited to the sites offshore of Eglin AFB shown in Figure 1–1 of Eglin AFB's application. The EGTTR encompasses approximately 222,739 km^2 (86,000 mi^2) within the GOM and consists of the airspace over the GOM, which is scheduled and operated by Eglin AFB. NEODS test areas are located approximately three nautical miles (nmi) from shore, in approximately 18.3 m (60 ft) of water and in area W–151 of the EGTTR.

The mission of NEODS is to detect, recover, identify, evaluate, render safe, and dispose of unexploded ordnance (UXO) that constitutes a threat to people, material, installations, ships, aircraft, and operations. The U.S. Navy EOD force of approximately 1,000 men and women has the equipment, mobility, and flexibility to tackle the global spectrum of threats in all world environments. Mine Countermeasures (MCM) detonations is one function of the U.S. Navy EOD force, which involves mine-hunting and mine-clearance operations. The NEODS facilities are located at Eglin AFB, Florida. The proposed training at Eglin AFB involves focused training on basic EOD skills. Examples of these fundamental skills are recognizing ordnance, reconnaissance, measurement, basic understanding of demolition charges, and neutralization of conventional and chemical ordnance.

The NEODS at Eglin AFB proposes to use the GOM waters off of SRI for a portion of the NEODS class. The NEODS would utilize areas approximately one to three nmi offshore of Test Site A–15, A–10 or A–3 for MCM training (see Figure 1–1 of Eglin AFB's application). A "test site" is a specific location on EGTTR where the mission activities actually occur. The goal of the training is to give NEODS students the tools and techniques to implement MCM through real scenarios. The students would be taught established techniques to implement MCM through real scenarios. The students would be taught established techniques for neutralizing mines by diving and hand-placing charges adjacent to the mines. The detonation of small, live explosive charges adjacent to the mine disables the mine function. Inert mines are utilized for training purposes. This training would occur offshore of SRI up to eight times annually, at varying times within the year.

Proposed NEODS Operations

MCM training classes are 51 days in duration, with four days of on-site training in the GOM. Two of these four days will be utilized to lay the inert mines prior to the training. The other two days will require the use of live detonations in the GOM. One large safety vessel and five MK V inflatable 3.1 m (10 ft) rubber boats with 50 horsepower (HP) engines would be used to access the GOM waters during training activities. The training procedures during the two "live demolition" days are described as follows.

First Live Demolition Day: Five inert mines will be placed in a compact area on the GOM floor in approximately 60 ft of water. These five mines will be utilized for the one or two live demolition days. Divers will locate the mines by hand-held sonars (AN/PQS–2A acoustic locator and the Dukane Underwater Acoustic Locator System), which detect the mine casings (mine shape reacquisition). The hand-held sonar would not impact any protected marine species because the sonar ranges are below any current threshold for protected marine species (*see* Table 1–1 of Eglin AFB's application); therefore, potential noise impacts from sonars are not included in this analysis.

Five charges packed with C–4 explosive material (either 2.3 kg [5 lb] NEW or 4.6 kg [10 lb] NEW) will be set up adjacent to the mines. A charge includes detonation cord, non-electric caps, time fuses and fuse igniters. No more than five charges will be utilized over the two-day period. Live training events will occur eight times annually, averaging once every six to seven weeks. Four of the training events will involve five-lb charges, and four events will involve ten-lb charges. Because five detonations (maximum) are expected during each event, there will be up to twenty five-lb detonations and twenty ten-lb detonations annually, for a total of forty detonations. It is expected that 60 percent of the training events will occur in summer, and 40 percent will occur in winter. Therefore, analyses of potential marine mammal impacts in Section 6 of Eglin AFB's application reflect this seasonal distribution. Overpressure from the detonation is intended to disrupt the electrical charge on the mine, rendering it safe. The five charges will be detonated individually with a maximum separation time of 20 minutes between each detonation. The time of detonation will be limited to an hour after sunrise and an hour before sunset. Mine shapes and debris will be recovered and removed from the GOM waters when training is completed.

Second Live Demolition Day: Each team has two days to complete their entire evolution (detonation of five charges). The second day will be utilized only if the teams cannot complete their evolution on day one.

TABLE 1—(TABLE 1–1 OF THE APPLICATION) HAND-HELD SONAR CHARACTERISTICS

	AN/PQS–2A	Dukane
Frequency Operating Range	115 kHz–145 kHz	30–45 kHz.
Audible Frequency Range	N/A	250 Hz–2,500 Hz.
Operating Frequency	115 kHz–145 kHz	37.5 kHz ± 1 kHz.
Sound Pressure Level	1.78.5 re 1 μPa @ 1m	157–160.5 re 1 μPa @ 1m.

Additional details regarding the proposed NEODS training operations can be found in Eglin AFB's LOA application and Draft Environmental Assessment on the Promulgation of Regulations and the Issuance of Letters of Authorization to Take Marine Mammals, by Harassment, Incidental to Naval Explosive Ordnance Disposal School Training Operations at Eglin Air Force Base, Florida (Draft EA). The Draft EA can also be found online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Military Readiness Activity

NEODS supports the Naval Fleet by providing training to personnel from all four armed services, civil officials, and

military students from over 70 countries. The NEODS facility supports the Department of Defense Joint Service Explosive Ordnance Disposal training mission. According to the application, the Navy and the Marine Corps believe that the ability of Sailors and Marines to detect, characterize, and neutralize mines from their operating areas at sea, on the shore, and inland, is vital to their doctrines.

As described in the application, the Navy believes that an array of trans-national, rogue, and sub-national adversaries now pose the most immediate threat to American interests. Because of their relative low cost and ease of use, mines will be among the adversaries' weapons of choice in shallow-water situations, and they will be deployed in an asymmetrical and asynchronous manner. The Navy needs organic means to clear mines and obstacles rapidly in three challenging environments: Shallow water; the surf zone; and the beach zone. The Navy also needs a capability for rapid clandestine surveillance and reconnaissance of minefields and obstacles in these environments. The NEODS mission in the GOM offshore of Eglin AFB is considered a military readiness activity pursuant to the National Defense Authorization Act (NDAA) (Pub. L. 108–136).

Proposed Dates, Duration, and Location of Specified Activity

NEODS missions will occur over the next five years utilizing resources within the Eglin Military Complex, including three sites in the EGTTR (Figure 1–1 of Eglin AFB's application). There will be eight training events annually, with an average of one event occurring every six to seven weeks. Half of the events will involve 5 lb charges and half will involve 10 lb charges.

Description of Marine Mammals and Habitat Affected in the Activity Area of the Specified Activities

Marine mammal species that potentially occur within the EGTTR include several species of cetaceans and one sirenian, the West Indian manatee (*see* Table 1 below). Marine mammal species listed as Endangered under the U.S. Endangered Species Act (ESA), includes the humpback, sei, fin, blue, North Atlantic right, sperm whale, and Florida manatee. The marine mammals that generally occur in the proposed training operations area belong to three taxonomic groups: Mysticetes (baleen whales), odontocetes (toothed whales), and sirenians (the manatee). Table 2 below outlines the cetacean species and their habitat in the region of the proposed project area.

During winter months, manatee distribution in the GOM is generally confined to southern Florida. During summer months, a few may migrate north as far as Louisiana. However, manatees primarily inhabit coastal and inshore waters and rarely venture offshore. NEODS missions would be conducted one to three nmi from shore. Therefore, effects on manatees are considered very unlikely, and the discussion of marine mammal species is confined to cetaceans. The primarily cetacean occurring in the NEODS area of interest, EGTTR sub-area 197 (Figure 3–1 of Eglin AFB's application), is the Atlantic bottlenose dolphin and this analysis will focus on that species.

TABLE 2—THE HABITAT AND CONSERVATION STATUS OF MARINE MAMMALS INHABITING THE PROPOSED STUDY AREA IN THE GULF OF MEXICO OFF OF FLORIDA.

Species	Habitat	ESA [1]	MMPA [2]
Mysticetes			
North Atlantic right whale (*Eubalaena glacialis*)	Coastal and shelf	EN	D.
Humpback whale (*Megaptera novaeangliae*)	Pelagic, neashore waters and banks	EN	D.
Bryde's whale (*Balaenoptera brydei*)	Pelagic and coastal	NL	NC.
Minke whale (*Balaenoptera acutorostrata*)	Pelagic and coastal	NL	NC.
Blue whale (*Balaenoptera musculus*)	Pelagic and coastal	EN	D.
Sei whale (*Balaenoptera borealis*)	Primarily offshore, pelagic	EN	D.
Fin whale (*Balaenoptera physalus*)	Slope, mostly pelagic	EN	D.
Odontocetes			
Sperm whale (*Physeter macrocephalus*)	Pelagic, deep seas	EN	D.
Cuvier's beaked whale (*Ziphius cavirostris*)	Pelagic	NL	NC.
Gervais' beaked whale (*Mesoplodon europaeus*)	Pelagic	NL	NC.
True's beaked whale (*Mesoplodon mirus*)	Pelagic	NL	NC.
Blainville's beaked whale (*Mesoplodon densirostris*)	Pelagic	NL	NC.
Dwarf sperm whale (*Kogia sima*)	Offshore, pelagic	NL	NC.
Pygmy sperm whale (*Kogia breviceps*)	Offshore, pelagic	NL	NC.
Killer whale (*Orcinus orca*)	Widely distributed	NL	NC. D (Southern Resident, AT1 Transient).
Short-finned pilot whale (*Globicephala macrorhynchus*)	Inshore and offshore	NL	NC.
False killer whale (*Pseudorca crassidens*)	Pelagic	NL	NC.
Melon-headed whale (*Peponocephala electra*)	Pelagic	NL	NC.
Pygmy killer whale (*Feresa attenuata*)	Pelagic	NL	NC.
Risso's dolphin (*Grampus griseus*)	Pelagic, shelf	NL	NC.
Bottlenose dolphin *(Tursiops truncatus*)	Offshore, inshore, coastal, estuaries	NL	NC. D (Western North Atlantic Coastal).
Rough toothed dolphin (*Steno bredanensis*)	Pelagic	NL	NC.
Fraser's dolphin (*Lagenodelphis hosei*)	Pelagic	NL	NC.
Striped dolphin (*Stenella coeruleoalba*)	Pelagic	NL	NC.
Pantropical spotted dolphin (*Stenella attenuata*)	Pelagic	NL	NC. D (Northeastern Offshore).

TABLE 2—THE HABITAT AND CONSERVATION STATUS OF MARINE MAMMALS INHABITING THE PROPOSED STUDY AREA IN THE GULF OF MEXICO OFF OF FLORIDA.—Continued

Species	Habitat	ESA [1]	MMPA [2]
Atlantic spotted dolphin (*Stenella frontalis*)	Coastal to pelagic	NL	NC.
Spinner dolphin (*Stenella longirostris*)	Mostly pelagic	NL	NC.
			D (Eastern).
Clymene dolphin (*Stenella clymene*)	Pelagic	NL	NC.
Sirenians			
West Indian (Florida) manatee (*Trichechus manatus latirostris*) ..	Coastal, rivers and estuaries	EN	D.

[1] U.S. Endangered Species Act: EN = Endangered, T = Threatened, NL = Not listed.
[2] U.S. Marine Mammal Protection Act: NC = Not Classified, D = Depleted, S = Strategic.

The three species of marine mammals that are known to commonly occur in close proximity to the NEODS training area of the GOM are the West Indian (Florida) manatee, Atlantic spotted dolphin, and Atlantic bottlenose dolphin.

Florida Manatee

The West Indian manatee in Florida and U.S. waters is listed as Endangered under the Endangered Species Act (ESA). They primarily inhabit coastal and inshore waters. Because the Florida manatee is managed under the jurisdiction of the U.S. Fish and Wildlife Service it is not considered further in this analysis.

Atlantic Spotted Dolphins

The Atlantic spotted dolphin is endemic to the Atlantic Ocean in temperate to tropical waters (Perrin *et al.,* 1987, 1994). In the GOM, Atlantic spotted dolphins occur primarily from continental shelf waters 10 to 200 m (33 to 656 ft) deep to slope waters greater than 500 m (1,640 ft) deep (Fulling *et al.,* 2003; Mullin and Fulling, 2004). Atlantic spotted dolphins were seen in all seasons during GulfCet aerial surveys of the northern GOM from 1992 to 1998 (Hansen *et al.,* 1996; Mullin and Hoggard, 2000). It has been suggested that this species may move inshore seasonally during spring, but data supporting this hypothesis are limited (Caldwell and Caldwell, 1966; Fritts *et al.,* 1983).

Eglin AFB has included Atlantic spotted dolphins in previous requests for IHAs to be conservative, although their occurrence is considered unlikely. The stock assessment reports for the northern GOM describes the shoreward range of Atlantic spotted dolphins as 10 m (33 ft) depth. NEODS activities can occur from one to three miles offshore. Maximum water depth of the proposed activities is 18.3 m (60 ft), but they often train in approximately 9.1 m (30 ft) of water, so this species range occurs at the very edge of the proposed activities. Therefore, the chance of impacting Atlantic spotted dolphins is remote, especially given the monitoring and mitigation measures described below.

Atlantic Bottlenose Dolphins

The marine mammal species potentially affected is the Atlantic bottlenose dolphin. Atlantic bottlenose dolphins are distributed worldwide in tropical and temperate waters. Atlantic bottlenose dolphins occur in slope, shelf, and inshore waters of the entire GOM, and their diet consists mainly of fish, crabs, squid, and shrimp (Caldwell and Caldwell, 1983). In addition, a coastal and an offshore form of the bottlenose dolphin have been suggested. Baumgartner *et al.* (2001) suggest a bimodal distribution in the northern GOM, with a shelf population occurring out to the 150 m (492 ft) isobath and a shelf break population out to the 750 m (2,460.6 ft) isobath. Occurrence in water with depth greater than 1,000 m (3,280.8 ft) is not considered likely and not applicable to this assessment. Migratory patterns from inshore to offshore are likely associated with the movements of prey rather than a preference for a particular habitat characteristic (such as surface water temperature) (Ridgeway, 1972; Irving, 1973; Jefferson *et al.,* 1992).

Within the EGTTR, there are four defined stocks of bottlenose dolphins: the Northern GOM Oceanic Stock, the Northern GOM Continental Shelf Stock, the Eastern GOM Coastal Stock, and the Northern GOM Coastal Stock. In addition, there are 33 stocks of bottlenose dolphins inhabiting the bays, sounds, and estuaries along the GOM coast (Waring *et al.,* 2007). Prior to the 2007 Garrison survey and model predictions, the best estimates of abundance were 7 to 15 years old, occurred during different seasons, and each of the surveys suffered from differing degrees of negative bias in abundance estimates because all surveys assumed that all animals on the trackline were seen. Therefore, estimates based on those surveys would be highly uncertain. Based on data from the Protected Species Habitat Modeling in the EGTTR, the total estimate of abundance of bottlenose dolphins from the winter 2007 survey was 65,861 (95 percent CI 36,699 to 118,200) and for the summer 2007 survey was 11,433 animals (95 percent CI 7,346 to 17,793) (Garrison, 2008). For both the summer and winter surveys, the highest density of bottlenose dolphins occurred in the northern inshore stratum. The summer survey overall abundance estimate for bottlenose dolphins was approximately 50 percent lower than the winter survey (Garrison, 2008). Bottlenose dolphin stocks for the shelf edge and slope are not considered strategic. The potential for biological removal (PBR) for shelf and slope stocks is 45 dolphins (Waring *et al.,* 2001).

The presence of fish in the stomachs of some individual offshore bottlenose dolphins suggest that they dive to depths of more than 500 m (1,640 ft). A tagged individual near Bermuda had maximum recorded dives of 600 to 700 m (1,969 to 2,297 ft) and durations of 11 to 12 min. Dive durations up to 15 min have been recorded for trained individuals. Typical dives, however, are more shallow and of a much shorter duration. Data from a tagged individual off Bermuda indicated a possible diel dive cycle (*i.e.,* a regular daily dive cycle) in search of mesopelagic (living at depths between 180 and 900 m [591 and 2,953 ft]) prey in the deep scattering layer.

In the EGTTR as a whole, there were a total of 281 groups of bottlenose dolphins during the winter survey and 162 groups during the summer survey. According to the species-habitat model for bottlenose dolphins, densities were predicted to be highest in relatively shallow water, with an offshore peak in density between 40 to 60 m (131 to 196.9 ft) depth and in waters ranging

between 27.5 to 28.5 °C (81.5 to 83.3 °F) (Garrison, 2008).

Bottlenose dolphin density estimates for the study area are derived from Protected Species Habitat Modeling in the EGTTR (Garrison, 2008). NMFS developed habitat models using new aerial survey line transect data collected during the winter and summer of 2007. The winter survey was conducted primarily during the month of February (water temperatures of 12 to 15 °C [53.6 to 59 °F]) while the summer survey was primarily during July (water temperatures >26 °C [78.8 °F]). In combination with remotely sensed habitat parameters (sea surface temperature and chlorophyll), these data were used to develop spatial density models for bottlenose dolphins within the continental shelf and coastal waters of the eastern GOM. Encounter rates during the aerial surveys were corrected for sighting probabilities and the probability that animals were available to be seen on the surface. The models predict the absolute density of bottlenose dolphins within the EGTTR. Given that the survey area (EGTTR sub-area 197, Figure 3–1 of Eglin AFB's application) completely overlaps the NEODS mission area and that this data is currently the best available survey data, these models best reflect the occurrence of bottlenose dolphins within the EGTTR.

Table 3–1 of Eglin AFB's application provides median and adjusted bottlenose dolphin densities in EGTTR sub-area 197. These absolute estimates of density (animals per square kilometer [km^2] were produced by combining the spatial density model, sighting probability, and availability model (Garrison, 2008). All environmental terms were retained in the species-habitat model for the winter survey and the summer survey with the exception of glare for the summer survey. The model fits for the winter and summer were highly significant, explained a significant portion of the variability in the data, and resulted in effective predictions of spatial distribution of bottlenose dolphins.

NEODS missions may be executed at any time during the year. It is anticipated that approximately 60 percent of missions will be executed during summer months, and 40 percent will be executed during winter months. Separate summer and winter density estimates are provided in Table 3–1 of Eglin AFB's application. Months with high CV values (greater than 1) have high degrees of uncertainty in the model predictions. These months include May, June, September, October, and November where density was unknown. In order to compensate for the months without good estimates, interpolation was used between the available months by providing a means of estimating the function at intermediate points through presuming that there were linear seasonal trends. Interpolation assumes that the poorly estimated periods lie somewhere in the middle of the well estimated periods. Adjusted densities for each month were reached after interpolation calculations (*see* Table 3–1 of Eglin AFB's application). Based on the adjusted densities, January, March, and July have the highest bottlenose dolphin densities while the months from August through December months have the lowest densities. On average, there are 0.81 bottlenose dolphins/km^2 throughout the year in EGTTR sub-area 197. Seasonally there are on average 0.84 dolphins/km^2 during summer and 0.78 dolphins/km^2 during winter in sub-area 197.

TABLE 3—(TABLE 3–1 OF THE APPLICATION) BOTTLENOSE DOLPHIN DENSITIES FOR EGTTR SUB-AREA 197

Month	Median density (Individuals/km^2)	CV	Valid	Adjusted density (Individuals/km^2)[a]
November	0.00	31.62	0	0.51
December	0.52	0.25	1	0.52
January	1.24	0.22	1	1.24
February	0.73	0.20	1	0.73
March	1.22	0.28	1	1.22
April	0.84	0.46	1	0.84
Average Winter Density				
May	0.00	22.41	0	0.95
June	0.00	4.47	0	1.06
July	1.17	0.24	1	1.17
August	0.48	0.22	1	0.48
September	0.01	3.02	0	0.49
October	0.00	20.43	0	0.50
Average Summer Density			.....	0.78
Overall Average Density			.....	0.81

[a] Adjusted through interpolation.

NMFS anticipates that no bottlenose dolphins will be injured, seriously injured, or killed during the proposed NEODS training operations. The specific objective of the U.S. Air Force's mitigation and monitoring plan is to ensure that no dolphins (or manatees) or other protected species are in the action area where they might be impacted by the explosive detonations. Because of the circumstances and the proposed mitigation and monitoring requirements discussed in this document, NMFS believes it highly unlikely that the proposed activities would result in injury (Level A harassment), serious injury, or mortality of bottlenose dolphins, however, they may temporarily avoid the area where the proposed explosive demolition will occur. Eglin AFB has requested the incidental take of 10 bottlenose dolphin each year and approximately 50 animals during the five year duration of the proposed action.

Further information on the biology, habitat, and local distribution of these species and others in the region can be found in Eglin AFB's application, which is available upon request (*see* **ADDRESSES**), and the NMFS Marine Mammal Stock Assessment Reports, which are available online at: *http://www.nmfs.noaa.gov/pr/species/*.

Comments and Responses

On January 15, 2010, NMFS published a notice of receipt of application for a LOA in the **Federal Register** (75 FR 2490) and requested comments, information, and suggestions from the public for 30 days. NMFS received comments from the Marine Mammal Commission (Commission) and a private citizen. The private citizen's comments opposed the issuance of an authorization without providing any specific rationale for that position. NMFS, therefore, cannot respond to this comment.

Comment 1: The Commission supports NMFS' intent to publish proposed small-take regulations for these activities, provided the research, mitigation, and monitoring activities described in the application are incorporated into the rule. The Commission looks forward to reviewing the proposed regulations.

Response: NMFS appreciates with the Commission's comments and has incorporated the research, mitigation, and monitoring activities described in the application into the proposed rule.

Potential Effects of Specified Activities on Marine Mammals

In general, potential impacts to marine mammals from explosive detonations could include non-lethal injury (Level A harassment), serious injury, and mortality, as well as Level B harassment. In the absence of monitoring and mitigation, marine mammals may be killed or injured as a result of an explosive detonation due to the response of air cavities in the body, such as the lungs and bubbles in the intestines. Effects are likely to be most severe in near surface waters where the reflected shock wave creates a region of negative pressure called "cavitation." While these direct physiological effects are possible, they are considered unlikely in association with the specified activities due to the monitoring and mitigation measures described below.

A second potential possible cause of mortality is the onset of extensive lung hemorrhage. Extensive lung hemorrhage is considered debilitating and potentially fatal. Suffocation caused by lung hemorrhage is likely to be the major cause of marine mammal death from underwater shock waves. The estimated range for the onset of extensive lung hemorrhage to marine mammals varies depending upon the animal's weight, with the smallest mammals having the greatest potential hazard range.

Marine mammals may potentially be harassed due to noise from NEODS mission involving underwater detonations. The potential numbers and species taken by noise are assessed in this section. Three key sources of information are necessary for estimating potential noise effects on marine resources: (1) The number of distinct firing or test events; (2) the Zone of Influence (ZOI) for noise exposure; and (3) the density of animals that potentially reside within the ZOI. The ZOI is the area where potential impacts from the mission could occur. The "test site" and "mission area" are both found within the ZOI.

For the acoustic analysis, the exploding charge is characterized as a point source. The impact thresholds used for marine mammals relate to potential effects on hearing from underwater detonation noise. No ESA-listed marine mammals would be affected given the location of the proposed action in nearshore waters. The only ESA-listed marine mammal likely to be found in the northeastern GOM, the Federal and state-listed endangered sperm whale (*Physeter macrocephalus*), occurs farther out on the continental slope in water generally deeper than 600 m (1,968.5 ft). Manatees are not considered likely to occur in the mission areas (see Figure 1–1 of Eglin AFB's application) and are therefore not considered in this analysis.

For the explosives in question, actual detonation depths would occur at 60 ft near the sand bottom. The inert mines and sea floor may potentially interact with the propagation of noise into the water. However, effects on the propagation of noise into the water column cannot be determined without in-water noise monitoring at the time of detonation. Potential exposure of a sensitive species to detonation noise could theoretically occur at the surface or at any number of depths with differing consequences. A conservative acoustic analysis was selected to ensure the greatest direct path for the harassment ranges and to give the greatest impact range for the injury thresholds.

Criteria and thresholds that are the basis of the analysis of NEODS noise impacts to cetaceans were initially used in U.S. Navy Environmental Impact Statements for ship shock trials of the *Seawolf* submarine and the *Winston S. Churchill* (*Churchill*) vessel (DON, 1998; DON, 2001) and adopted by NMFS (NMFS, 2001). Supplemental criteria and thresholds have been introduced in the EGTTR Programmatic Environmental Assessment (U.S. Air Force, 2002), subsequent EGTTR LOA (U.S. Air Force, 2003) permit request, Precision Strike Weapons (PSW) LOA (U.S. Air Force, 2004), and Naval Surface Warfare Center Panama City Division LOA (U.S. Navy, 2008).

Standard impulsive and acoustic metrics were used for the analysis of underwater pressure waves in this document.

- Energy flux density (EFD) is the time integral of the squared pressure divided by the impedance. EFD levels have units of dB re 1 $\mu Pa^2 \cdot s$.
- ⅓-Octave EFD is the energy flux density in a ⅓-octave frequency band; the ⅓ octave selected is the hearing range at which the subject animals' hearing is believed to be most sensitive.
- Peak pressure is the maximum positive pressure for an arrival of a sound pressure wave that a marine mammal would receive at some distance away from a detonation. Units used here are pounds per square inch (psi) and dB levels.

Non-lethal injurious impacts are defined in this document as eardrum rupture (*i.e.,* tympanic-membrane (TM rupture) and the onset of slight lung injury. These are considered indicative of the onset of injury. The threshold for TM rupture corresponds to a 50 percent rate of rupture (*i.e.,* 50 percent of animals exposed to the level are expected to suffer TM rupture); this is stated in terms of an EFD value of 1.17 in-lb/in^2, which is about 205 dB re 1 $\mu Pa^2 \cdot s$. This recognizes that TM rupture is not necessarily a life-threatening injury, but is a useful index of possible injury that is well-correlated with measures of permanent hearing impairment (*e.g.,* Ketten [1998] indicates a 30 percent incidence of permanent threshold shift [PTS] at the same threshold). 205 re 1 $\mu Pa^2 \cdot s$ has been requested by NMFS to calculate harassment distances for Level A harassment (NMFS, 2008).

Public Law 108–136 (2004) amended the definition of Level B harassment under the MMPA for military readiness activities, such as this action (and also for scientific research on marine mammals conducted by or on the behalf of the Federal Government). For military readiness activities, Level B harassment is now defined as "any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering to a point where such behavioral patterns are abandoned or significantly altered." Unlike Level A harassment, which is solely associated with physiological effects, both physiological and behavioral effects may cause Level B harassment.

NMFS (2008) requested a dual criterion (*i.e.,* 182 dB re 1 μPa²·s and 23 psi peak) be used to calculate Level B harassment. Since the mission (five detonations over one or two days) does not meet multiple explosion criteria and the potential for significant alteration of behavior will not be expected for the short duration of noise produced from single detonations from NEODS missions, thresholds for behavioral effects to explosive sound will not be analyzed. The first criterion for non-injurious harassment is TTS, which is defined as a temporary, recoverable loss of hearing sensitivity (NMFS, 2001; DON, 2001). The criterion for TTS is 182 dB re 1 μPa²·s. The potential for significant alteration of behavior described below will not be expected for the short duration of noise produced from single detonations from NEODS tests.

The second criterion for estimating TTS threshold applies to all cetacean species and is stated in terms of peak pressure at 23 psi. The threshold is derived from the *Churchill* threshold which was subsequently adopted by NMFS in its Final Rule on the unintentional taking of marine animals incidental to the shock testing (NMFS, 2001). The original criteria in *Churchill* incorporated 12 psi. The current criteria and threshold for peak pressure over all exposures was updated from 12 psi to 23 psi for explosives less than 907 kg (2,000 lb) based on an IHA issued to the Air Force for a similar action (NOAA, 2006a). Peak pressure and energy scale at different rates with charge weight, so that ranges based on the peak-pressure threshold are much greater than those for the energy metric when charge weights are small, even when source and animal are away from the surface. In order to more accurately estimate TTS for smaller shots while preserving the safety feature provided by the peak pressure threshold, the peak pressure threshold is appropriately scaled for small shot detonations. This scaling is based on the similitude formulas (*e.g.,* Urick, 1983) used in virtually all compliance documents for short ranges. Further, the peak-pressure threshold for marine mammal TTS for explosives offers a safety margin for source or animals near the ocean surface.

The more conservative isopleths of the criterion for estimating Level B harassment will be used in take analysis. Table 6–1 of Elgin AFB's application provides a summary of threshold criteria and metrics for potential noise impacts to sensitive species.

TABLE 4—(TABLE 6–1 OF THE APPLICATION) THRESHOLD CRITERIA AND METRICS UTILIZED FOR IMPACT ANALYSES

Level A harassment	Level B harassment	
Injurious; eardrum rupture (for 50 percent of animals exposed). 205 dB re 1 μPa²·s EFD	Non-injurious; TTS (temporary hearing loss) ... 182 dB re 1 μPa²·s EFD* and/or 12 psi.	Non-injurious; peak-pressure threshold for TTS. 23 psi.

* **Note:** In greatest ⅓-octave band above 10 Hz or 100 Hz.

Noise ZOIs were calculated for bottom detonation scenarios at 60 ft both lethality and harassment (Level A and B harassment). To determine the number of potential "takes" or animals affected, cetacean population information from surveys was applied to the various ZOIs. The impact calculations for this section utilize marine mammal density estimates that have been derived from a Legacy funded NMFS/Air Force project (Garrison, 2008). The species density estimate data were adjusted to reflect the best available data and more realistic encounters of these animals in their natural environment (Garrison, 2008). These calculations and estimates are explained in detail in Section 3, and adjusted density estimates are provided in Table 3–1 of Eglin AFB's application.

Given the variability in mission schedules (any time during the year), an overall average of bottlenose dolphin density of 0.81 individuals/km² is used for take analysis.

Table 6–2 of Eglin AFB's application gives the estimated impact ranges for the two explosive weights. The proposed test locations are one to three nmi south of SRI. NEODS detonations were modeled for bottom detonations at 60 ft.

No behavioral impacts (176 dB re 1 μPa²·s) are anticipated with the NEODS test activities and are not considered in this analysis. Repetitive exposure (below TTS) to the same resident animals is highly unlikely due to the infrequent test events (no more than 5 detonations over a one or two day period), the potential variability in target locations, and the continuous movement of marine mammals in the northern GOM.

TABLE 5—(TABLE 6–2 OF THE APPLICATION) ZOI FOR UNDERWATER EXPLOSIONS

Ordnance	NEW (lbs)	Depth of explosion (m)	Ranges for EFDL >205 dB (m)	Ranges for EFDL in ⅓ octave band (m)	23 psi (m)
Summer					
NEODS MCM 2.3 kg (5 lb) charge	5	18	52.1	227.5	222
NEODS MCM 4.5 kg (10 lb) charge	10	18	77	385	280
Winter					
NEODS MCM 5 lb charge	5	18	52.2	229.8	222
NEODS MCM 10 lb charge	10	18	77	389	280

EFDL = Energy Flux Density Level.

Applying the harassment ranges in Table 6–2 of the application to the species densities of Table 3–1 of the application, the number of animals potentially occurring within the ZOI was estimated. These results are presented in Tables 6–3 and 6–4 of the application. For Level B harassment calculations (Table 6–4 of the application), the ZOI corresponding to the 182 dB re 1 $\mu Pa^2 \cdot s$ metric is used because this radius is in all cases greater than the radius corresponding to 23 psi. The total number of animals potentially exposed annually is in bold. A whole animal (and potential take) is defined as 0.5 or greater, where calculation totals result in fractions of an animal. Where less than 0.5 animals are affected, no calculation totals result in fractions of an animals. Where less than 0.5 animals are affected, no take is assumed. The calculations in Tables 6–3 and 6–4 of the application are based on the expected tempo of: (1) 40 total detonations per year, (2) one-half of detonations are of 5 lb charges, and one-half are of 10 lb charges, and (3) 60 percent of detonations occur in summer, and 40 percent occur in winter.

TABLE 6—(TABLE 6–3 OF THE APPLICATION) MARINE MAMMAL DENSITIES AND RISK ESTIMATES FOR LEVEL A HARASSMENT (205 dB EFD 1/3 OCTAVE BAND) NOISE EXPOSURE FOR SUMMER AND WINTER

Species	Density (animals/km^2)	ZOI (km)		Number of animals exposed to Level A harassment	
		5 lb charge	10 lb charge	5 lb charge	10 lb charge
Summer					
Bottlenose Dolphin	0.78	0.0521	0.0770	0.08 (12 detonations)	0.17. (12 detonations).
Winter					
Bottlenose Dolphin	0.84	0.0522	0.0770	0.06 (8 detonations)	0.13. (8 detonations).
Total Number Animals Potentially Exposed To Level A Harassment Annually				0.44	

TABLE 7—(TABLE 6–4 OF THE APPLICATION) MARINE MAMMAL DENSITIES AND RISK ESTIMATES FOR LEVEL B HARASSMENT (182 dB EFT 1/3 OCTAVE BAND) NOISE EXPOSURE

Species	Density (animals/km^2)	ZOI (km)		Number of animals exposed to Level B harassment	
		5 lb charge	10 lb charge	5 lb charge	10 lb charge
Summer					
Bottlenose Dolphin	0.78	0.2275	0.385	1.52 (12 detonations)	4.36. (12 detonations).
Winter					
Bottlenose Dolphin	0.84	0.2298	0.389	1.11 (8 detonations)	3.19. (8 detonations).
Total Number Animals Potentially Exposed To Level B Harassment Annually				10.18	

The tables above indicate that the potential for non-injurious (Level B) harassment, as well as the onset of injury (Level A harassment) to cetaceans is possible but unlikely even without any mitigation measures. Wintertime ZOIs are generally slightly larger but do not significantly affect the numbers of animals potentially exposed to noise.

Less than 0.5 cetaceans are estimated to be exposed to Level A harassment (205 dB re 1 $\mu Pa^2 \cdot s$) ZOI. Therefore, as discussed above, no potential Level A exposures are anticipated. Level B harassment (182 dB re 1 $\mu Pa^2 \cdot s$) noise would potentially affect approximately 10 cetaceans. None of the above impact estimates consider mitigation measures that will be employed by the proponent to minimize potential impacts to protected species. These mitigation measures are described in Section 11 and are anticipated to greatly reduce potential impacts to marine mammals.

Based on the analyses and results provided here and in Section 6 of Eglin AFB's application, no strategic marine mammal stocks would be affected, and none of the marine mammal species that could potentially be taken is listed as threatened or endangered. The PBR for bottlenose dolphin is 45. No strategic marine mammal stocks would be affected.

Possible Effects of Activities on Marine Mammal Habitat

The primary source of marine mammal habitat impact is noise resulting from live NEODS missions. However, the noise does not constitute a long-term physical alteration of the

water column or bottom topography, as the occurrences are of limited duration and are intermittent in time. Surface vessels associated with the missions are present in limited duration and are intermittent as well.

Other sources that may affect marine mammal habitat were considered and potentially include the introduction of fuel, debris, ordnance, and chemical residues in the water column. The effects of each of these components were considered in the NEODS BA and were determined to be unlikely to adversely affect protected marine species. Marine mammal habitat would not be affected, lost or modified.

NMFS anticipates that the action will result in no impacts to marine mammal habitat beyond rendering the areas immediately around the NEODS training operations in the EGTTR less desirable shortly after each demolition event. The impacts will be localized and instantaneous. Impacts to marine mammal, invertebrate, and fish species are not expected to be detrimental.

Proposed Mitigation

In order to issue an Incidental Take Authorization under Section 101(a)(5)(A) and (D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses. The NDAA of 2004 amended the MMPA as it relates to military readiness activities and the incidental take authorization process such that "the least practicable adverse impact" shall include consideration of personnel, safety, practicality of implementation, and the impact on the effectiveness of the "military readiness activity." NEODS training involves military readiness activities.

The NEODS has employed a number of mitigation measures in an effort to substantially decrease the number of animals potentially affected. Eglin AFB is committed to assessing the mission activity for opportunities to provide operational mitigations while potentially sacrificing some mission flexibility.

Prior to the mission, a trained observer aboard the largest surface support vessel will survey (visually monitor) the test area for the presence of sea turtles and cetaceans. The area to be surveyed will span 230 m (754.6 ft) in every direction from the target, which is approximately the size of the largest harassment ZOI. The trained observer will conduct ship-based monitoring for non-participating vessels as well as for protected species. Dependent on visibility, surface observation would be effective out to several kilometers.

Weather that supports the ability to sight small marine life is required in order to mitigate the test site effectively (DON, 1998). Wind, visibility, and surface conditions of the GOM are the most critical factors affecting mitigation operations. Higher winds typically increase wave height and create "white cap" conditions, limiting an observer's ability to locate surfacing marine mammals. NEODS missions would be delayed if the sea state were greater than the Scale Number 3 described on Table 8 (below) and in Eglin AFB's application. Such a delay would maximize detection of marine mammals.

TABLE 8—(TABLE 11–1 OF THE APPLICATION) SEA STATE SCALE FOR MARINE MAMMAL AND SEA TURTLE OBSERVATION

Scale No.	Sea Conditions
0	Flat calm, no waves or ripples.
1	Small wavelets, few if any whitecaps.
2	Whitecaps on 0 to 33 percent of surface; 0.3 to 0.6 m (1 to 2 ft) waves.
3	Whitecaps on 33 to 50 percent of surface; 0.6 to 0.9 m (2 to 3 ft) waves.
4	Whitecaps on greater than 50 percent of surface; greater than 0.9 m (3 ft) waves.

Shipboard Monitoring Team

Shipboard monitoring would be staged from the highest point possible on a support ship. The trained observer will be experienced in shipboard surveys and be familiar with the marine life of the area. The observer on the vessel must be equipped with optical equipment with sufficient magnification (*e.g.,* binoculars, as these have been successfully used in monitoring from ships), which should allow the observer to sight surfacing mammals from a significant distance past the safety zone of 230 m (754.6 ft). The trained observer would be responsible for reporting sighting locations, which would be based on bearing and distance.

The trained observer will have proper lines of communication to avoid communication deficiencies to make Go/No-Go recommendations for the detonations. The observer recommends the Go/No-Go decision to the Officer in Tactical Command, who makes the final Go/No-Go decision. As long as no protected species are sighted by the observer, then the mission is a Go, meaning it can proceed. However, if the area is fouled, meaning a protected species has entered the area, then the mission is a No-Go and cannot proceed until those individuals have left the mission area.

Mitigation Procedures Plan

Stepwise mitigation procedures for NEODS missions are outlined below. All zones (TTS, injury, and safety zones) are monitored, plus a buffer area that is twice the size of the largest ZOI (460 m or 1,509.2 ft).

Pre-mission Monitoring: The purposes of pre-mission monitoring are to (1) evaluate the test site for environmental suitability of the mission (*e.g.,* relatively low numbers of marine mammals, few or no patches of *Sargassum,* etc.) and (2) verify that the ZOI is free of visually detectable marine mammals, large schools of fish, large flocks of birds, large *Sargassum* mats, and large concentrations of jellyfish. On the morning of the test, the Officer in Tactical Command would confirm that the test sites can still support the mission and that the weather is adequate to support mitigation.

(a) Two Hours Prior to Mission

Approximately two hours prior to the mission, or at daybreak, (whichever is closest to time of the mission) the appropriate vessel(s) would be on-site near the location of the earliest planned detonation point. Observers onboard the vessels and the trained observer would assess the suitability of the test site, based on visual observation of marine mammals, the presence of large *Sargassum* mats, and overall environmental conditions (visibility, sea state, etc.). This information would be relayed to the Officer in Tactical Command.

(b) One Hour Prior to Mission

One hour prior to the mission, monitoring would commence within the test site to evaluate the test site for environmental suitability. The observer would monitor the area around the detonation site, out to 0.47 km (0.25 nmi) from the site, and record in a database all marine mammals sightings, include the time of each sighting.

(c) Five Minutes Prior to Mission

Visual monitoring would continue to document any protected animals seen inside the ZOI and farther out to 0.47 km (0.25 nmi). If a marine mammal is traveling toward the test area, the time and distance can be calculated to determine if it will enter the test area during detonation.

(d) Go/No-Go Decision Process

The observer would plot and record sightings and bearings for all marine animals detected. This would depict animal sightings relative to the mission area. The observer would have the authority to declare the range fouled and recommend a hold until monitoring indicates that the test area (or ZOI) is and will remain clear of detectable marine mammals.

(e) Throughout the Mission

Monitoring of the test area will continue until the last detonation is complete. If any change in the status of the test area is observed or a protected marine mammal is sighted, the mission will be postponed until the area can be certified clear of protected marine mammals.

The mission would be postponed if:

1. Any marine mammal is visually detected within the ZOI. The delay would continue until the marine mammal that caused the postponement is confirmed to be outside of the ZOI due to the animal swimming out of the range.

2. Any marine mammal is detected within or about to enter the ZOI (230 m [754.6 ft]) and subsequently cannot be reacquired. The mission would not continue until the last verified location is outside of the ZOI and the animal is moving away from the mission area.

3. Large *Sargassum* rafts or large concentrations of jellyfish are observed within the ZOI. The delay would continue until the *Sargassum* rafts or jellyfish that caused the postponement are confirmed to be outside of the ZOI either due to the current and/or wind moving them out of the mission area.

4. Large schools of fish are observed in the water within 230 m (754.6 ft) of the mission area. The delay would continue until the large fish schools are confirmed to be outside the ZOI.

In the event of a postponement, pre-mission monitoring would continue as long as weather and daylight hours allow. If a charge failed to explode, operations would attempt to recognize and solve the problem while continuing with all mitigation measures in place. The probability of this occurring is very remote but the possibility still exists. Should a charge fail to explode, the Proponent would attempt to identify the problem and detonate the charge with all marine mammal mitigation measures in place as described.

Post-mission monitoring: Post-mission monitoring is designed to determine the effectiveness of pre-mission mitigation by reporting any sightings of dead or injured marine mammals. Post-detonation monitoring would commence immediately following each detonation and would be concentrated on the area down current of the test site.

Marine mammals killed by an explosion would likely suffer lung rupture, which would cause them to float to the surface immediately due to air in the blood stream. Animals that were not killed instantly but were mortally wounded would likely resurface within a few days, though this would depend on the size and type of animal, fat stores, depth, and water temperature (DON, 2001). The monitoring team would attempt to document any marine mammals that were killed or injured as a result of the test and, if practicable, recover and examine any dead animals. The species, number, location, and behavior of any animals observed by the observation teams would be documented and reported to the Officer in Tactical Command.

The NMFS maintains stranding networks along coasts to collect and circulate information about marine mammal strandings. Local coordinators report stranding data to state and regional coordinators. Any observed dead or injured marine mammal would be reported to the appropriate coordinator.

Summary of Mitigation Plan

In the event either any human safety concerns arise or marine mammals are sighted within the ZOI, the test will be postponed. The area to be surveyed will be 0.3 km (0.15 nmi) in every direction from the target (approximately the size of the largest harassment ZOI). Additionally, a buffer area (0.5 km or 0.25 nmi) will be surveyed for protected marine animals moving toward the ZOI. The total area to be monitored is 0.7 km^2 (0.2 nmi^2). The survey vessel will leave the safety footprint immediately prior to detonation; however, given the relatively small impact area, visual observation of the ZOI will be ongoing.

Avoidance of impacts to schools of cetaceans will most likely be realized through visual monitoring since groups of dolphins are relatively easy to spot with the survey distances and methods that will be employed.

Post-mission monitoring would be conducted after each mission and would attempt to document any marine mammals that were killed or injured as a result of the test and, if practicable, recover and examine any dead animals. Post-mission monitoring activities may include coordination with marine animals stranding networks if any dead or injured marine mammal or sea turtles are observed.

Hard-bottom habitats and artificial reefs would be avoided to alleviate any potential impacts to protected habitat. NEODS testing would be delayed if large *Sargassum* mats or large schools of fish or jellyfish were found in the ZOI. Testing would resume only when the mats or schools move outside of the largest ZOI. The NEODS personnel will recover all debris from the targets and charges following test activities.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

Mitigations may include any supplemental activities that are designed, proposed, and exercised to help reduce or eliminate the potential impacts to the marine resources. The Air Force recognizes the importance of such "in-place" mitigations and is aware that NMFS recommends an approved mitigation plan that outlines the scope and effectiveness of the Proposed Action's mitigations.

The risk of harassment (Levels A and B) to marine mammals has been determined to be relatively small. Eglin AFB has determined that with the implementation and commitment to utilizing the "visual monitoring" mitigations, potential takes are greatly reduced.

For NEODS testing, areas to be used in missions are visually monitored for marine mammal presence from a surface vessel prior to detonation of mine neutralization charges. Monitoring would be conducted before missions to clear marine mammals within the ZOI. If protected animals are inside the ZOI, firing would be postponed until they left the area. The following procedures may be feasible during the mission activities using the operational aircraft.

- Conduct survey clearance procedures using best operational methods possible.
- Clear ZOI and avoid all dolphins and *Sargassum* rafts to the maximum extent possible.
- Re-conduct clearance procedures if dolphins or *Sargassum* rafts are encountered.
- Conduct post-mission observation and report operations data as required by Eglin's Natural Resources Section, 96 CEG/CEVSN.
- Submit an annual summary (coordinated through 96 CEG/CEVSN) of mission observations to: National Marine Fisheries Service, Southeast Regional Office, Protected Resources Division, 9721 Executive Center Drive North, St. Petersburg, FL 33702.

Proposed monitoring requirements in relation to Eglin AFB's NEODS training activities would include observations made by the applicant and their associates. Information recorded would include species counts, numbers of observed disturbances, and descriptions of the disturbance behaviors before, during, and after explosive activities. Observations of unusual behaviors, numbers, or distributions of marine mammals in the activity area will be reported to NMFS and USFWS so that any potential follow-up observations can be conducted by the appropriate personnel. In addition, observations of tag-bearing marine mammals, sea turtles, and fish carcasses as well as any rare or unusual species of marine mammals and fish would be reported to NMFS and USFWS.

Eglin AFB would notify NMFS and the Regional Office prior to initiation of each explosive demolition session. If at any time injury or death of any marine mammal occurs that may be a result of the proposed NEODS activities, Eglin AFB would suspend activities and contact NMFS immediately to determine how best to proceed to ensure that another injury, serious injury, or death does not occur and to ensure that the applicant remains in compliance with the MMPA. Any takes of marine mammals other than those authorized by the LOA, as well as any injuries or deaths of marine mammals, will be reported to the Southeast Regional Administrator, within 24 hours. An annual draft final report must be submitted to NMFS within 90 days after the conclusion of the NEODS activities. An annual report must be submitted at the time of renewal of the LOA as well. Also, a report must be submitted at least 180 days prior to the expiration of these regulations. The report would include a summary of the activities undertaken and information gathered pursuant to the monitoring requirements set forth in the regulations and LOA, including dates and times of detonations as well as pre- and post-blasting monitoring observations. A final report must be submitted to the Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report would be considered to be the final report.

Research

Although Eglin AFB does not currently conduct independent Air Force monitoring efforts, Eglin's Natural Resources Section does participate in marine animal tagging and monitoring programs led by other agencies. Additionally, the Natural Resources Section also supports participation in annual surveys of marine mammals in the GOM with NMFS. From 1999 to 2002, Eglin AFB's Natural Resources Section, through a contract representative, participated in summer cetacean monitoring and research opportunities. The contractor participated in visual surveys in 1999 for cetaceans in the GOM, photographic identification of sperm whales in the northeastern GOM in 2001, and as a visual observer during the 2000 Sperm Whale Pilot Study and the 2002 sperm whale Satellite-tag (S-tag) cruise. Support for these research efforts is anticipated to continue. In addition, Eglin's Natural Resources Section has obtained Department of Defense funding for two marine mammal habitat modeling projects. The latest such project (2008) included funding and extensive involvement of NMFS personnel so that the most recent aerial survey data could be utilized for habitat modeling and animal density estimates in the northeastern GOM.

Eglin AFB conducts other research efforts that utilize marine mammal stranding information as a means of ascertaining the effectiveness of mitigation techniques. Stranding data is collected and maintained for the Florida panhandle and GOM-wide areas. This is undertaken through the establishment and maintenance of contacts with local, state, and regional stranding networks.

Eglin AFB assists with stranding data collection by maintaining its own team of stranding personnel. In addition to simply collecting stranding data, various analyses are performed. Stranding events are tracked by year, season, and NMFS statistical zone, both GOM-wide and on the coastline in proximity to Eglin AFB. Stranding data is combined with records of EGTTR mission activity in each water range and analyzed for any possible correlation. In addition to being used as a measure of the effectiveness of mission mitigations, stranding data can yield insight into the species composition of cetaceans in the region.

Negligible Impact Determination

NMFS implementing regulations codified at 50 CFR 216.103 states that "negligible impact is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Based on the analysis contained herein, of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS, on behalf of the Secretary, preliminarily finds that Eglin AFB's proposed activities would result in the incidental take of marine mammals, by Level B harassment only, and that the total taking from the NEODS training operations would have a negligible impact on the affected species or stocks of marine mammals.

Tables 2, 3, 6 and 7 in this document disclose the habitat, regional abundance, conservation status, density, and the number of individuals exposed to sound levels considered the threshold for Level A and B harassment. Also, there are no known important reproductive or feeding areas in the proposed action area.

For reasons stated previously in this document, the specified activities associated with the proposed NEODS operations are not likely to cause TTS, PTS, or other non-auditory injury, serious injury, or death to affected marine mammals. As a result, no take by injury, serious injury, or death is anticipated or authorized, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the proposed monitoring and mitigation measures.

In making a negligible impact determination NMFS evaluated factors such as: No anticipated injury, serious injury, or mortality; the number, nature,

intensity, and duration of harassment (all relatively limited); the low probability that take will likely result in effects to annual rates of recruitment of survival; the context in which it occurs (*i.e.,* impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data); the status of stock or species of marine mammals (*i.e.,* depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population); impacts on habitat affecting rates of recruitment/survival; and the effectiveness of monitoring and mitigation measures.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There is no subsistence hunting for marine mammals in the waters off of the coast of Florida that implicates MMPA Section 101(a)(5)(D).

Endangered Species Act (ESA)

For the reasons already described in this **Federal Register** notice, NMFS has determined that the described proposed NEODS training operations and the accompanying IHA may have the potential to adversely affect species under NMFS jurisdiction and protected by the ESA. Eglin AFB requested a Section 7 consultation pursuant to the ESA with NMFS' Southeast Regional Office (SERO) for the revised proposed NEODS training operations. NMFS SERO issued a Biological Opinion on October 25, 2004 for a five year plan of NEODS training operations in the EGTTR (Consultation No. F/SER/2004/00361). The U.S. Air Force requested informal Section 7 consultation with SERO on May 9, 2010 and SERO concurred that the proposed action may affect, but is not likely to adversely affect, ESA-listed species or designated critical habitat in a letter to the U.S. Air Force dated July 28, 2010.

National Environmental Policy Act (NEPA)

NMFS has begun conducting NEPA analysis and preparing a Draft Environmental Assessment on the Promulgation of Regulations and the Issuance of Letters of Authorization to Take Marine Mammals, by Harassment, Incidental to Naval Explosive Ordnance Disposal School Training Operations at Eglin Air Force Base, Florida, which analyzes the project's purpose and need, alternatives, affected environment, and environmental effects for the proposed action. NMFS will complete the necessary NEPA analysis and the public comments received prior to making a determination on the issuance of the final rule and LOA.

Preliminary Determinations

Based on Eglin AFB's application, as well as the analysis contained herein, NMFS has preliminarily determined that the impact of the described NEODS training operations will result, at most, in a temporary modification in behavior (Level B harassment) of Atlantic bottlenose dolphins, in the form of temporarily vacating the action area to avoid NEODS training activities and potential for minor visual and acoustic disturbance from detonations. The effect of the NEODS training operations is expected to be limited to short-term and localized TTS-related behavioral changes.

Due to the infrequency, short time-frame, and localized nature of these activities, the number of marine mammals, relative to the stock population size, potentially taken by harassment is small. In addition, no take by injury, serious injury, or death is anticipated, and take by Level B harassment will be at the lowest level practicable due to incorporation of the proposed monitoring and mitigation measures mentioned previously in this document. No injury (Level A harassment), serious injury, or mortality is expected or authorized for marine mammals, and take by harassment will be at the lowest level practicable due to incorporation of the monitoring and mitigation measures mentioned previously in this document. Further, NMFS has preliminarily determined that the anticipated takes incidental to this activity is expected to result in a negligible impact on the affected species or stocks of marine mammals. The provision requiring that the activity not have an unmitigable adverse impact on the availability of the affected species or stock for subsistence uses does not apply to this proposed action as there are no subsistence users within the geographic area of the proposed project.

Classification

For purposes of Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief of Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The U.S. Air Force is the entity that will be affected by this rulemaking, not a small governmental jurisdiction, small organization or small business, as defined by the Regulatory Flexibility Act. The requested authorization is specific to an will only govern the behavior of the U.S. Air Force as it carries out the specified training activities on water ranges at Eglin AFB. The primary effect of the authorization will be to impose mitigation and monitoring requirements on the U.S. Air Force for a specified, limited number of annual training events. Thus, the regulated activity involves only military activities on a Federal military installation. The requested authorization will not affect the activities of the private sector or result in any costs to local government jurisdictions. As a result, NMFS concludes the action would not result in a significant economic impact on a substantial number of small entities.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue five-year regulations establishing a framework for the issuance of LOAs to Eglin AFB for the harassment of Atlantic bottlenose dolphins incidental to NEODS training operations, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

List of Subjects in 50 CFR Part 217

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: September 24, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 217 is proposed to be amended as follows:

PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Subpart I is added to part 217 to read as follows.

Subpart I—Taking of Marine Mammals Incidental to Naval Explosive Ordnance Disposal School Training Operations

Sec.

Subpart I–Taking of Marine Mammals Incidental to Naval Explosive Ordnance Disposal School (NEODS) Training Operations

§ 217.80 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammals specified in paragraph (b) of this section by the United States Air Force, Headquarters 96th Air Base Wing, Eglin Air Force Base, and those persons who engage in activities described in paragraphs (a)(1) through (7) of this section and the area set forth in paragraph (b) of this section:

(1) NEODS missions involving underwater detonations of small, live explosive charges adjacent to inert mines in order to disable the mine function.

(2) Live training events occurring eight times annually, averaging one event occurring every six to seven weeks.

(3) Four of the training events involving 5-lb charges, and four events involving 10-lb charges.

(4) Up to twenty 5-lb detonations and twenty 10-lb detonations annually, for a total of forty detonations.

(5) The five charges will be detonated individually with a maximum separation time of 20 minutes between each detonation.

(6) Mine shapes and debris will be recovered and removed from the Gulf of Mexico waters when training is completed.

(7) Each training team has two days to complete their entire evolution (*i.e.,* detonation of five charges). If operations cannot be completed on the first live demolition day, the second live demolition day will be utilized to complete the evolution.

(b) The incidental take of marine mammals at Eglin Air Force Base, within the Eglin Military Complex, including three sites in the Eglin Gulf Test and Training Range at property off Santa Rosa Island, Florida, in the northern Gulf of Mexico, under the activity identified in paragraph (a) of this section, is limited to the following species: Atlantic bottlenose dolphins (*Tursiops truncatus*).

§ 217.81 Effective dates.

Regulations in this subpart are effective from December 1, 2010, through November 30, 2015.

§ 217.82 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 217.87, the U.S. Department of the Air Force, Headquarters 96th Air Base Wing, Eglin Air Force Base, its contractors, and clients, may incidentally, but not intentionally, take marine mammals by Level B harassment, within the area described in § 217.80, provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The taking of marine mammals is authorized for the species listed in § 217.80(b) and is limited to Level B harassment.

§ 217.83 Prohibitions.

Notwithstanding takings contemplated in § 217.80 and authorized by a Letter of Authorization issued under § 216.106 and § 217.87, no person in connection with the activities described in § 217.80 may:

(a) Take any marine mammal not specified in § 217.80(b);

(b) Take any marine mammal specified in § 217.80(b) other than by incidental, unintentional harassment;

(c) Take a marine mammal specified in § 217.80(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under §§ 216.106 and 217.87.

§ 217.84 Mitigation.

(a) The activity identified in § 217.80(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 217.80(a), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 217.87 must be implemented. These mitigation measures include (but are not limited to):

(1) The time of detonation will be limited to an hour after sunrise and an hour before sunset.

(2) NEODS missions would be postponed if:

(i) The Beaufort sea state is greater than scale number three. Such a delay would maximize detection of marine mammals.

(ii) Any marine mammal is visually detected within the Zone of Influence. The delay would continue until the marine mammal that caused the postponement is confirmed to be outside of the Zone of Influence due to the animal swimming out of the range.

(iii) Any marine mammal is detected within or about to enter the Zone of Influence (*i.e.,* the exclusion radius of 230 m or 754.6 ft) and subsequently cannot be reacquired. The mission would not continue until the last verified location is outside of the Zone of Influence and the animal is moving away from the mission area.

(iv) Large *Sargassum* rafts of large concentrations of jellyfish are observed within the Zone of Influence. The delay would continue until the *Sargassum* rafts or jellyfish that caused the postponement are confirmed to be outside of the Zone of Influence either due to the current and/or wind moving them out of the mission area.

(v) Large schools of fish are observed in the water within 230 m (754.6 ft) of the mission area. The delay would continue until the large fish schools are confirmed to be outside the Zone of Influence.

(3) A Go/No-Go decision process if the range is fouled and if monitoring indicates that the test area is and will remain clear of detectable marine mammals. As long as no protected species are sighted by the observer, then the mission is a Go, meaning it can proceed. However, if the area is fouled, meaning a protected species has entered the area, then the mission is a No-Go and cannot proceed until those individuals have left the mission area.

(4) In the event of a postponement, pre-mission monitoring would continue as long as weather and daylight hours allow. If a charge failed to explode, operations would attempt to recognize and solve the problem while continuing with all mitigation measures in place. Should a charge fail to explode, the proponent would attempt to identify the problem and detonate the charge with all marine mammal mitigation measures in place as described.

(5) Additional mitigation measures as contained in a Letter of Authorization.

(b) [Reserved]

§ 217.85 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization pursuant to §§ 216.106 and 217.87 for activities described in 216.80(a) are required to cooperate with NMFS, and any other Federal, state, or local agency with authority to monitor the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of

Authorization, the Holder of the Letter of Authorization must notify the Administrator, Southeast Region, NMFS, by letter or telephone, prior to activities possibly involving the taking of marine mammals. If the authorized activity identified in § 217.80(a) is thought to have resulted in the mortality or injury of any marine mammals or in any take of marine mammals not identified in § 217.80(b), then the Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, NMFS, or designee, by telephone (301–713–2289), within 24 hours of the discovery of the injured or dead animal.

(b) Holders of Letters of Authorization must designate trained, qualified, on-site individuals approved in advance by NMFS, as specified in the Letter of Authorization, to perform the following monitoring requirements:

(1) For NEODS testing, areas to be used in missions are visually monitored for marine mammal presence from a surface support vessel prior to detonation of mine neutralization charges. The observer on the vessel must be equipped with the proper optical equipment and lines of communication in order to recommend the Go/No-Go decision.

(2) Monitoring (pre-mission, two hours prior to mission, one hour prior to mission, five minutes prior to mission, throughout the mission, post-mission) will be conducted before missions to evaluate the test site for environmental suitability of the mission and to verify the area is clear of marine mammals within the Zone of Influence. If marine mammals are inside the Zone of Influence, firing would be postponed until they have left the area.

(3) Conduct survey clearance procedures using best operational methods possible.

(4) Re-conduct clearance procedures if dolphins or *Sargassum* rafts are encountered.

(5) Conduct post-mission observation and report operations data as required by Eglin Air Force Base's Natural Resources Section, 96 CEG/CEVSN. Post-mission monitoring would commence immediately following each detonation and would be concentrated on the area down current of the test site. If any injured or dead marine mammals are observed, that information will be reported and coordinated with marine animals stranding networks.

(6) Submit an annual summary (coordinated through 96 CEG/CEVSN) of mission observations to: NMFS, Southeast Regional Office, Protected Resources Division, 9721 Executive Center Drive North, St. Petersburg, Florida 33702.

(c) Holders of Letters of Authorization must conduct additional monitoring as required under an annual Letter of Authorization.

(d) Holders of Letters of Authorization must submit an annual report summarizing the specified activity as well as monitoring and mitigation data to the Southeast Regional Administrator, NMFS, within 90 days after the conclusion of the NEODS activities. This report must contain the following information:

(1) Date(s), time(s), and location(s) of explosive activities,

(2) Design of the monitoring program,

(3) Results of the monitoring program including, but not necessarily limited to:

(i) Species counts,

(ii) Numbers of observed disturbances,

(iii) Descriptions of the disturbance behaviors before, during, and after explosive activities,

(iv) Bearing and distances,

(v) Observations of unusual behaviors, numbers, or distributions of marine mammals in the activity area will be reported to NMFS and the U.S. Fish and Wildlife Service so that any potential follow-up observations can be conducted by the appropriate personnel. In addition, observations of tag-bearing marine mammals, sea turtles, and fish carcasses as well as any rare or unusual species of marine mammals and fish would be reported to NMFS and U.S. Fish and Wildlife Service.

(e) An annual report must be submitted at the time of renewal of the Letter of Authorization.

(f) A final report must be submitted at least 180 days prior to expiration of these regulations. This report will summarize the activities undertaken and the results reported in all previous reports.

§ 217.86 Applications for Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined by § 216.103) conducting the activity identified in § 217.80(a) must apply for and obtain either an initial Letter of Authorization in accordance with § 217.87 or a renewal under § 217.88.

(b) The application must be submitted to NMFS at least 30 days before the activity is scheduled to begin.

(c) Application for a Letter of Authorization and for renewals of Letters of Authorization must include the following:

(1) Name of the U.S. citizen requesting the authorization.

(2) A description of the activity, the dates of the activity, and the specific location of the activity, and

(3) Plans to monitor the behavior and effects of the activity on marine mammals.

(d) A copy to the Letter of Authorization must be in the possession of the persons conducting activities that may involve incidental takings of marine mammals.

§ 217.87 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in § 217.88.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (*i.e.,* mitigation); and

(3) Requirements for mitigation, monitoring, and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 217.88 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under §§ 216.106 and 217.87 for the activity identified in § 217.80(a) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 217.86 will be undertaken and there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under § 217.85(d) and (e), and the Letter of Authorization issued under § 217.87, which has been reviewed and accepted by NMFS; and

(3) A determination by NMFS that the mitigation, monitoring, and reporting measures required under §§ 217.84 and 217.85 and the Letter of Authorization issued under §§ 216.106 and 217.87, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 217.88 indicates that a

substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register**.

§ 217.89 Modifications of Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS issued pursuant to §§ 216.106 and 217.87 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 217.88, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 217.80(b), a Letter of Authorization issued pursuant to §§ 216.106 and 217.87 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

[FR Doc. 2010–24689 Filed 9–30–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

RIN 0648–BA01

Fisheries Off West Coast States; Notice of Availability for Amendments 16–5 and 23 to the Pacific Coast Groundfish Fishery Management Plan

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

ACTION: Availability of amendments to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendments 16–5 and 23 to the Pacific Coast Groundfish Fishery Management Plan (FMP) for Secretarial review. Amendment 16–5 would modify the FMP to implement an overfished species rebuilding plan for petrale sole and revise existing overfished species rebuilding plans. In addition, Amendment 16–5 would modify the default proxy values for FMSY and BMSY as they apply to the flatfish species, including petrale sole; and the harvest control rule policies. Amendment 23 introduces a new framework for fishery specifications and other measures for establishing Annual Catch Limits (ACLs) as required by the recent amendments to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments on Amendments 16–5 and 23 must be received on or before November 30, 2010.

ADDRESSES: You may submit comments, identified by RIN 0648–BA01, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal, at *http://www.regulations.gov*.
- Fax: 206–526–6736; Attn: Becky Renko.
- Mail: William Stelle, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; Attn: Becky Renko

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (if submitting comments via the Federal e-Rulemaking portal, enter "N/A" in the relevant required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Becky Renko (Northwest Region, NMFS), phone: 206–526–6110; fax: 206 526 6736; and e mail: *becky.renko@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the internet at the website of the Office of the **Federal Register**: *http://www.access.gpo.gov/su-docs/aces/aces140.html*.

The Magnuson-Stevens Act requires that each regional fishery management council submit any FMP or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a notice that the FMP or amendment is available for public review and comment. NMFS will consider the public comments received during the comment period described above in determining whether to approve Amendments 16–5 and 23 to the FMP.

Petrale sole was declared overfished on February 9, 2010. Amendment 16–5 adds a new rebuilding plan for petrale sole to the FMP and revises the seven existing overfished species rebuilding plans consistent with the Magnuson-Stevens Act. The following groundfish species have been declared as overfished and are currently being managed under rebuilding plans: bocaccio in the Monterey and Conception areas; canary rockfish; cowcod south of Point Conception to the U.S. Mexico boundary; darkblotched rockfish, Pacific Ocean Perch (POP), widow rockfish, and yelloweye rockfish.

In the FMP, MSY refers to a constant harvest rate (F) control rule that is assumed to produce the maximum average yield over time while protecting the spawning potential of the stock. The constant F control rule is generally the proxy for the MSY control rule. The long-term average biomass associated with fishing at F_{MSY} is B_{MSY}. Fishing rates above F_{MSY} eventually result in

biomass smaller than B_{MSY} and produce less harvestable fish on a sustainable basis. The Council uses default F_{MSY} proxies for species groups. If sufficient information becomes available to develop more appropriate values of F_{MSY}, B_{MSY}, and harvest control rules for individual species or species groups the FMP allows those more specific values to be used. Amendment 16–5 revises the proxy F_{MSY} value for all flatfish species from $F_{40\%}$ to $F_{30\%}$.

B_{MSY} (or its proxy) is used as a reference point for rebuilding for overfished stocks, such as petrale sole. Amendment 16–5 revises the proxy BMSY value for all flatfish species from $B_{40\%}$ to $B_{25\%}$. A rebuilding analysis is used to project the status of the overfished resource into the future under a variety of alternative harvest strategies to determine the probability of recovering to B_{MSY} within a specified time-frame. The overfished threshold is also being revised. The overfished threshold or minimum stock size threshold (MSST) is the estimated biomass level of the stock relative to its unfished biomass (i.e., depletion level), below which the stock is considered overfished. Amendment 16–5 revises the default proxy MSST for the assessed flatfish species from $B_{25\%}$ to $B_{12.5\%}$, which is 50 percent of the BMSY target of $B_{25\%}$.

Amendment 16–5 adds to the FMP a new harvest control rule referred to as the 25–5 harvest control rule for stocks with a B_{MSY} proxy of 25 percent ($B_{25\%}$). When the estimated biomass has fallen below $B_{25\%}$ and when the stock is not managed under an overfished species rebuilding plan, the 25–5 harvest control rule would be applied. Under the 25–5 harvest control rule, a precautionary adjustment is made to the ACL when the stock's depletion drops below $B_{25\%}$ and at $B_{5\%}$, the ACL is set to zero. The 25–5 harvest control rule is designed to prevent stocks from becoming overfished.

On January 16, 2009, NMFS adopted revisions to its guidelines implementing Magnuson-Stevens Act National Standard 1 (74 FR 3178) to prevent and end overfishing and rebuild fisheries. In particular, the revised guidelines provide guidance on implementation of the new statutory requirement for annual catch limits (ACLs). The revised guidelines also include new requirements for accountability measures (AMs) and other provisions regarding preventing and ending overfishing and rebuilding fisheries. To comply with the statute and these new guidelines Amendment 23 to the FMP redefines several existing terms and reference points to make them consistent with the new guidelines; provides a framework for the specification of the overfishing limit (OFL), acceptable biological catch (ABC) and ACLs, including control rules for determining the ABC; describes AMs; addresses the formation of stock complexes; and otherwise ensures that the FMP is consistent with the revised guidelines. Further, Amendment 23 removes dusky and dwarf-red rockfish from the FMP because these stocks are not considered to be in the fishery as there are no historical records of them being landed.

NMFS welcomes comments on the proposed FMP amendments through the end of the comment period. A proposed rule to implement Amendments 16–5 and 23 has been submitted for Secretarial review and approval. NMFS expects to publish and request public review and comment on proposed regulations to implement Amendments 16–5 and 23, along with the groundfish specifications and management measures for 2011 and 2012, in the near future. Public comments on the proposed rule must be received by the end of the comment period on the amendment to be considered in the approval/disapproval decision on the amendment. All comments received by the end of the comment period for the amendment, whether specifically directed to the amendment or the proposed rule, will be considered in the approval/disapproval decision.

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

Dated: September 24, 2010.

Carrie Selberg,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–24697 Filed 9–28–10; 4:15 pm]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 75, No. 190
Friday, October 1, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[Docket #GIPSA–2010–FGIS–0014–NONRULEMAKING]

Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comments.

SUMMARY: This notice announces the Grain Inspection, Packers and Stockyards Administration's (GIPSA) intention to request that the Office of Management and Budget (OMB) approve a 3-year extension of a currently approved information collection for the "Regulations Governing the National Inspection and Weighing System under the United States Grain Standards Act and under the Agricultural Marketing Act of 1946." This approval is required under the Paperwork Reduction Act of 1995 (PRA).

DATES: We will consider comments that we receive by November 30, 2010.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments by any of the following methods:

- *Internet:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *E-Mail: comments.gipsa@usda.gov*.
- *Mail:* Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.
- *Fax:* (202) 690–2173.

Instructions: All comments should be identified as "FGIS Information Collection," and should reference the date and page number of this issue of the **Federal Register.** Information collection package and other documents relating to this action will be available for public inspection in Room 1643–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604 during regular business hours. All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)). Please call the Management and Budget Services Staff of GIPSA at (202) 720–7486 to arrange to inspect comments.

SUPPLEMENTARY INFORMATION:

Congress enacted the United States Grain Standards Act (USGSA) (7 U.S.C. 71–87k) and the Agricultural Marketing Act (AMA) (7 U.S.C. 1621–1627) to facilitate the marketing of grain, oilseeds, pulses, rice, and related commodities. These statutes provide for the establishment of standards and terms which accurately and consistently measure the quality of grain and related products, provide for uniform official inspection and weighing, provide regulatory and service responsibilities, and furnish the framework for commodity quality improvement incentives to both domestic and foreign buyers. The GIPSA's Federal Grain Inspection Service (FGIS) establishes policies, guidelines, and regulations to carry out the objectives of the USGSA and the AMA. Regulations appear at 7 CFR parts 800, 801, and 802 for the USGSA and 7 CFR part 868 for the AMA.

The USGSA, with few exceptions, requires official inspection of export grain sold by grade. Official services are provided, upon request, for grain in domestic commerce. The AMA authorizes similar inspection and weighing services, upon request, for rice, pulses, flour, corn meal, and certain other agricultural products. Conversely, the regulations promulgated under the USGSA and the AMA requires specific information collection and recordkeeping necessary to carry out requests for official services. Applicants for official services must specify the kind and level of service, the identification of the product, the location, the amount, and other pertinent information in order that official personnel can efficiently respond to their needs.

Official services under the USGSA are provided through FGIS field offices and delegated and/or designated State and private agencies. Delegated agencies are State agencies delegated authority under the USGSA to provide official inspection service, Class X or Class Y weighing services, or both, at one or more export port locations in the State. Designated agencies are State or local governmental agencies or persons designated under the USGSA to provide official inspection services, Class X or Class Y weighing services, or both, at locations other than export port locations. State and private agencies, as a requirement for delegation and/or designation, must comply with all regulations, procedures, and instructions in accordance with provisions established under the USGSA. FGIS field offices oversee the performance of these agencies and provide technical guidance as needed.

Official services under the AMA are performed, upon request, on a fee basis for domestic and export shipments either by FGIS employees, individual contractors, or cooperators. Contractors are persons who enter into a contract with FGIS to perform specified sampling and inspection services. Cooperators are agencies or departments of the Federal Government which have an interagency agreement, State agencies, or other entities which have a reimbursable agreement with FGIS.

Title: Regulations Governing the National Inspection and Weighing System Under the USGSA and AMA of 1946.

OMB Number: 0580–0013.

Expiration Date of Approval: April 30, 2011.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The USGSA and the AMA authorize USDA to inspect, certify and identify the class, quality, quantity and condition of agricultural products shipped or received in interstate and foreign commerce.

Estimate of Burden: Public reporting and record keeping burden for this collection of information is estimated to average .13 hours per response.

Respondents: Grain producers, buyers, and sellers, elevator operators, grain merchandisers, and official grain inspection agencies.

Estimated Number of Respondents: 8,754.

Estimated Number of Responses per Respondent: 142.12.

Estimated Total Annual Burden on Respondents: 164,393 hours.

As required by the PRA (44 U.S.C. 3506(c)(2)(A)) and its implementing regulations (5 CFR 1320.8(d)(1)(i)), GIPSA specifically requests comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

J. Dudley Butler,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2010–24661 Filed 9–30–10; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. AMS–DA–10–0070; DA–10–06]

Notice of Request for an Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for an extension of, and revision to a currently approved information collection for the National Research, Promotion, and Consumer Information Programs.

DATES: Comments on this notice must be received by November 30, 2010.

Additional Information: Interested persons are invited to submit written comments on the Internet at *http://www.regulations.gov* or to Whitney A. Rick, Promotion and Research Branch; Dairy Programs, AMS, U.S. Department of Agriculture; 1400 Independence Avenue, SW., Stop 0233; Washington, DC 20250–0233, (202) 720–6909. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Promotion and Research Branch, Dairy Programs, AMS, USDA, Room 2958–S, 1400 Independence Avenue, SW., Washington, DC 20250–0233, during regular business hours, or can be viewed at *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Title: National Research, Promotion, and Consumer Information Programs. *OMB Number:* 0581–0093. *Expiration Date,* as approved by OMB: 11/30/2013.

Type of Request: Extension and Revision of a currently approved information collection.

Abstract: National research and promotion programs are designed to strengthen the position of a commodity in the marketplace, maintain and expand existing domestic and foreign markets, and develop new uses and markets for specified agricultural commodities. USDA has the responsibility for implementing and overseeing programs for a variety of commodities including beef, blueberries, cotton, dairy, eggs, fluid milk, Hass avocados, honey, lamb, mangos, mushrooms, peanuts, popcorn, pork, potatoes, sorghum, soybeans, and watermelons. The enabling legislation includes the Beef Promotion and Research Act of 1985 [7 U.S.C. 2901–2911]; Cotton Research and Promotion Act of 1966 [7 U.S.C. 2101–2118]; the Dairy Production Stabilization Act of 1983 [7 U.S.C. 4501–4514]; the Fluid Milk Promotion Act of 1990 [7 U.S.C. 6401–6417]; the Egg Research and Consumer Information Act [7 U.S.C. 2701–2718]; the Hass Avocado Promotion, Research, and Information Act [7 U.S.C. 7801–7813]; the Mushroom Promotion, Research, and Consumer Information Act of 1990 [7 U.S.C. 6101–6112]; the Popcorn Promotion, Research, and Consumer Information Act [7 U.S.C. 7481–7491]; the Pork Promotion, Research, and Consumer Information Act of 1985 [7 U.S.C. 4801–4819]; the Potato Research and Promotion Act [7 U.S.C. 2611–2627]; the Soybean Promotion, Research, and Consumer Information Act [7 U.S.C. 6301–6311]; the Watermelon Research and Promotion Act [7 U.S.C. 4901–4916]; and the Commodity Promotion, Research, and Information Act of 1996 [7 U.S.C. 7411–7425] (which governs the blueberry, honey, lamb, mango, peanut and sorghum programs). These programs appear in the Code of Federal Regulations at 7 CFR, parts 1150 and 1160, and parts 1205 through 1260.

These programs carry out projects relating to research, consumer information, advertising, sales promotion, producer information, market development, and product research to assist, improve, or promote the marketing, distribution, and utilization of their respective commodities. Approval of the programs is required through referendum of affected parties. The programs are administered by industry boards composed of producer, handler, processor, and in some cases, importer and public members appointed by the Secretary of Agriculture. Program funding is generated through assessments on designated industry segments.

The Secretary also approves the board's budgets, plans, and projects. These responsibilities have been delegated to AMS. The applicable commodity program areas within AMS have direct oversight of the respective programs.

The information collection requirements in this request are essential to carry out the intents of the various Acts authorizing such programs, thereby providing a means of administering the programs. The objective in carrying out this responsibility includes assuring the following: (1) Funds are collected and properly accounted for; (2) expenditures of all funds are for the purposes authorized by the enabling legislation and (3) the board's administration of programs conforms to USDA policy. The forms covered under this collection require the minimum information necessary to effectively carry out the requirements of the respective orders, and their use is necessary to fulfill the intents of the Acts as expressed in orders. The information collected is used only by authorized employees of the various boards and authorized employees of USDA.

The various boards utilize a variety of forms including; reports concerning status information such as handler and importer reports; transaction reports; exemption from assessment forms and reimbursement forms; forms and information concerning referenda including ballots; forms and information concerning board nominations and selection and acceptance statements; certification of industry organizations; and recordkeeping requirements. The forms and information covered under this information collection require the minimum information necessary to effectively carry out the requirements of the programs and their use is necessary

to fulfill the intent of the applicable authorities.

As part of this renewal collection for the National Research, Promotion, and Consumer Information Programs, AMS is merging the "Sorghum Promotion, Research, and Information Order, 0581–0246;" "Lamb Promotion, Research and Information Program, 0581–0198;" "Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order, Referendum Procedures, 0581–0245;" and "Establishment of the New Honey Packers and Importers R&P Program, 0581–0247." Upon approval of this revision of 0581–0093, AMS will request a Discontinuation Request for 0581–0246, 0581–0198, 0581–0245, and 0581–0247 to retire these collections. This action will keep all research and promotion collections under one generic collection since similar forms are used to collect information and to prevent duplication of burden.

AMS is committed to complying with the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.54 hours per response.

Respondents: Producers, processors, handlers, importers, and others in the marketing chain of a variety of agricultural commodities, and recordkeepers.

Estimated Number of Respondents: 325,579.

Estimated Total Annual Reponses: 896,027.

Estimated Number of Responses per Respondent: 2.75.

Estimated Total Annual Burden on Respondents: 334,711.71 hours.

Copies of this information collection can be obtained from Whitney A. Rick, Research and Promotion Branch; Dairy Programs at (202) 720–6909.

Comments may be submitted regarding, but is not limited to: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received will be available for public inspection during regular business hours at the above address and may be viewed at *http:www.regulations.gov.* All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 27, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–24627 Filed 9–30–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. AMS–TM–10–0082; TM–10–02]

Farmers' Market Promotion Program: Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget (OMB) for the currently approved the information collection for OMB 0581–0235, an extension and revision of forms "TM–29, FMPP Project Proposal Narrative Form" and "TM–30, FMPP Supplemental Budget Summary Form." Copies of these voluntary forms to participate in the U.S. Department of Agriculture (USDA) Farmers Market Promotion Program, may be obtained by calling the AMS Marketing Services Branch contact listed.

DATES: Comments received by November 30, 2010 will be considered.

Additional Information: Contact Carmen Humphrey, Branch Chief, Marketing Grants and Technical Assistance Branch, Marketing Services Division, Transportation and Marketing Programs, Agricultural Marketing Service (AMS), USDA; 202–694–4000.

ADDRESSES: Contact Errol R. Bragg, Associate Deputy Administrator, Marketing Services Branch, Transportation and Marketing Programs, AMS, USDA, 1800 M Street, NW., Room 3012–South Tower, Washington, DC 20036; 202/694–4000, or fax 202/694–5949.

Comments should reference docket number AMS–TM–10–0082, TM–10–02 and be sent to Mr. Errol Bragg at the above address or via the Internet at *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Title: Farmers Market Promotion Program.

OMB Number: 0581–0235.

Expiration Date of Approval: February 21, 2011.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Farmers Market Promotion Program (FMPP) was created through an amendment of the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3001–3006). The grants authorized by the FMPP, originally funded in 2006 and revised under the 2008 Farm Bill (Pub. L. 110–246), are targeted to help improve and expand domestic farmers markets, roadside stands, community-supported agriculture programs, agritourism activities, and other direct producer-to-consumer marketing opportunities. Approximately $1 million each year was allocated for Fiscal Years (FY) 2006–2007 for the FMPP. The 2008 Farm Bill allocated mandatory funds, from the Commodity Credit Corporation, at $3 million for FY 2008, $5 million for FY 2009–2010, and $10 million for FY 2011–2012. The maximum amount awarded for any one proposal cannot exceed $100,000.

Entities eligible to apply include agricultural cooperatives, producer networks, and producer associations; local governments; nonprofit corporations; public health corporations; economic development corporations; regional farmers market authorities; and Tribal governments.

On March 1, 2010, the AMS published a notice in the **Federal Register** (75 FR 9155) to announce the availability of 2010 FMPP grant funds under the FMPP. The OMB approved the revision of the information collection 0581–0235 for 3 years on February 21, 2008. The forms and other requirements under the FMPP are as follows:

1. *Form SF–424,* "Application for Federal Assistance," (approved under OMB collection number 4040–0004) is required by all entities seeking Federal assistance.

2. *Form SF–424A,* "Budget Information—Non-Construction Programs," (approved under OMB collection number 0348–0044) must also

be completed by all applicants to show the project's budget breakdown, both as to expense categories and the division between Federal and non-Federal funding sources, as applicable.

3. *Form SF–424B,* "Assurances—Non-Construction Programs," (approved under OMB collection number 0348–0040) must also be completed by applicants to assure the Federal government of the applicant's legal authority to apply for Federal assistance.

4. *Proposal Narrative.* Completed applications must include a proposal narrative, which will include the supplemental budget summary. The proposal narrative, excluding the supplementary budget summary, must be single-sided, typed, un-stapled, and not exceed 12 pages. New requirements are made to the narrative with this submission to include: Requested FMPP funding and match funds; questions regarding EBT, equipment, supplies, and promotional requests; eligibility type in the entity type section; summarizing statements about the project's meeting the evaluation criteria; requiring existing and pending support; and providing a list of all project activities.

The narrative must be organized under the following headings to explain the project work:

a. Project Title. Must capture the primary focus of the project and match the title provided on the SF–424.

b. Applicant/Organization Information. Provide the applicant/organization name, contact name, mailing address, and telephone and fax number. Provide the e-mail address for the person designated to answer questions about the application, financial information, and the proposed project budget.

c. Primary Project Manager Information. Provide the name, mailing address, telephone and fax number, and e-mail address for the person(s) responsible for managing and/or overseeing the project.

d. Requested FMPP Funding and Match Funds. Indicate the dollar amount requested from FMPP. Include other funding sources, matching, and in-kind contributions in the "Matching Funds" section as applicable.

e. Entity Type and Eligibility Statement. Indicate the entity type of the applicant/organization, *i.e.,* an agricultural cooperative, local government, nonprofit corporation, public benefit corporation, economic benefit corporation, regional farmers' market authority, tribal government, or other entity type. Provide and explanation of how the applicant/organization qualifies as an eligible entity. Applications without sufficient information to determine their eligibility will not be considered.

f. EBT, Equipment, Supplies, and Promotional Projects. Answer either "Yes" or "No" to whether your proposal includes a new or existing electronic benefit transfers (EBT) component; or includes purchases of equipment, supplies, or other promotional items.

g. Executive Summary. The proposal summary, not to exceed 200 words, must include the following: A project description, goals to be accomplished, stages of work and resources required, and the expected timeframe for completing all tasks and results.

h. Goals of the Project. Provide a clear statement (one or two sentences) focusing on the ultimate goal(s) and objective(s) of the project.

i. Background Statement. Provide information regarding past, current, and/or future events, conditions, or actions taken that justify the need for the project. Correlate the background and purpose of the activity to support the particular project issue.

j. Workplan and Resource Requirements. Provide a statement that includes the planned scope of work, anticipated stages and timelines, and the resources required to complete the project. A timeline must be provided for the planned work. Identify who will do the work, whether collaborative arrangements or subcontractors will be used, the resource commitments of the collaborators, and the role(s) and responsibilities of each collaborator or project partner.

k. Expected Outcomes and Project Evaluation. Describe what is to be accomplished, the expected results; and how success will be measured at the completion of the project (quantitative and evaluation measurements of the project's impact).

l. Beneficiaries. Identify the individuals, organizations, and/or entities that will benefit from the project outcome and how they will benefit.

m. Evaluation Criteria Statements. All applications will be evaluated against the "Proposal Evaluation Criteria," published annually, which can be found in the FMPP Guidelines at *http://www.ams.usda.gov/FMPP.* AMS may change the criteria annually based on the priorities for annual funding. Using the criteria as headings, the applicant must summarize how the project addresses each criterion. Provide references to the appropriate pages and/or sections of the narrative to justify the project's plan and merit.

n. Existing and Pending Support. List all current and pending public or private support. Include personnel identified in the narrative who have committed portions of their time, whether or not salary support for persons involved is included in the budget. An application that duplicates or overlaps substantially with project activities or application already reviewed and funded by another Federal agency will not be funded under FMPP.

o. Supplemental Budget Summary. Provide in sufficient detail information about the budget categories listed on Form SF–424A. This detailed budget information is required. All requested budget items and activities must:

i. Be itemized, listing separately each item, its cost, and use.

ii. Correlate to the purpose/goals of the project and demonstrate that the budget is reasonable and adequate for the proposed work.

iii. Not include matching funds or in-kind work and items.

iv. Be substantiated in a written budget narrative

p. Primary Proposal Activity. Identify one specific activity (only) that meets the proposal's main goal and objective.

q. Proposal Activities. List all other activities (as many as area applicable) that meet the remaining goals and objectives.

5. *FMPP Voluntary Narrative Forms.* Forms "TM–29, FMPP Project Proposal Narrative Form" and "TM–30, FMPP Supplemental Budget Summary Form" were developed to assist applicants in placing the required information in the proper order in the proposal narrative. These voluntary forms are recommended for use as guidance for the application development and submittal processes. Forms TM–29 and TM–30 are being revised to include instructions to assist applicants in completing the narrative and supplemental budget information.

The instructions for completing the "FMPP Project Proposal Narrative Form" and "FMPP Supplemental Budget Summary Form" for the proposal narrative will increase the total number of burden hours. These burden hours are captured in the proposal narrative.

Before funds are dispersed, applicants that are selected for FMPP grant funds (awardees) must complete the following forms:

6. *Form AD–1047,* "Certification Regarding Disbarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions." This form must have the awardee's original signature.

7. *Form AD–1048,* "Certification Regarding Disbarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions." This

form must have the awardee's original signature.

8. *Form AD–1049,* "Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I—For Grantees Other Than Individuals." The awardee keeps this document for their records.

Additionally, awardees must also complete the following forms and paperwork for AMS:

9. *Grant Agreement.* The grant agreement is used as It also indicates the agreed upon grant funding dollar amounts and the beginning date and ending date of the project work and the grant agreement. Four (4) copies of this agreement are required with the awardee's and the AMS Administrator's office signatures and dated for each grant.

10. *Form SF–270,* "Request for Advance and Reimbursement" is required whenever the awardees request an advance or reimbursement of Federal grant funds. AMS expects that at least three (3) SF–270 forms will be submitted during the grant agreement period.

11. *Progress Reports.* The Progress Report is written documentation required to notify AMS about the work activities and progress towards completing the awardee's established project workplan goals, objectives, and timelines. AMS expects that at least two (2) Progress Reports will be submitted during the grant agreement period.

12. *Final Report.* The Final Report is written information required by AMS within 90 days after the ending date of the grant agreement. This information is utilized as final documentation of completion of the workplan goals, objectives, and activities.

13. *Form SF–425,* Federal Financial Report currently approved under OMB collection number 0348–0061, replaces forms SF–269A, Financial Status Report (Short form approved under OMB collection number 0348–0038) and SF–269, Financial Status Report, (Long form approved under OMB collection number 0348–0039, (if the project had program income)). AMS expects that at minimum two (2) or a maximum of seven (7) Federal Financial Reports will be submitted depending on the duration of the grant agreement period. Additionally, a final form SF–425 is to be completed once by the awardee(s) 90 days after the expiration date of the grant period.

14. *Grant Recordkeeping.* AMS requires that grant recipients maintain all records pertaining to the grant for a period of 3 years after the final status report has been submitted to AMS, in accordance with Federal recordkeeping regulations. This requirement is provided in the FMPP Guidelines, which are published at AMS' Marketing Services Branch Web site at: *http://www.ams.usda.gov/FMPP.*

The 2008 Farm Bill increases funding for grants under FMPP, allocating mandatory funds from the Commodity Credit Corporation, from 2009 through 2012 with $5 million for each of FY 2009 through 2010, and $10 million for each of FY 2011 and 2012. Additionally, not less than 10 percent of the grant funds in a fiscal year shall be used to support the use of electronic benefit transfers (EBT) for Federal nutrition programs at farmers' markets. Eligible EBT projects must (1) not be used for funding the ongoing cost of carrying out any EBT project; and (2) demonstrate a plan to continue to provide EBT card access at one or more farmers' markets following the receipt of a grant.

With the increase in funds available annually and focus of funding new EBT projects, AMS anticipates an increase in the number of applications submitted. As such, AMS submits the following revisions in information collection:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 7.168 hours per response.

Respondents: Agricultural Cooperatives, Producer Networks, or Producer Associations; Local Governments; Nonprofit Corporations; Public Benefit Corporations; Economic Development Corporations; Regional Farmers' Market Authorities; and Tribal Governments.

Estimated annual number of respondents: 1,500.

Estimated annual number of responses per respondent: 1.94.

Estimated annual number of responses: 2,915.

Estimated total annual burden on the respondents: 20,896 hours.

AMS is committed to compliance with the Government Paperwork Elimination Act that requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible:

- The SF and AD forms can be filled out electronically and printed out for submission to AMS with original signatures.
- The voluntary "FMPP Proposal Narrative Form" and "FMPP Supplemental Budget Summary Form" can be filled electronically and printed out for submission.

For Grants.gov applicants all SF and AD forms, as well as the proposal narrative and eligibility statement, can also be filled out electronically and submitted as an attachment through Grants.gov during the FMPP application process. Additionally, Grants.gov applicants are not required to submit any additional (hard copy) paperwork to AMS.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether this information will have practical utility; (2) the accuracy of the agency's estimate of the burden of this collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received by AMS will be available for public inspection during regular business hours, 8 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, at the same address; and can be viewed via the Internet at *http://www.regulations.gov.* All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: September 27, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–24625 Filed 9–30–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Domestic Sugar Program—FY 2010 and FY 2011 Cane Sugar and Beet Sugar Marketing Allotments and Company Allocations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing this notice to publish the modifications to the fiscal year 2010 (FY 2010) State sugar marketing allotments and company allocations to sugarcane and sugar beet processors. This applies to all domestic sugar marketed for human consumption in the United States from October 1, 2009, through September 30, 2010. CCC is also issuing this notice to publish the

FY 2011 State sugar marketing allotments and company allocations to sugarcane and sugar beet processors, which apply to all domestic sugar marketed for human consumption in the United States from October 1, 2010, through September 30, 2011. Although CCC already has announced most of the information in this notice through United States Department of Agriculture (USDA) news releases, CCC is required to publish the determinations establishing and adjusting sugar marketing allotments in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic and Policy Analysis Staff, Farm Service Agency, USDA, 1400 Independence Avenue, SW., Mail Stop 0516, Washington, DC 20250–0516; telephone (202) 720–4146; FAX (202) 690–1480; e-mail: *barbara.fecso@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Initial FY 2010 State Allotments and Company Allocations

On September 25, 2009, CCC established the initial FY 2010 allocation of the sugar overall allotment quantity (OAQ) at 9,235,250 short tons, raw value (tons). As required by the Agricultural Adjustment Act of 1938, as amended, the sugar beet sector was allotted 54.35 percent of the OAQ (5,019,358 tons), while the cane sugar sector was allotted 45.65 percent (4,215,892 tons). CCC distributed the sector allotments among domestic sugar beet and sugarcane processors according to the statute and the regulations in 7 CFR part 1435 and made several structural changes in the allocation to certain sugarcane processors.

CCC combined the Louisiana cane sugar allocations of Alma Plantation, L.L.C, Cajun Sugar Cooperative, Inc., Cora-Texas Mfg. Co. Inc., Lafourche Sugars, L.L.C., Louisiana Sugar Cane Cooperative, Inc., Lula-Westfield, L.L.C. and St. Mary Sugar Cooperative, Inc. into one allocation under the name of Louisiana Sugar Cane Products, Inc. (LSCPI). CCC also modified the FY 2010 cane sugar allocations of mills in Louisiana to reflect grower petitions to transfer allocation commensurate with their cane deliveries to the new mill of their choice. CCC permanently transferred allocations between Louisiana mills for those growers whose petitions met all CCC requirements. However, for those growers whose petitions did not meet all CCC requirements, CCC temporarily increased the FY 2010 allocations of the recipient mills specified in the petitions. Surplus allocation from Hawaii was reassigned to these recipient mills (see below). The allocations of the mills which the growers asked to leave were not reduced.

In FY 2004, CCC determined that Puerto Rican processors permanently terminated operations because no sugar had been processed for two complete years. The Puerto Rico allocation of 6,356 tons was reassigned to Hawaii in FY 2010, as required, and then further reassigned to the mainland sugarcane-producing States. This reassignment will also occur in FY 2011 as Hawaii is again not expected to use all of its cane sugar allotment.

First Revision to the FY 2010 Sugar Marketing Allotment Program

The May 7, 2010, announcement of sugar marketing allotment changes implemented CCC's reassignment of 200,000 tons of surplus cane sugar allotments to imports, announced on April 23, 2010. The May 7, 2010, revisions included a reassignment of projected surplus beet sugar marketing allocations under the FY 2010 Sugar Marketing Allotment Program from beet sugar processors with surplus allocation to those with deficit allocation. Further, CCC noted the addition of the allocation of Wyoming Sugar Company, LLC (WSC) to the allocation of Minn-Dak Farmers Cooperative (MDFC). This was done in accordance with section 359d(b)(2)(G) of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359dd(b)(2)(G)) to reflect MDFC's purchase of WSC's Worland, WY, factory in December 2009.

Second Revision to the FY 2010 Sugar Marketing Allotment Program

USDA revised cane processor allocations, and cane State allotments, on August 19, 2010, to implement the July 6, 2010, reassignment of 300,000 tons of surplus domestic cane sugar allotment to a raw Tariff Rate Quota (TRQ) import increase. Since all cane processors were still expected to have more allocation than could be fulfilled by domestically-produced cane sugar in FY 2010, CCC reassigned an additional 200,000 tons of surplus cane allotment to raw cane sugar imports already expected from non-TRQ sources. With respect to the beet sector, CCC on August 19, 2010 reassigned surplus beet sector allotment from beet processors not expected to fill their allocation to beet processors still requiring allocation to market all their FY 2010 supply. CCC then determined that 170,000 tons of beet sugar allotment could not be filled by the beet sector and the surplus was reassigned to raw cane sugar imports already expected from non-TRQ sources. In total, CCC reassigned 670,000 tons of surplus beet and cane sugar allotments to raw cane sugar imports—300,000 tons to an increase in the raw sugar tariff-rate quota per the July 6, 2010, announcement and 370,000 tons to raw cane sugar imports already expected from non-TRQ sources on August 19th. Final FY 2010 beet and cane sector allotments were reduced to 4,849,358 and 3,515,892 tons, respectively.

Initial FY 2011 Sugar Marketing Allotments and Processor Allocations

On August 19, 2010, CCC further announced the initial FY 2011 OAQ of 9,235,250 tons, the same level as FY 2010, as well as sugar beet and sugarcane sector allotments and allocations. Establishing the OAQ at this level will supply over 85 percent of expected FY 2011 domestic sugar needs and permit domestic sugarcane and sugar beet processors to market all of their expected sugar production in FY 2011. Processors are expected to be able to market all of their expected production in FY 2011 because the market is expected to be firm—domestic demand is projected to be strong relative to available supplies and prices are expected to remain firm. Due to this expected firm market situation, CCC announced that it would not implement the Feedstock Flexibility Program (FFP) or the Louisiana Proportionate Share Program for FY 2011. CCC also established a beet allocation for a new beet processor who acquired an existing factory with production history.

On August 19, 2010, CCC distributed the FY 2011 beet sugar allotment of 5,019,358 tons (54.35 percent of the OAQ) among the sugar beet processors and the cane sugar allotment of 4,215,892 tons (45.65 percent of the OAQ) among the sugarcane States and processors, as required by the Agricultural Adjustment Act of 1938, as amended. The accompanying table is identical to the August 19 allotments. The allotments recognize the sale by Minn-Dak Farmers Cooperative (MDFC) of its beet processing factory located in Worland, Wyoming to Wyoming Sugar Growers, LLC (WSG). As a result, 0.8373168 percent of the total beet sugar marketing allotment and the associated production history will be transferred from MDFC to WSG, effective October 1, 2010. In addition, the allotments reflect reassignment of Puerto Rico's allocation of 6,356 tons to Hawaii, and then further reassignment to the mainland sugarcane-producing States, because Hawaii is not expected to use all of its cane sugar allotment.

The summary of the FY 2010 beet and cane sugar marketing allotments and processor allocations are listed in the following table:

FY 2010 Overall Beet/Cane Allotments And Allocations

Distribution	Initial FY 2010 allocation 9/28/09	Revisions 5/7/10	Revisions 8/19/10	Final FY 10 allocations
	Short tons, raw value			
Beet Sugar	5,019,358	0	−170,000	4,849,358
Cane Sugar	4,215,892	−200,000	−500,000	3,515,892
Reassignment to Raw TRQ Imports	0	200,000	670,000	870,000
Total OAQ	9,235,250	0	0	9,235,250
Beet Processors' Marketing:				
Amalgamated Sugar Co	1,074,683	−17,362	14,327	1,071,647
American Crystal Sugar Co	1,850,519	−51,420	−111,798	1,687,301
Michigan Sugar Co	518,377	69,779	−9	588,146
Minn-Dak Farmers Co-op	321,805	51,988	−41,244	332,549
So. Minn Beet Sugar Co-op	677,454	−21,949	−36,773	618,731
Western Sugar Co	507,709	37,777	5,498	550,984
Wyoming Sugar Co	68,812	−68,812	.....	.....
Total Beet Sugar	5,019,358	0	−170,000	4,849,358
State Cane Sugar Allotments:				
Florida	2,094,682	−110,880	−309,097	1,674,705
Louisiana	1,623,713	−42,407	−20,877	1,560,429
Texas	182,094	−3,728	−62,650	115,716
Hawaii	315,403	−42,986	−107,376	165,042
Total Cane Sugar	4,215,892	−200,000	−500,000	3,515,892
Cane Processors' Marketing				
Florida:				
Florida Crystals	862,435	−58,572	−163,122	640,742
Growers Co-op of Florida	376,802	−15,331	−42,735	318,737
U.S. Sugar Corp	855,444	−36,977	−103,241	−715,226
Total Florida	2,094,682	−110,880	−309,097	1,674,705
Louisiana				
Louisiana Sugar Cane Products, Inc.	1,128,210	−19,479	−16,579	1,092,152
M.A. Patout & Sons	495,502	−22,928	−4,298	−468,276
Total Louisiana	1,623,713	−42,407	−20,877	1,560,429
Texas				
Rio Grande Valley	182,094	−3,728	−62,650	115,716
Hawaii				
Gay & Robinson, Inc	72,401	−18,673	−50,592	3,136
Hawaiian Commercial & Sugar Company	243,002	−24,313	−56,784	161,905
Total Hawaii	315,403	−42,986	−107,376	165,042

The initial FY 2011 sugar marketing State allotments and processor allocations are listed in the table located below:

FY 2011 Overall Beet/Cane Allotments and Allocations

Distribution	Initial FY2011 allocations
	Short tons, raw value
Beet Sugar	5,019,358
Cane Sugar	4,215,892
Total OAQ	9,235,250
Beet Processors' Marketing Allocations:	
Amalgamated Sugar Co	1,074,683
American Crystal Sugar Co	1,845,383

FY 2011 OVERALL BEET/CANE ALLOTMENTS AND ALLOCATIONS—Continued

Distribution	Initial FY2011 allocations
Michigan Sugar Co	518,377
Minn-Dak Farmers Co-op	348,589
So. Minn Beet Sugar Co-op	677,454
Western Sugar Co	512,845
Wyoming Sugar Growers, LLC	42,028
Total Beet Sugar	5,019,358
State Cane Sugar Allotments:	
Florida	2,094,682
Louisiana	1,620,472
Texas	182,094
Hawaii	318,644
Total Cane Sugar	4,215,892
Cane Processors' Marketing Allocations	
Florida:	
Florida Crystals	862,435
Growers Co-op. of FL	376,802
U.S. Sugar Corp	855,444
Total Florida	2,094,682
Louisiana:	
Louisiana Sugar Cane Products, Inc	1,124,983
M.A. Patout & Sons	495,489
Total Louisiana	1,620,472
Texas:	
Rio Grande Valley	182,094
Hawaii:	
Gay & Robinson, Inc	73,145
Hawaiian Commercial & Sugar Company	245,499
Total Hawaii	318,644

*The sums of individual entries may not match totals due to rounding.

Signed in Washington, DC, on September 27, 2010.

Jonathan W. Coppess,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2010–24663 Filed 9–30–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2010–0028]

Codex Alimentarius Commission: Meeting of the Codex Committee on Nutrition and Foods for Special Dietary Uses

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA) and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services (HHS), are sponsoring a public meeting on October 13, 2010. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions that will be discussed at the 32nd session of the Codex Committee on Nutrition and Foods for Special Dietary Uses (CCNFSDU) of the Codex Alimentarius Commission (Commission), which will be held in Santiago, Chile, November 1–5, 2010. The Under Secretary for Food Safety and FDA recognizes the importance of providing interested parties the opportunity to obtain background information on the 32nd session of the CCNFSDU and to address items on the agenda.

DATES: The public meeting is scheduled for October 13, 2010, from 1 p.m.–4 p.m.

ADDRESSES: The public meeting will be held in the Harvey W. Wiley Building, Auditorium (1A003), 5100 Paint Branch Parkway, College Park, MD 20740. Parking is adjacent to this building and will be available at no charge to individuals who pre-register by the date below (See Pre-Registration). In addition, the College Park metro station is across the street. Codex documents related to the 32nd session of the CCNFSDU will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp*.

Pre-Registration: To gain admittance to this meeting, individuals must present a photo ID for identification and also are required to pre-register. No cameras or videotaping equipment will be permitted in the meeting room. To pre-register, please send the following information to this e-mail address (*nancy.crane@fda.hhs.gov*) by *October 6, 2010:*

—Your Name.
—Organization.
—Mailing Address.
—Phone number.

—E-mail address.

For Further Information About the 32nd Session of the CCNFSDU Contact: Nancy Crane, Assistant to the U.S. Delegate to the CCNFSDU, Office of Nutrition, Labeling and Dietary Supplements, Center for Food Safety and Applied Nutrition, FDA, 5100 Paint Branch Parkway (HFS–830), College Park, MD 20740, Phone: (301) 436–1450, Fax: (301) 436–2636, E-mail: *nancy.crane@fda.hhs.gov*.

For Further Information About the Public Meeting Contact: Paulo Almeida, U.S. Codex Office, Food Safety and Inspection Service (FSIS), Room 4861, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, Phone: (202) 205–7760, Fax: (202) 720–3157, e-mail: *Paulo.Almeida@fsis.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The CCNFSDU was established to study specific nutritional problems assigned to it by the Commission and advise the Commission on general nutritional issues; to draft general provisions as appropriate, concerning the nutritional aspects of all foods; to develop standards, guidelines, or related texts for foods for special dietary uses, in cooperation with other committees when necessary; and to consider, amend if necessary, and endorse provisions on nutritional aspects proposed for inclusion in Codex standards, guidelines, and related texts. The CCNFSDU is hosted by the Federal Republic of Germany.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 32nd Session of the CCNFSDU will be discussed during the public meeting:

- Matters referred to the CCNFSDU by the Codex Alimentarius Commission and Other Codex Committees.
- Matters of Interest Arising from FAO and WHO.
- Draft Annex to the Guidelines on Nutrition Labeling: General Principles for Establishing Nutrient Reference Values of Vitamins and Minerals for General Population at Step 7.
- Proposed Draft Additional or Revised Nutrient Reference Values for Labeling Purposes in the Codex Guidelines on Nutrition Labeling at Step 4.
- Proposed Draft Revision of the Codex General Principles for the Addition of Essential Nutrients to Foods at Step 4.
- Proposed Draft Revision of the Guidelines on Formulated Supplementary Foods for Older Infants and Young Children at Step 4.
- Proposed Draft Nutrient Reference Values (NRVs) for Nutrients Associated with Risk of Diet-Related Noncommunicable Diseases for General Population at Step 4.
- Discussion Paper on the Inclusion of New Part B for Underweight Children in the Standard for Processed Cereal-Based Foods for Infants and Young Children.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access these documents (*see* **ADDRESSES**).

At the October 13, 2010, public meeting, draft U.S. positions on these agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 32nd session of the CCNFSDU, Dr. Barbara Schneeman, at *CCNFSDU@fda.hhs.gov.* Written comments should state that they relate to activities of the 32nd session of the CCNFSDU.

USDA Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, or audiotape) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/Regulations_&_Policies/2010_Notices_Index/index.asp.* FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on September 24, 2010.

Karen Stuck,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2010–24656 Filed 9–30–10; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Missouri River Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Helena National Forest's Missouri River Resource Advisory Committee (RAC) will meet on Tuesday, November 9, 2010 from 6 p.m. until 9 p.m., in Helena, Montana. The purpose of the meeting is to conduct welcomes and introductions, discuss the status of the RAC charter and committee membership vacancies, discuss and vote on Teton County joining this RAC, review and discuss

project proposals, make project approval and funding decisions, set a next meeting date and receive public comment on the meeting subjects and proceedings.

DATES: Tuesday, November 9, 2010 from 6 p.m. until 9 p.m.

ADDRESSES: The meeting will be held at the USDA-Helena National Forest office located at 2880 Skyway Drive, Helena, Montana 59602 (MT 59602).

FOR FURTHER INFORMATION CONTACT: Kathy Bushnell, Committee Coordinator, Helena National Forest, 2880 Skyway Drive, Helena, Montana 59602 Phone: 406–495–3747; E-mail: *kbushnell@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Welcome and introductions; (2) review and approve previous meeting minutes;(3) briefly update committee on RAC administrative items and membership nomination process; (4) discuss and decide on Teton County request to join RAC; (5) review, discuss and approve projects and funding; (6) set next meeting purpose, location and date; (7) and receive public comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: September 22, 2010.

Duane H. Harp,

Helena District Ranger, Helena National Forest, RAC Designated Federal Official.

[FR Doc. 2010–24728 Filed 9–30–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System

Correction

In notice document 2010–24341 appearing on page 59696 in the issue of Tuesday, September 28, 2010 make the following corrections:

1. In the second column, in lines five and eight of the first paragraph and in lines two and eleven of the second paragraph, "Arraigns" should read "Narragansett."

2. In the third column, in the paragraph that begins with **FOR FURTHER INFORMATION CONTACT**, in line five, "Arraigns" should read "Narragansett."

3. In the same column, in the signature block, "Donna Witting" should read "Donna Wieting."

[FR Doc. C1–2010–24341 Filed 9–30–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for November 2010

The following Sunset Reviews are scheduled for initiation in November 2010 and will appear in that month's Notice of Initiation of Five-Year Sunset Reviews.

Antidumping duty proceedings	Department contact
Certain Cut-to-Length Carbon-Quality Steel Plate from India (A–533–817) (2rd Review)	David Goldberger, (202) 482–4136.
Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia (A–560–805) (2rd Review)	David Goldberger, (202) 482–4136.
Certain Cut-to-Length Carbon-Quality Steel Plate from Italy (A–475–826) (2rd Review)	David Goldberger, (202) 482–4136.
Certain Cut-to-Length Carbon-Quality Steel Plate from Japan (A–588–847) (2rd Review)	David Goldberger, (202) 482–4136.
Certain Cut-to-Length Carbon-Quality Steel Plate from South Korea (A–580–836) (2rd Review)	David Goldberger, (202) 482–4136.
Granular Polytetrafluoroethylene Resin from Italy (A–475–703) (3rd Review)	David Goldberger (202) 482–4136.
Granular Polytetrafluoroethylene Resin from Japan (A–588–707) (3rd Review)	David Goldberger (202) 482–4136.
Superalloy Degassed Chromium from Japan (A–588–866)	Dana Mermelstein (202) 482–1391.
Cased Pencils from the People's Republic of China (A–570–827) (3rd Review)	David Goldberger (202) 482–4136.
Sparklers from the People's Republic of China (A–570–804) (3rd Review)	Jennifer Moats (202) 482–5047.
Certain Cut-to-Length Carbon-Quality Steel Plate from India (C–533–818) (2rd Review)	David Goldberger (202) 482–4136.
Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia (C–560–806) (2rd Review)	David Goldberger (202) 482–4136.
Certain Cut-to-Length Carbon-Quality Steel Plate from Italy (C–475–827) (2rd Review)	David Goldberger (202) 482–4136.
Certain Cut-to-Length Carbon-Quality Steel Plate from South Korea (C–580–837) (2rd Review)	David Goldberger (202) 482–4136.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in November 2010.

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998).

The Notice of Initiation of Five-Year ("Sunset") Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: September 24, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–24731 Filed 9–30–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Aerospace Supplier Development Mission to China; Recruitment Reopened for Additional Applications

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet web sites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

The recruitment has reopened and the deadline for additional applications is extended to September 29, 2010. The U.S. Department of Commerce will review all additional applications after the deadline. We will inform applicants of selection decisions as soon as possible after the deadline. Applications received after the deadline will be considered only if space and scheduling constraints permit.

Companies who have already applied do not need to reapply.

Contacts

U.S. Commercial Service Domestic Contact

Lisa Huot, 202–482–2796, *Lisa.Huot@trade.gov*.

Lisa Huot,

Trade Promotion Programs, International Trade Specialist, U.S. Commercial Service.

[FR Doc. 2010–24637 Filed 9–30–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XZ21

Notice of Intent to Prepare a Programmatic Environmental Impact Statement on Implementing Recovery Actions for Hawaiian Monk Seals

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

ACTION: Notice of Intent to prepare a Programmatic Environmental Impact Statement; announcement of public scoping period; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) announces its intent to prepare a Programmatic Environmental Impact Statement (PEIS) to analyze the environmental impacts of implementing specific management actions and administering the associated research and enhancement program for Hawaiian monk seals (*Monachus schauinslandi*) in the Northwestern and Main Hawaiian Islands. Publication of this notice begins the official public scoping process that will help identify alternatives and determine the scope of environmental issues to be considered in the PEIS.

ADDRESSES: Written statements and questions regarding the public scoping process must be postmarked by November 15, 2010. To be included on a mailing list and receive newsletters and copies of the Draft and Final PEIS, please send mailing address and/or email address to Jeff Walters, Hawaiian Monk Seal Recovery Coordinator, Protected Resources Division, NOAA NMFS Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814. Comments on this notice and the scoping process for this action may be submitted by:

- Mail: 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814.
- Scoping Meetings: Oral and written comments will be accepted during the upcoming scoping meetings. See **SUPPLEMENTARY INFORMATION**, SCOPING MEETINGS (below) for dates and locations of public scoping meetings for this issue.
- Email: *monkseal@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Jeff Walters, NMFS Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814, or via the following email address: *monkseal@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS is the Federal agency responsible for management of Hawaiian monk seals, under the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*) and the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*). NMFS funds and conducts research and enhancement activities on Hawaiian monk seals in the Northwestern Hawaiian Islands (NWHI) and Main Hawaiian Islands (MHI). In 1976, NMFS listed Hawaiian monk seals as "endangered" under the ESA and "depleted" under the MMPA. As required under section 4 of the ESA, NMFS published a Recovery Plan for the species in 1983, which was revised in 2007. The funds administered by NMFS to implement recovery actions, including research and enhancement, have been designated by Congress and allocated within NMFS' annual budgets for the purpose of promoting Hawaiian monk seal recovery. The intent of this PEIS is to evaluate, in compliance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), the potential direct, indirect, and cumulative impacts on the human environment of the alternative approaches to implementing recovery actions, including research and enhancement activities, under the Hawaiian monk seal recovery program.

Background

The Hawaiian monk seals' population has experienced a prolonged decline and currently only approximately 1,200 monk seals remain. Numerous threats to the survival of Hawaiian monk seals are identified in the Hawaiian monk seal Recovery Plan. In the NWHI, young seals are starving, pups are being killed by sharks, seals are getting entangled in marine debris, and sea level rise threatens terrestrial habitats. Low juvenile survival over the past two decades is the primary cause of the population's decline. There is insufficient recruitment into the breeding population, and the population decline will likely continue without intervention. Enhancement activities, including but not limited to translocating seals from areas of lower to higher survival probability, are being considered to improve juvenile survival and the overall health of the population.

The purpose of implementing recovery activities for Hawaiian monk seals is to promote the recovery of the species population to levels at which ESA protection is no longer needed. Research, enhancement, and management activities on Hawaiian monk seals considered in this PEIS are funded, undertaken, and permitted by NMFS, which are federal actions requiring NEPA compliance. The need for this action is rooted in fundamental

biological and ecological factors that are now limiting the population. As part of this action, NMFS is developing measures that will help identify factors limiting the population, minimize human-induced impacts and other factors affecting survival, promote recovery, prevent harm, and avoid jeopardy or continued disadvantage to the species. Research and monitoring will continue to play a key role in determining whether enhancement activities achieve their desired outcomes.

NMFS administers funds that have been designated by Congress and allocated within NMFS' annual budget for the purpose of implementing recovery actions on Hawaiian monk seals. Using these funds, NMFS implements various management, research, and enhancement activities for recovery of the species. This PEIS would satisfy the NEPA compliance requirements for funding and undertaking recovery actions for Hawaiian monk seals, including the subset of actions requiring MMPA and ESA permits.

The purposes of the ESA, as described in section 2, are to provide a means whereby the ecosystems upon which threatened and endangered species may depend may be conserved, to provide a program for the conservation of such threatened and endangered species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in section 2(a) of the ESA.

Proposed Action and Possible Alternatives

This notice initiates a public scoping period that will help determine the structure of each alternative considered in the PEIS. NMFS has identified the proposed action and several other alternatives, including the No Action Alternative. The final scope and structure of the alternatives will reflect the combined input from the public, research institutions, affected State and Federal agencies, and NMFS administrative and research offices. The number and structure of the alternatives that are analyzed in the PEIS will be determined at a later date. Themes to include in the range of potential alternatives are presented here to provide a framework for public comments:

• No Action Alternative: Under this alternative, currently permitted research and enhancement activities on Hawaiian monk seals would continue until expiration of the permit in 2014 (NMFS ESA-MMPA Permit No. 10137–04 issued to the NMFS Pacific Islands Fisheries Science Center). Recovery Plan actions authorized by this permit would not be implemented beyond 2014. Currently, the existing research and enhancement activities include, but are not limited to:

1. Population assessment (e.g., counting, resighting, marking for identification, flipper tags);
2. Health and disease studies (e.g., tissue sampling, morphometric measurements);
3. Foraging studies (e.g., telemetry, scat collection);
4. De-worming research (e.g., fecal samples, testing anti-parasite treatments);
5. Translocation of weaned pups within the NWHI to improve juvenile survival;
6. Mitigation of fishery interactions (e.g., disentanglement, removal of fishing hooks); and
7. Mitigation of adult male aggression (e.g., removal and relocation of aggressive males).

• Status Quo Alternative: The Status Quo Alternative would consist of the existing types and scope of management, research and enhancement activities (including those identified in the No Action Alternative). New permits would be issued to maintain the current levels of research and enhancement activities. Existing management activities include but are not limited to protecting seals that haul out on recreational beaches and creating effective outreach messages, brochures, signs and volunteer programs to minimize human disturbance and other adverse impacts.

• Enhanced Implementation Alternative (Proposed Action): The Proposed Action would result in implementation and continuation of activities identified in the Status Quo, as well as additional activities to achieve more comprehensive Recovery Plan implementation. These additional activities would include, but are not limited to:

1. Vaccination studies (including potential vaccination);
2. Aversive conditioning (e.g., the development of tools to modify undesirable seal behavior including interactions with humans or domestic animals);
3. Archipelago-wide translocation to improve juvenile survival; and
4. De-worming.

The PEIS will assess the direct, indirect, and cumulative effects of implementing the alternative approaches for funding, undertaking, and permitting the management, research and enhancement activities on Hawaiian monk seals as well as other components of the marine ecosystem and human environment. Anyone having relevant information they believe NMFS should consider in its analysis should provide a description of that information along with complete citations for supporting documents.

Public Involvement

Scoping is an early and open process for determining the scope of issues to be addressed in a PEIS and for identifying the significant issues related to the proposed action. A principal objective of the scoping and public involvement process is to identify a range of reasonable management alternatives that will delineate critical issues and provide a clear basis for distinguishing among those alternatives and selecting a preferred alternative. Through this notice, we are notifying the public that a NEPA analysis and decision—making process for this proposed action has been initiated so that interested or affected people may participate and contribute to the final decision. NMFS will ask for additional public comments once the Draft PEIS is prepared and available. For additional information about Hawaiian monk seals and the PEIS process, please visit our website at *http://www.nmfs.noaa.gov/pr/permits/eis/hawaiianmonkseal.htm*. NMFS estimates the Draft PEIS will be available in late spring 2011.

Scoping Meetings

Public scoping meetings will be held on the following dates, times, and locations:

1. Wednesday, October 20, 2010, 5:30 — 8:30 p.m., Central Union Church, 1660 South Beretania Street, Honolulu, O'ahu;
2. Thursday, October 21, 2010, 6 — 9 p.m., Mokupāpapa Discovery Center, 308 Kamehameha Avenue, Suite 109, Hilo, Hawai'i;
3. Monday, October 25, 2010, 6 — 9 p.m., NOAA Sanctuaries New Community Learning Center, 726 South Kīhei Road, Kīhei, Maui;
4. Tuesday, October 26, 2010, 6 — 9 p.m., Hale Mahaolu Home Pumehana, 290 Kolapa Place, Kaunakakai, Moloka'i; and
5. Wednesday, October 27, 2010, 6 — 9 p.m., Wilcox Elementary School, 4319 Hardy Street, Līhu'e, Kaua'i.

Comments will be accepted at these meetings as well as during the scoping period, and can be submitted to NMFS by November 15, 2010 (see **FOR FURTHER INFORMATION CONTACT**). We request that you include in your comments: (1) Your name, address, and affiliation (if any); and (2) Any background documents to

support your comments as you think necessary.

Special Accommodations

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Rachel Sprague, (808) 944–2200 (phone) or (808) 973–2941 (fax), at least 5 days before the scheduled meeting date.

Dated: September 22, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–24738 Filed 9–30–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–838]

Seamless Refined Copper Pipe and Tube From Mexico: Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce ("the Department") has determined that imports of seamless refined copper pipe and tube ("copper pipe and tube") from Mexico are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are listed in the "Continuation of Suspension of Liquidation" section of this notice.

DATES: *Effective Date:* October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Joy Zhang or George McMahon, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–1168 or (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 12, 2010, the Department published in the **Federal Register** its preliminary determination on copper pipe and tube from Mexico. *See Seamless Refined Copper Pipe and Tube from Mexico: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 75 FR 26726 (May 12, 2010) ("*Preliminary Determination*").[1] We selected the following companies for individual examination: IUSA S.A. de C.V. ("IUSA") and Nacional de Cobre, S.A. de C.V. ("Nacobre").

See Preliminary Determination, 75 FR at 26726.

As provided in section 782(i) of the Act, we conducted sales and cost verifications of the questionnaire responses submitted by IUSA and Nacobre. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by IUSA and Nacobre.[2] All verification reports are on file and available in the Central Records Unit ("CRU"), Room 7046, of the main Department of Commerce building.

On July 23, 2010 and July 26, 2010, respectively, IUSA and Nacobre, submitted sales and cost databases with revisions that reflect the minor corrections presented during their respective verifications.[3] IUSA, Nacobre, and the petitioners[4] filed their case briefs with the Department on August 4, 2010, and rebuttal briefs on August 10, 2010. At the petitioners' request, we held a hearing on August 12, 2010.

We used IUSA's July 23, 2010, and Nacobre's July 26, 2010, sales and cost databases to calculate IUSA's and Nacobre's antidumping duty margin. No parties have objected to the use of these databases.

On September 13, 2010, the Department placed a memorandum on the record of this case regarding a recent *ex parte* meeting in which Francisco J. Sánchez, Under Secretary for International Trade Administration met with Mr. Carlos Peralta, President and Director General of IUSA. The Department invited interested parties to comment on this memorandum by September 17, 2010; however, no comments were received.

Period of Investigation

The period of investigation ("POI") is July 1, 2008, to June 30, 2009. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

For the purpose of this investigation, the products covered are all seamless circular refined copper pipes and tubes, including redraw hollows, greater than or equal to 6 inches (152.4 mm) in length and measuring less than 12.130 inches (308.102 mm) (actual) in outside diameter ("OD"), regardless of wall thickness, bore (*e.g.,* smooth, enhanced with inner grooves or ridges), manufacturing process (*e.g.,* hot finished, cold-drawn, annealed), outer surface (*e.g.,* plain or enhanced with grooves, ridges, fins, or gills), end finish (*e.g.,* plain end, swaged end, flared end, expanded end, crimped end, threaded), coating (*e.g.,* plastic, paint), insulation, attachments (*e.g.,* plain, capped, plugged, with compression or other fitting), or physical configuration (*e.g.,* straight, coiled, bent, wound on spools).

The scope of this investigation covers, but is not limited to, seamless refined copper pipe and tube produced or comparable to the American Society for Testing and Materials ("ASTM") ASTM–B42, ASTM–B68, ASTM–B75, ASTM–B88, ASTM–B88M, ASTM–B188, ASTM–B251, ASTM–B251M, ASTM–B280, ASTM–B302, ASTM–B306, ASTM–359, ASTM–B743, ASTM–B819, and ASTM–B903 specifications and meeting the physical parameters described therein. Also included within the scope of this investigation are all sets of covered products, including "line sets" of seamless refined copper tubes (with or without fittings or insulation) suitable for connecting an outdoor air conditioner or heat pump to an indoor evaporator unit. The phrase "all sets of covered products" denotes any combination of items put up for sale that is comprised of merchandise subject to the scope.

"Refined copper" is defined as: (1) Metal containing at least 99.85 percent by weight of copper; or (2) metal containing at least 97.5 percent by weight of copper, provided that the

[1] On May 28, 2010, the Department also published in the **Federal Register**, *Seamless Refined Copper Pipe and Tube From Mexico: Correction to Notice of Preliminary Determination of Sales at Less Than Fair Value 75 FR 29990 (May 28, 2010) and Postponement of Final Determination* to correct the Scope section of the *Preliminary Determination.*

[2] *See* Memorandum to the File titled "Verification of the Sales Response of IUSA S.A. de C.V. ("IUSA") and its affiliates ("IUSA") in the Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from Mexico, dated July 21, 2010" "Verification of the Cost Response of IUSA, S.A. de C.V. in the Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from Mexico, dated July 19, 2010" "Verification of the Sales Response of Nacobre, S.A. de C.V. and its affiliates ("Nacobre") in the Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from Mexico," dated July 21, 2010, and "Verification of the Cost Response of Nacobre, S.A. de C.V. and its affiliates ("Nacobre") in the Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from Mexico," dated July 22, 2010.

[3] *See* IUSA's July 23, 2010, and Nacobre's July 26, 2010, submission of the sales and cost databases.

[4] The petitioners in this investigation are Cerro Flow Products, Inc., KobeWieland Copper Products, LLC, Mueller Copper Tube Products, Inc., and Mueller Copper Tube Company, Inc. (collectively, "petitioners").

content by weight of any other element does not exceed the following limits:

Element	Limiting content percent by weight
Ag—Silver	0.25
As—Arsenic	0.5
Cd—Cadmium	1.3
Cr—Chromium	1.4
Mg—Magnesium	0.8
Pb—Lead	1.5
S—Sulfur	0.7
Sn—Tin	0.8
Te—Tellurium	0.8
Zn—Zinc	1.0
Zr—Zirconium	0.3
Other elements (each)	0.3

Excluded from the scope of this investigation are all seamless circular hollows of refined copper less than 12 inches in length whose OD (actual) exceeds its length. The products subject to this investigation are currently classifiable under subheadings 7411.10.1030 and 7411.10.1090 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Products subject to this investigation may also enter under HTSUS subheadings 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping duty investigation are addressed in the "Issues and Decision Memorandum for the Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from Mexico" ("Decision Memorandum") from Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Susan H. Kuhbach, to Deputy Assistant Secretary for Import Administration Ronald K. Lorentzen, dated September 24, 2010, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in the Decision Memorandum which is on file in the CRU of the main Department of Commerce building, Room 7046, and is accessible on the Web at *http://ia.ita.doc.gov/frn/index.html.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we have made certain changes to the margin calculations for IUSA and Nacobre based on the sales and cost verifications.[5]

Cost of Production

As explained in the *Preliminary Determination,* we conducted an investigation concerning sales at prices below the cost of production in the home market. We found that, for certain specific products, more than 20 percent of IUSA and Nacobre's home market sales were at prices less than the cost of production and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. Therefore, we disregarded these sales and used the remaining sales as the basis for determining normal value in accordance with section 773(b)(1) of the Act. Based on this test, for this final determination we have disregarded below-cost sales by IUSA and Nacobre.

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection ("CBP") to continue to suspend liquidation of all entries of subject merchandise from Mexico entered, or withdrawn from warehouse, for consumption on or after May 12, 2010, the date of the publication of the *Preliminary Determination.* We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average margin, as indicated below, as follows: (1) The rates for IUSA and Nacobre will be the rates we have determined in this final determination; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 28.16 percent as discussed in the "All-Others Rate"' section below. These suspension-of-liquidation instructions will remain in effect until further notice.

Final Determination

The final antidumping duty margins are as follows:

Manufacturer/exporter	Weighted-average margin (percent)
IUSA S.A. de C.V.	24.89
Nacional de Cobre, S.A. de C.V.	31.43
All Others	28.16

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated "All Others" rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act. IUSA and Nacobre are the only respondents in this investigation for which the Department has calculated a company-specific rate that is not zero or *de minimis.* Therefore, because there are only two relevant weighted-average dumping margins for this final determination and because using a weighted average risks disclosure of business proprietary information, the "all others" rate is a simple-average of these two values, which is 28.16 percent.[6]

Disclosure

The Department will disclose the calculations performed in connection with this final determination within five days of the date of publication of this notice to parties in this proceeding. *See* 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our final determination. As our final determination is affirmative, the ITC will determine within 45 days whether imports of the subject merchandise are causing material injury or threat of material injury to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC

[5] For a discussion of these changes, see the Issues and Decision Memorandum and memorandum titled, "Final Determination of Sales at Less Than Fair Value in the Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from Mexico—Sales Analysis Memorandum for IUSA" ("IUSA Sales Analysis Memo"); "Final Determination of Sales at Less Than Fair Value in the Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from Mexico—Sales Analysis Memorandum for Nacobre" ("Nacobre Sales Analysis Memo"); "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination—IUSA" ("IUSA Cost Analysis Memo"); and "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination—Nacobre" ("Nacobre Cost Analysis Memo"), dated September 24, 2010.

[6] *See Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 47587, 47591 (August 14, 2008).

determines that such injury does exist, we will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Destruction of Proprietary Information

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the APO itself. *See* 19 CFR 351.305(a)(3). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: September 24, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix

List of Issues in the Issues and Decision Memorandum

Comment 1: Comments Regarding the Investigation
Comment 2: Alternative Cost Averaging Methodology
Comment 3: Cost Recovery Test
Comment 4: Model Matching Hierarchy
Comment 5: Nacobre's U.S. Date of Sale
Comment 6: Treatment of Nacobre's General and Administrative Expense Ratio
Comment 7: Nacobre's Weight Basis
Comment 8: Treatment of the Negative Value of Certain U.S. Expense Variables for IUSA
Comment 9: Treatment of Early Payment Discounts for IUSA's Home Market Sales
Comment 10: IUSA's Packing Costs
Comment 11: Further Manufactured Line Sets
Comment 12: "All Others" Rate

[FR Doc. 2010–24719 Filed 9–30–10; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–964]

Seamless Refined Copper Pipe and Tube From the People's Republic of China: Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* October 1, 2010.

SUMMARY: On May 12, 2010, the Department of Commerce (the "Department") published its preliminary determination of sales at less than fair value ("LTFV") in the antidumping duty investigation of seamless refined copper pipe and tube ("copper pipe and tube") from the People's Republic of China ("PRC").[1] The Department invited interested parties to comment on the *Preliminary Determination.* Based on the Department's analysis of the comments received, the Department has made changes from the *Preliminary Determination.* The Department determines that copper pipe and tube from the PRC is being, or is likely to be, sold in the United States at LTFV as provided in section 735 of the Tariff Act of 1930, as amended (the "Act"). The final dumping margins for this investigation are listed in the "Final Determination" section below.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan or Shawn Higgins, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4081 and (202) 482–0679, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published its *Preliminary Determination* of sales at LTFV and postponement of the final determination on May 12, 2010.

Between May 24, 2010, and June 1, 2010, the Department conducted verification of mandatory respondents Golden Dragon Precise Copper Tube Group, Inc. ("Golden Dragon") and Zhejiang Hailiang Co., Ltd., Shanghai Hailiang Copper Co., Ltd., and Hong Kong Hailiang Metal Trading Limited (collectively, the "Hailiang Group").[2]

Cerro Flow Products, Inc., KobeWieland Copper Products, LLC, Mueller Copper Tube Company, Inc. (collectively, "Petitioners"), Golden Dragon, and the Hailiang Group submitted case briefs on July 2, 2010.[3] On July 9, 2010, Petitioners, Golden Dragon, and the Hailiang Group filed rebuttal briefs.[4] The Department conducted a public hearing on August 4, 2010.

On August 3, 2010, the Department notified parties that as a result of the recent decision in *Dorbest Ltd.* v. *United States,* 604 F.3d 1363 (Fed. Cir. 2010) ("*Dorbest*"), issued by the United States Court of Appeals for the Federal Circuit ("CAFC") on May 14, 2010, the Department would be reconsidering its valuation of the labor wage rate in this investigation. The Department placed export data on the record of the investigation and gave parties an opportunity to comment on the narrow issue of the labor wage value in light of the CAFC's decision.[5] On August 9, 2010, Petitioners and Golden Dragon submitted comments regarding the wage rate issue.[6]

Period of Investigation

The period of investigation ("POI") is January 1, 2009, through June 30, 2009. This period corresponds to the two most recent fiscal quarters prior to the month

[1] *See Seamless Refined Copper Pipe and Tube from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 75 FR 26716 (May 12, 2010) ("*Preliminary Determination*").

[2] *See* the "Verification" section below.

[3] *See* Letter from Petitioners to the Secretary of Commerce, "Seamless Refined Copper Pipe and Tube from the People's Republic of China; Investigation; Case Brief of Petitioners" (July 2, 2010); Letter from Golden Dragon to the Secretary of Commerce, "Seamless Refined Copper Pipe and Tube from the People's Republic of China" (July 2, 2010); Letter from the Hailiang Group to the Secretary of Commerce, "Seamless Refined Copper Pipe & Tube from the People's Republic of China: The Hailiang Group—Administrative Case Brief" (July 2, 2010).

[4] *See* Letter from Petitioners to the Secretary of Commerce, "Seamless Refined Copper Pipe and Tube from the People's Republic of China; Investigation; Rebuttal Brief of Petitioners" (July 9, 2010); Letter from Golden Dragon to the Secretary of Commerce, "Seamless Refined Copper Pipe and Tube from the People's Republic of China" (July 9, 2010); Letter from the Hailiang Group to the Secretary of Commerce, "Seamless Refined Copper Pipe & Tube from the People's Republic of China: Rebuttal Brief of the Hailiang Group" (July 9, 2010).

[5] *See* Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, "Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Wage Data" (August 3, 2010).

[6] *See* Letter from Petitioners to the Secretary of Commerce, "Seamless Refined Copper Pipe and Tube from China; Petitioners' Comments on the Surrogate Value for Labor" (August 9, 2010); Letter from Golden Dragon to the Secretary of Commerce, "Seamless Refined Copper Pipe and Tube from the People's Republic of China: Golden Dragon Precise Copper Tube Group, Inc." (August 9, 2010).

of the filing of the petition (*i.e.,* September, 2009).[7]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation, as well as comments received pursuant to the Department's requests, are addressed in the Issues and Decision Memorandum.[8] A list of the issues which parties raised and to which the Department responds in the Issues and Decision Memorandum is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document that is on file in the Central Records Unit, Room 7046 of the main Commerce building and accessible at *http://trade.gov/ia.* The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Determination

Changes Applicable to Multiple Companies

1. Pursuant to *Dorbest,* the Department calculated an hourly wage rate by averaging earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise.[9]

2. The Department made several adjustments to the calculations of the surrogate financial ratios.[10]

Changes Specific to Golden Dragon

1. The Department treated Golden Dragon's copper cathode purchases from a certain PRC supplier as market economy purchases.[11]

2. In accordance with section 777A(a)(2) of the Act and 19 CFR 351.413, the Department declined to make certain adjustments to the calculation of indirect U.S. selling expenses for salaries paid to two employees of Golden Dragon who worked in the United States during the POI because these adjustments are insignificant in relation to the price of the merchandise.[12]

3. The Department revised the reported wall thickness for one control number ("CONNUM").[13]

4. The Department revised the reported electricity consumption to account for indirect consumption of electricity.[14]

5. The Department revised the reported indirect labor to account for previously unreported labor hours.[15]

6. The Department revised the reported water consumption to reflect the water consumption calculated in Golden Dragon's cost reconciliation.[16]

7. The Department revised the reported direct labor and electricity consumption to reflect the correct production quantities at all stages of the production process.[17]

8. The Department revised the reported electricity consumption to reflect the correct allocation of electricity to the different inner grooved tubes ("IGT") based on the IGT forming processing stage consumption that corresponds to each type of IGT.[18]

9. The Department adjusted the reported electricity and direct labor consumption for a particular CONNUM to reflect the lower electricity and direct labor usage rates for a nine millimeter (mm) IGT product instead of the higher rates for a seven mm product.[19]

10. The Department revised the reported consumption of plastic plugs, wood boards, rubber plugs, and paper pads to reflect the weights measured by the Department during verification.[20]

11. The Department revised the distances between Golden Dragon and several of its suppliers.[21]

12. The Department revised the distances between Golden Dragon and several seaports, including the nearest seaport.[22]

13. The Department revised the gross unit price of eight invoices in which the sales amount recorded in the U.S. sales database was less than the sales amount recorded in the records of the U.S. sales staff.[23]

14. The Department revised the reported international freight amount to include a security fee that was not reported in the U.S. sales database.[24]

15. The Department revised the credit period over which the reported credit expenses are based from the period between the date of sale and the payment date to the period between the date of shipment and the payment date.[25]

Changes Specific to the Hailiang Group

1. The Department determined that the Hailiang Group has failed to cooperate because it has not acted to the best of its ability to comply with the Department's requests to provide factors of production ("FOP") on a product-group specific basis. Therefore, pursuant to section 776(b) of the Act, the Department has found that, in selecting from among the facts otherwise available ("FA"), an adverse inference is appropriate for the Hailiang Group.[26]

2. The Department revised the weighted-average per-unit FOP for water to include the FOP for water reported on a cubic meter per kilogram basis.[27]

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[7] *See* 19 CFR 351.204(b)(1).

[8] *See* Memorandum from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, "Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China" (September 24, 2010) ("Issues and Decision Memorandum").

[9] *See* Issues and Decision Memorandum at Comment 1; Memorandum to the File from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, "Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Surrogate Value Memorandum," (September 24, 2010) ("Final Surrogate Value Memorandum") at 2, Attachment 3.

[10] *See* Issues and Decision Memorandum at Comment 2; Final Surrogate Value Memorandum at 2, Attachment 4.

[11] *See* Issues and Decision Memorandum at Comment 4; Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, "Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Analysis Memorandum for Golden Dragon Precise Copper Tube Group, Inc." (September 24, 2010) ("Golden Dragon's Final Analysis Memorandum") at 1–2, Attachment 1.

[12] *See* Issues and Decision Memorandum at Comment 8; Golden Dragon's Final Analysis Memorandum at 2, Attachment 3.

[13] *See* Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, "Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Verification of the Questionnaire Responses of Golden Dragon Precise Copper Tube Group, Inc." (June 15, 2010) ("Golden Dragon's Verification Report") at 3; Golden Dragon's Final Analysis Memorandum at 2.

[14] *Id.*

[15] *Id.*

[16] *See* Golden Dragon's Verification Report at 3; Golden Dragon's Final Analysis Memorandum at 3.

[17] *See* Golden Dragon's Verification Report at 2, 29; Golden Dragon's Final Analysis Memorandum at 3.

[18] *See* Issues and Decision Memorandum at Comment 9; Golden Dragon's Final Analysis Memorandum at 3.

[19] *Id.*

[20] *See* Golden Dragon's Verification Report at 33; Golden Dragon's Final Analysis Memorandum at 3.

[21] *See* Golden Dragon's Verification Report at 32; Golden Dragon's Final Analysis Memorandum at 3–4, Attachment 4.

[22] *Id.*

[23] *See* Golden Dragon's Verification Report at 2, 18; Golden Dragon's Final Analysis Memorandum at 4.

[24] *See* Golden Dragon's Verification Report at 2, 22; Golden Dragon's Final Analysis Memorandum at 4.

[25] *See* Golden Dragon's Verification Report at 2, 22–23; Golden Dragon's Final Analysis Memorandum at 4.

[26] *See* Issues and Decision Memorandum at Comment 12; Memorandum from Karine Gziryan, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, "Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Analysis Memorandum for the Hailiang Group" (September 24, 2010) ("Hailiang Group's Final Analysis Memorandum") at 2.

[27] *See* Issues and Decision Memorandum at Comment 13; Hailiang Group's Final Analysis Memorandum at 2.

3. The Department revised the weighted-average per-unit FOP for wooden crate.[28]

4. The Department revised its normal value calculation to include carbon soot, scale-like graphite, hydrogen, and mold oils as direct materials.[29]

5. The Department revised its normal value calculation to exclude polythene, colorant, and anti-aging master batch.[30]

6. The Department revised its normal value calculation to include nitrogen, kerosene and charcoal as direct inputs.[31]

7. The Department revised its normal value calculation to include the labor hours reported in the two additional indirect labor fields from the Hailiang Group's post-verification sales database.[32]

8. The Department incorporated all changes from the Hailiang Group's minor corrections in the final calculation of the Hailiang Group's antidumping margin.[33]

Scope of Investigation

For the purpose of this investigation, the products covered are all seamless circular refined copper pipes and tubes, including redraw hollows, greater than or equal to 6 inches (152.4 mm) in length and measuring less than 12.130 inches (308.102 mm) (actual) in outside diameter ("OD"), regardless of wall thickness, bore (*e.g.,* smooth, enhanced with inner grooves or ridges), manufacturing process (*e.g.,* hot finished, cold-drawn, annealed), outer surface (*e.g.,* plain or enhanced with grooves, ridges, fins, or gills), end finish (*e.g.,* plain end, swaged end, flared end, expanded end, crimped end, threaded), coating (*e.g.,* plastic, paint), insulation, attachments (*e.g.,* plain, capped, plugged, with compression or other fitting), or physical configuration (*e.g.,* straight, coiled, bent, wound on spools).

The scope of this investigation covers, but is not limited to, seamless refined copper pipe and tube produced or comparable to the American Society for Testing and Materials ("ASTM") ASTM–B42, ASTM–B68, ASTM–B75, ASTM–B88, ASTM–B88M, ASTM–B188, ASTM–B251, ASTM–B251M, ASTM–B280, ASTM–B302, ASTM–B306, ASTM–359, ASTM–B743, ASTM–B819, and ASTM–B903 specifications and meeting the physical parameters described therein. Also included within the scope of this investigation are all sets of covered products, including "line sets" of seamless refined copper tubes (with or without fittings or insulation) suitable for connecting an outdoor air conditioner or heat pump to an indoor evaporator unit. The phrase "all sets of covered products" denotes any combination of items put up for sale that is comprised of merchandise subject to the scope.

"Refined copper" is defined as: (1) Metal containing at least 99.85 percent by weight of copper; or (2) metal containing at least 97.5 percent by weight of copper, provided that the content by weight of any other element does not exceed the following limits:

Element	Limiting content percent by weight
Ag—Silver	0.25
As—Arsenic	0.5
Cd—Cadmium	1.3
Cr—Chromium	1.4
Mg—Magnesium	0.8
Pb—Lead	1.5
S—Sulfur	0.7
Sn—Tin	0.8
Te—Tellurium	0.8
Zn—Zinc	1.0
Zr—Zirconium	0.3
Other elements (each)	0.3

Excluded from the scope of this investigation are all seamless circular hollows of refined copper less than 12 inches in length whose OD (actual) exceeds its length. The products subject to this investigation are currently classifiable under subheadings 7411.10.1030 and 7411.10.1090 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Products subject to this investigation may also enter under HTSUS subheadings 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Scope Comments

The Department has not received comments on the scope of this investigation since the publication of the *Preliminary Determination.*

Verification

As provided in section 782(i) of the Act, the Department verified the information submitted by Golden Dragon and the Hailiang Group for use in the final determination. The Department used standard verification procedures including examination of relevant accounting and production records and original source documents provided by the respondents.[34]

Non-Market Economy Treatment

The Department considers the PRC to be a non-market economy ("NME") country.[35] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. No party has challenged the designation of the PRC as an NME country in this investigation. Therefore, the Department continues to treat the PRC as an NME country for purposes of this final determination.

Surrogate Country

In the *Preliminary Determination,* the Department stated that it selected India as the appropriate surrogate country to use in this investigation for the following reasons: (1) It is a significant producer of comparable merchandise; (2) it is at a similar level of economic development pursuant to section 773(c)(4) of the Act; and (3) the Department has reliable data from India that it can use to value the FOPs.[36] The Department received no comments on this issue after the *Preliminary Determination* and the Department has not made changes to its findings with respect to the selection of a surrogate country for the final determination.

Separate Rates

In proceedings involving NME countries, the Department holds a rebuttable presumption that all companies within the country are subject to government control and, thus,

[28] *See* Issues and Decision Memorandum at Comment 14; Hailiang Group's Final Analysis Memorandum at 3.

[29] *See* Issues and Decision Memorandum at Comment 15; Hailiang Group's Final Analysis Memorandum at 3.

[30] *Id.*

[31] *See* Issues and Decision Memorandum at Comment 15; Hailiang Group's Final Analysis Memorandum at 4.

[32] *See* Issues and Decision Memorandum at Comment 17; Hailiang Group's Final Analysis Memorandum at 4.

[33] *See* Issues and Decision Memorandum at Comment 18; Hailiang Group's Final Analysis Memorandum at 4.

[34] *See* Memorandum from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to the File, "Verification of the Sales and Factors Responses of Zhejiang Hailiang Co., Ltd.; Shanghai Hailiang Co., Ltd.; and Hong Kong Hailiang Co., Ltd. in the Antidumping Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China" (June 18, 2010); Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, "Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Verification of the Questionnaire Responses of Golden Dragon Precise Copper Tube Group, Inc." (June 15, 2010).

[35] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632 (October 25, 2007).

[36] *See Preliminary Determination,* 75 FR at 26719.

should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[37]

In the *Preliminary Determination,* the Department found that the following companies demonstrated eligibility for separate-rate status: Luvata Tube (Zhongshan) Ltd.; Ningbo Jintian Copper Tube Co. Ltd.; Zhejiang Naile Copper Co., Ltd.; Zhejiang Jiahe Pipes Inc.; and Luvata Alltop (Zhongshan) Ltd. (collectively, the "Separate Rate Applicants").[38] Since the publication of the *Preliminary Determination,* no party has commented on the eligibility of the Separate Rate Applicants for separate-rate status. For the final determination, the Department continues to find that the evidence placed on the record of this investigation by the Separate Rate Applicants demonstrates both *de jure* and *de facto* absence of government control with respect to each company's respective exports of the merchandise under investigation. Thus, the Department continues to find that the Separate Rate Applicants are eligible for separate-rate status.

The separate rate is determined based on the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding zero and *de minimis* margins or margins based entirely on adverse facts available ("AFA").[39] In this investigation both mandatory respondents, Golden Dragon and the Hailiang Group, have estimated weighted-average dumping margins which are above *de minimis* and which are not based on total AFA. Therefore, because there are only two relevant weighted-average dumping margins for this final determination and because using a weighted average risks disclosure of business proprietary information, the separate rate is a simple-average of these two values, which is 36.05 percent.[40]

[37] *See Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994).

[38] *See Preliminary Determination,* 75 FR at 26720.

[39] *See* section 735(c)(5)(A) of the Act.

[40] *See Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 47587, 47591 (August 14, 2008).

Use of FA and AFA

Section 776(a) of the Act provides that the Department shall apply FA if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying FA when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Hailiang Group

In the *Preliminary Determination,* the Department determined, pursuant to section 776(a)(1) and (2)(B) of the Act, that it was appropriate to base the Hailiang Group's preliminary dumping margin, in part, on FA because (1) the Hailiang Group's own information on the record indicates that it had the ability to report its FOPs on a product-group specific basis,[41] and (2) the Hailiang Group continued to report FOP values that are identical for all CONNUMs, despite the Department's multiple requests to provide this data on a more specific basis.[42] On April 29, 2010, the Department issued a questionnaire that requested the Hailiang Group to report product-specific FOPs for different production stages and, if the Hailiang Group believed that this were not possible, to comment on the product-group specific processing yields that are on the record of this investigation. However, the Hailiang Group neither reported product-specific FOPs for different production stages nor explained why these product-group specific processing yields are incorrect and cannot be applied in the calculation of product-group specific FOPs.[43] The Hailiang Group had multiple opportunities both before and after the *Preliminary Determination* to explain why the cumulative yields that were calculated by Petitioners and used in the *Preliminary Determination* were flawed and could not be used in the final determination. The Hailiang Group, however, did not provide such an explanation.

Because the Hailiang Group has continued to report FOP values that are identical for all CONNUMs, despite the Department's multiple requests to provide this data on a more specific basis, all the information necessary for the Department to calculate an accurate dumping margin for the Hailiang Group is not on the record and available for use in the final determination. Since the Hailiang Group did not provide the requested FOPs on a product-group specific basis, this necessary information was not available on the record and, therefore, the Department has determined, pursuant to section 776(a)(1) and (2)(B) of the Act, that it continues to be appropriate to base the Hailiang Group's dumping margin, in part, on FA. Furthermore, the Department determines that the Hailiang Group has failed to cooperate because the Hailiang Group has not acted to the best of its ability to comply with the Department's requests both before and after the *Preliminary Determination* to provide FOPs on a product-group specific basis or to explain why the cumulative yields calculated by Petitioners and used in the *Preliminary Determination* could not be used in the final determination. Therefore, pursuant to section 776(b) of the Act, the Department finds that, in

[41] *See* Letter from the Hailiang Group to the Secretary of Commerce, "Certain Seamless Refined Copper Pipe & Tube from the People's Republic of China: Supplemental Section D Questionnaire Response of Hailiang Group" (March 19, 2010) at Exhibit 6; Letter from the Hailiang Group to the Secretary of Commerce, "Certain Seamless Refined Copper Pipe & Tube from the People's Republic of China: Supplemental Section D Questionnaire Response of Hailiang Group" (April 12, 2010) at Exhibit 12.

[42] *See* Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to the Hailiang Group, "Sections C&D Third Supplemental Questionnaire" (April 28, 2010) at 2–3; Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to the Hailiang Group, "Sections C&D Second Supplemental Questionnaire" (March 29, 2010) at 5; Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to the Hailiang Group, "Sections C&D Supplemental Questionnaire" (February 26, 2010) at 8–9; Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to Zhejiang Hailiang, "Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Request for Information" (December 4, 2009) at D–2.

[43] *See* Letter from the Hailiang Group to the Secretary of Commerce, "Certain Seamless Refined Copper Pipe and Tube from the People's Republic of China: Third Supplemental Section D Questionnaire & Part 1 of Post-Preliminary FOP Response of Hailiang Group" (May 11, 2010); Letter from the Hailiang Group to the Secretary of Commerce, "Certain Seamless Refined Copper Pipe and Tube from China: Part 2 of Post-Preliminary FOP Response of the Hailiang Group" (May 14, 2010).

selecting from among FA, an adverse inference is appropriate for the Hailiang Group.[44]

PRC-Wide Entity

In the *Preliminary Determination,* the Department determimined that certain PRC exporters/producers did not respond to the Department's requests for information.[45] Thus, the Department treated these PRC exporters/producers as part of the PRC-wide entity and found that the PRC-wide entity did not respond to our requests for information.[46] No additional information was placed on the record with respect to any of these companies after the *Preliminary Determination.* Since the PRC-wide entity did not provide the Department with requested information, pursuant to section 776(a)(2)(A) of the Act, the Department continues to find it appropriate to base the PRC-wide rate on FA.

The Department determines that, because the PRC-wide entity did not respond to our requests for information, the PRC-wide entity has failed to cooperate to the best of its ability. Therefore, pursuant to section 776(b) of the Act, the Department finds that, in selecting from among the FA, an adverse inference is appropriate for the PRC-wide entity.

Because the Department begins with the presumption that all companies within an NME country are subject to government control, and because only Separate Rate Applicants have overcome that presumption, the Department is applying a single antidumping rate (*i.e.,* the PRC-wide entity rate) to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate.[47] The PRC-wide entity rate applies to all entries of subject merchandise except for entries from Golden Dragon, the Hailiang Group, and the Separate Rate Applicants.

Selection of the AFA Rate for the PRC-Wide Entity

In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[48] Further, it is the Department's practice to select a rate that ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[49] It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.[50] In the instant investigation, as AFA, the Department has assigned to the PRC-wide entity the highest rate on the record of this proceeding, which is the 60.85 percent weighted-average margin calculated for the Hailiang Group.[51] The Department determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA.

The dumping margin for the PRC-wide entity applies to all entries of the merchandise under investigation except for entries of merchandise under investigation from the exporter/manufacturer combinations listed in the chart in the "Final Determination" section below.

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation.[52] This practice is described in *Policy Bulletin 05.1,* available at *http://www.trade.gov/ia.*

Final Determination

The Department determines that the following dumping margins exist for the period January 1, 2009 through June 30, 2009:

Exporter	Producer	Weighted-average percent margin
Golden Dragon Precise Copper Tube Group, Inc	Golden Dragon Precise Copper Tube Group, Inc	11.25
Zhejiang Hailiang Co., Ltd.; Hong Kong Hailiang Metal Trading Limited; Shanghai Hailiang Copper Co., Ltd	Zhejiang Hailiang Co., Ltd.; Shanghai Hailiang Copper Co., Ltd	60.85
Zhejiang Naile Copper Co., Ltd	Zhejiang Naile Copper Co., Ltd	36.05
Zhejiang Jiahe Pipes Inc	Zhejiang Jiahe Pipes Inc	36.05
Luvata Tube (Zhongshan) Ltd	Luvata Tube (Zhongshan) Ltd	36.05
Luvata Tube (Zhongshan) Ltd	Luvata Alltop (Zhongshan) Ltd	36.05
Luvata Alltop (Zhongshan) Ltd	Luvata Alltop (Zhongshan) Ltd	36.05
Ningbo Jintian Copper Tube Co. Ltd	Ningbo Jintian Copper Tube Co. Ltd	36.05
PRC-Wide Entity	PRC-Wide Entity	60.85

Disclosure

The Department will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection ("CBP") to continue to

[44] *See* Issues and Decision Memorandum at Comment 12; Hailiang Group's Final Analysis Memorandum at 6.

[45] *See Preliminary Determination,* 75 FR at 26722.

[46] *Id.*

[47] *See, e.g., Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value,* 65 FR 25706 (May 3, 2000).

[48] *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8932 (February 23, 1998).

[49] *See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review,* 70 FR 69937, 69939 (November 18, 2005) (quoting the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994)).

[50] *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From The People's Republic of China,* 65 FR 34660 (May 31, 2000) and accompanying Issues and Decision Memorandum at "Facts Available."

[51] *See* Hailiang Group's Final Analysis Memorandum at 1, Attachment III.

[52] *See Seamless Refined Copper Pipe and Tube From the People's Republic of China and Mexico: Initiation of Antidumping Duty Investigations,* 74 FR 55194, 55199 (October 27, 2009) ("*Initiation Notice*").

suspend liquidation of all entries of copper pipe and tube from the PRC, as described in the "Scope of Investigation" section, entered, or withdrawn from warehouse, for consumption on or after May 12, 2010, the date of publication of the *Preliminary Determination* in the **Federal Register.** The Department will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds U.S. price, as indicated above.

International Trade Commission Notification

In accordance with section 735(d) of the Act, the Department has notified the International Trade Commission ("ITC") of the final affirmative determination of sales at LTFV. As the Department's final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: September 24, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I

Issues for Final Determination

Comment 1: Whether the Department should revise its labor rate calculation.

Comment 2: Whether the Department should revise its calculation of the surrogate financial ratios.

Comment 3: Whether the Department should issue cash deposit instructions that contain *ad valorem* rates or specific rates.

Issues Specific to Golden Dragon Precise Copper Tube Group, Inc.

Comment 4: Whether the Department should treat copper cathode purchases by Golden Dragon from a certain supplier in the Peoples's Republic of China as non-market economy purchases.

Comment 5: Whether the Department should recalculate Golden Dragon's copper cathode cost based on the bonded and general trade copper cathode purchases during the period of investigation.

Comment 6: Whether the Department should revise the surrogate value for plywood batten consumed by Golden Dragon.

Comment 7: Whether the Department should consider solvent consumed by Golden Dragon to be a direct material input.

Comment 8: Whether the Department should include salaries paid to two employees of Golden Dragon who worked in the United States during the period of investigation as indirect U.S. selling expenses.

Comment 9: Whether the Department should adjust the factor of production for electricity for 7 mm and 9 mm inner-grooved tube products.

Comment 10: Whether the Department should make certain minor corrections.

Issues Specific to Zhejiang Hailiang Co., Ltd., Shanghai Hailiang Copper Co., Ltd., and Hong Kong Hailiang Metal Trading Limited

Comment 11: Whether to use facts available with regard to the Hailiang Group's line set sales.

Comment 12: Whether to use of facts available with regard to the Hailiang Group's factors of production.

Comment 13: Whether to correct the water usage factor of production used in the *Preliminary Determination.*

Comment 14: Whether the Department should accept the post-preliminary correction of the consumption of Shanghai Hailiang's wooden crates.

Comment 15: Whether to continue considering certain raw materials as factors of production or exclude them from the calculation of the Hailiang Group's normal value.

Comment 16: Whether to continue using the actual weight reported by the Hailiang Group in its United States sales database.

Comment 17: Whether to include two additional categories of indirect labor as labor inputs.

Comment 18: Whether the Department should make certain minor corrections.

[FR Doc. 2010–24720 Filed 9–30–10; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* October 1, 2010.

SUMMARY: The Department of Commerce ("Department") has determined that a request for a new shipper review ("NSR") of the antidumping duty order on certain frozen warmwater shrimp ("shrimp") from the Socialist Republic of Vietnam ("Vietnam"), received on August 26, 2010, meets the statutory and regulatory requirements for initiation. The period of review ("POR") for this NSR is February 1, 2010–July 31, 2010.

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–0413.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on shrimp from Vietnam was published in the **Federal Register** on February 1, 2005.[1] On August 26, 2010, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended ("Act"), and section 351.214(c) of the Department's regulations, the Department received a NSR request from Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd. ("Quoc Viet"). Quoc Viet's request was properly made during August 2010, which is the semi-annual anniversary of the *Order.* Quoc Viet certified that it is a producer and exporter of the subject merchandise upon which the request was based.

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and section 351.214(b)(2)(i) of the Department's regulations, Quoc Viet

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam,* 70 FR 5152 (February 1, 2005) ("*Order*").

certified that it did not export subject merchandise to the United States during the period of investigation ("POI"). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and section 351.214(b)(2)(iii)(A) of the Department's regulations, Quoc Viet certified that, since the initiation of the investigation, it has never been affiliated with any Vietnamese exporter or producer who exported subject merchandise to the United States during the POI, including those respondents not individually examined during the investigation. As required by section 351.214(b)(2)(iii)(B) of the Department's regulations, Quoc Viet also certified that its export activities were not controlled by the central government of Vietnam.

In addition to the certifications described above, pursuant to section 351.214(b)(2)(iv) of the Department's regulations, Quoc Viet submitted documentation establishing the following: (1) The date on which Quoc Viet first shipped subject merchandise for export to the United States and; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.[2]

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Act and section 351.214(d)(1) of the Department's regulations, we find that the request submitted by Quoc Viet meets the threshold requirements for initiation of a NSR for shipments of shrimp from Vietnam produced and exported by Quoc Viet.[3] The POR is February 1, 2010–July 31, 2010.[4] The Department intends to issue the preliminary results of this NSR no later than 180 days from the date of initiation, and the final results no later than 270 days from the date of initiation.[5]

It is the Department's usual practice, in cases involving non-market economies, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the NME entity-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue questionnaires to Quoc Viet, which will include a section requesting information with regard to Quoc Viet's export activities for separate rate purposes. The NSR will proceed if the response provides sufficient indication that Quoc Viet is not subject to either *de jure* or *de facto* government control with respect to its export of subject merchandise.

We will instruct U.S. Customs and Border Protection to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from Quoc Viet in accordance with section 751(a)(2)(B)(iii) of the Act and section 351.214(e) of the Department's regulations. Because Quoc Viet certified that it both produced and exported the subject merchandise, the sale of which is the basis for this new shipper review request, we will apply the bonding privilege to Quoc Viet only for subject merchandise which Quoc Viet both produced and exported.

Interested parties requiring access to proprietary information in this NSR should submit applications for disclosure under administrative protective order in accordance with sections 351.305 and 351.306 of the Department's regulations.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and sections 351.214 and 351.221(c)(1)(i) of the Department's regulations.

Dated: September 20, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–24729 Filed 9–30–10; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year ("Sunset") Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating a five-year Review ("Sunset Review") of the antidumping and countervailing duty orders listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

DATES: *Effective Date:* October 1, 2010.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin,* 63 FR 18871 (April 16, 1998).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping and countervailing duty orders:

DOC Case No.	ITC Case No.	Country	Product	Department contact
A–351–602	731–TA–308	Brazil	Carbon Steel Butt-Weld Pipe Fittings (3rd Review).	Dana Merrmelstein (202) 482–1391.
A–588–602	731–TA–309	Japan	Carbon Steel Butt-Weld Pipe Fittings (3rd Review).	Dana Mermelstein (202) 482–1391.

[2] *See also* "Memorandum to the File, through Scot T. Fullerton, Program Manager, "Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Placing CBP data on the record," dated concurrently with this notice.

[3] *See* "Memorandum to the File, through Scot T. Fullerton, Program Manager, "Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: New Shipper Initiation Checklist," dated concurrently with this notice.

[4] *See* section 351.214(g)(1)(i)(B) of the Department's regulations.

[5] *See* section 751(a)(2)(B)(iv) of the Act.

DOC Case No.	ITC Case No.	Country	Product	Department contact
A–583–605	731–TA–310	Taiwan	Carbon Steel Butt-Weld Pipe Fittings (3rd Review).	Dana Mermelstein (202) 482–1391.
A–549–807	731–TA–521	Thailand	Carbon Steel Butt-Weld Pipe Fittings (3rd Review).	Dana Mermelstein (202) 482–1391.
A–580–601	731–TA–304	South Korea	Top-of-the-Stove Stainless Steel Cooking Ware (3rd Review).	Dana Mermelstein (202) 482–1391.
A–570–836	731–TA–718	PRC	Glycine (3rd Review)	Dana Mermelstein (202) 482–1391.
A–583–508	731–TA–299	Taiwan	Porcelain-on-Steel Cooking Ware (3rd Review).	Jennifer Moats (202) 482–5047.
A–570–855	731–TA–841	PRC	Apple Juice Concentrate Non-Frozen (2nd Review).	Jennifer Moats (202) 482–5047.
A–570–814	731–TA–520	PRC	Carbon Steel Butt-Weld Pipe Fittings (3rd Review).	Dana Mermelstein (202) 482–1391.
A–570–506	731–TA–298	PRC	Porcelain-on-Steel Cooking Cooking Ware (3rd Review).	Jennifer Moats (202) 482–5047.
C–580–602	701–TA–267	South Korea	Top-of-the-Stove Stainless Steel Cooking Ware (3rd Review).	David Goldberger (202) 482–4136.

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Internet Web site at the following address: "*http://ia.ita.doc.gov/sunset/*." All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103 (d), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b)) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. *See* 19 CFR 351.218(d)(1)(i). The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218 (c).

Dated: September 28, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–24736 Filed 9–30–10; 8:45 am]

BILLING CODE 3510–DS–P

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ30

Marine Fisheries Advisory Committee; Public Meetings

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

ACTION: Notice of open public meeting.

SUMMARY: Notice is hereby given of a meeting of the Marine Fisheries Advisory Committee (MAFAC). This will be the second meeting to be held in the calendar year 2010. Agenda topics are provided under the **SUPPLEMENTARY INFORMATION** section of this notice. All full Committee sessions will be open to the public.

DATES: The meeting will be held October 19–21, 2010, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Maryland Inn, Historic Inns of Annapolis, 16 Church Circle in Annapolis, MD 21401; 410–263–2641.

FOR FURTHER INFORMATION CONTACT: Mark Holliday, MAFAC Executive

Director; (301) 713–2239 x–120; e-mail: *Mark.Holliday@noaa.gov*.

SUPPLEMENTARY INFORMATION: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given of a meeting of MAFAC. MAFAC was established by the Secretary of Commerce (Secretary) on February 17, 1971, to advise the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. This committee advises and reviews the adequacy of living marine resource policies and programs to meet the needs of commercial and recreational fisheries, and environmental, state, consumer, academic, tribal, governmental and other national interests. The complete charter and summaries of prior meetings are located online at *http://www.nmfs.noaa.gov/ocs/mafac/*.

Matters To Be Considered

This agenda is subject to change.

The meeting is convened to hear presentations and discuss policies and guidance on the following topics: NOAA's compliance assistance program; marine habitat assessments, including the new Habitat Assessment and Improvement Plan, essential fish habitat, and critical habitat for endangered species; recreational fisheries engagement; and NOAA strategic planning. Updates will be presented on the science enterprise, monitoring, and Natural Resource Damage Assessment activities related to the Deepwater Horizon oil spill, NOAA budgets, catch share policy, the National Ocean Policy, and coastal and marine spatial planning. The meeting will include discussion of various MAFAC administrative and organizational matters and meetings of the standing subcommittees.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mark Holliday, MAFAC Executive Director; (301) 713–2239 x120 by 5 p.m. on October 6, 2010.

Dated: September 27, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2010–24690 Filed 9–30–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended ("the Act"), may request, in accordance with 19 CFR 351.213, of the Department of Commerce ("the Department") regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports during the period of review ("POR"). We intend to release the CBP data under Administrative Protective Order ("APO") to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 20 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of the initiation **Federal Register** notice.

Opportunity to Request a Review: Not later than the last day of October 2010,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in October for the following periods:

	Period
Antidumping Duty Proceedings	
Australia: Electrolytic Manganese Dioxide, A–602–806	10/1/09–9/30/10
Brazil: Carbon and Certain Alloy Steel Wire Rod, A–351–832	10/1/09–9/30/10
Indonesia: Carbon and Certain Alloy Steel Wire Rod, A–560–815	10/1/09–9/30/10
Italy: Pressure Sensitive Plastic Tape, A–475–059	10/1/09–9/30/10
Mexico: Carbon and Certain Alloy Steel Wire Rod, A–201–830	10/1/09–9/30/10
Moldova: Carbon and Certain Alloy Steel Wire Rod, A–841–805	10/1/09–9/30/10
Republic of Korea: Polyvinyl Alcohol, A–580–850	10/1/09–9/30/10
The People's Republic of China:	
Barium Carbonate, A–570–880	10/1/09–9/30/10
Barium Chloride, A–570–007	10/1/09–9/30/10
Electrolytic Manganese Dioxide, A–570–919	10/1/09–9/30/10
Helical Spring Lock Washers, A–570–822	10/1/09–9/30/10
Polyvinyl Alcohol, A–570–879	10/1/09–9/30/10
Steel Wire Garment Hangers, A–570–918	10/1/09–9/30/10
Trinidad and Tobago: Carbon and Certain Alloy Steel Wire Rod, A–274–804	10/1/09–9/30/10

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

	Period
Ukraine: Carbon and Certain Alloy Steel Wire Rod, A–823–812	10/1/09–9/30/10
Countervailing Duty Proceedings	
Brazil: Carbon and Certain Alloy Steel Wire Rod, C–351–833	1/1/09–12/31/09
Iran: Roasted In-Shell Pistachios, C–507–601	1/1/09–12/31/09
Suspension Agreements	
Russia: Uranium, A–821–802	10/1/09–9/30/10

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Import Administration Web site at *http://ia.ita.doc.gov.*

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with 19 CFR 351.303(f)(3)(ii), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of October 2010. If the Department does not receive, by the last day of October 2010, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period, of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: September 24, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–24733 Filed 9–30–10; 8:45 am]

BILLING CODE 3510–DS–P

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ22

Endangered Species; File No. 13599–01

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

ACTION: Notice; issuance of permit modification.

SUMMARY: Notice is hereby given that National Ocean Service Marine Forensic Lab (NOS Lab, Julie Carter, Principal Investigator), 219 Fort Johnson Road, Charleston, SC 29412, has been issued a modification to scientific research Permit No. 13599.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Ave South, St. Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Colette Cairns, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On May 25, 2010, notice was published in the **Federal Register** (75 FR 29316) that a modification of Permit No. 13599,

issued December 16, 2008 (73 FR 78724), had been requested by the above-named permit holder. The requested modification has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

This permit amendment adds those ESA-listed NMFS species not previously included in the previous permit. No live animal takes or incidental harassment of animals would is authorized under this permit. Samples will be archived at the NOS Lab and used to support law enforcement actions, research studies (primarily genetics), and outreach education.

Issuance of this modification, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: September 24, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–24694 Filed 9–30–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 0648–XY95

Proposed Issuance of Incidental Take Permits to the Washington Department of Fish and Wildlife for State of Washington Wildlife Areas

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, (NOAA) Commerce; Fish and Wildlife Service (FWS), Interior.

ACTION: Notice of intent to conduct a 30–day public scoping period and prepare an environmental impact statement.

SUMMARY: The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), collectively the Services, advise interested parties of our intent to conduct public scoping under the National Environmental Policy Act (NEPA) to gather information to prepare an environmental impact statement (EIS) related to incidental take permit (ITP) applications from the Washington Department of Fish and Wildlife (WDFW) for incidental take of species listed under the Endangered Species Act (ESA), as well as unlisted species should they become listed during the term of the proposed permit. The WDFW has identified specific land management and recreation activities that currently occur on state Wildlife Areas that may cause incidental take. In support of the ITP applications, the WDFW is proposing to implement a habitat conservation plan (HCP) on approximately 900,000 acres of their state Wildlife Areas. The term of the proposed HCP and ITP's will occur after the public scoping process.

DATES: Written comments must be received on or before November 1, 2010. Four public scoping meetings will be held to introduce the proposed action, explain the NEPA public participation process, and solicit public comment. The public scoping meetings will be held on October 19, 20, 26, and 27, 2010, from 6:30 p.m. to 8:30 p.m. at the following locations:

1. October 19: Everett Community College, 2000 Tower Street, Whitehorse Hall, Room 105, Everett, WA 98201.

2. October 20: FWS and NMFS Office, 510 Desmond Drive, Suite 102, Lacey, WA 98503.

3. October 26: Hal Homes Center, 209 N. Ruby Street, Teanaway Room, Ellensburg, WA 98926.

4. October 27: Spokane Valley Center Place, 2426 N. Discovery Place, Room 109, Spokane, WA 99206.

ADDRESSES: You may submit comments by one of the following methods:

1. Verbally or in writing at the public scoping meetings;

2. U.S. mail or hand delivery to : Mr. David Molenaar, National Marine Fisheries Service, 510 Desmond Drive, SE, Suite 103, Lacey, WA 98503; or Mr. Mark Ostwald, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive, SE, Suite 102, Lacey, WA 98503

3. Email to *Wdfwwlareahcp@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Ostwald with the FWS at (360) 753–9564, or at *Mark__Ostwald@fws.gov* or Mr. David Molenaar with the NMFS at (360) 753–9456 or at *David.Molenaar@noaa.gov*, or on the Internet at: *http://www.fws.gov/wafwo*.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a)(2)(A) of the ESA of 1973, as amended (U.S.C. 1531 *et seq.*), the WDFW is preparing a HCP for their Wildlife Areas in support of their ITP applications to the Services to incidentally take the following ESA listed species under FWS jurisdiction: marbled murrelet, northern spotted owl, western snowy plover, Oregon silverspot butterfly, golden paintbrush, howellia, Spalding's silene, Ute ladies' tresses, Columbian white-tailed deer, gray wolf, grizzly bear, lynx, pygmy rabbit, and the bull trout.

The applications also request incidental take authorization for the following species under NMFS jurisdiction: chinook salmon Evolutionarily Significant Units (ESUs) in Puget Sound, the Lower Columbia River, Upper Columbia River spring-run, Upper Willamette River, Snake River fall-run and the Snake River spring/summer-run; chum salmon ESUs in the Columbia River and Hood Canal (summer run); coho salmon ESUs in the Lower Columbia River; steelhead Distinct Population Segments (DPSs) in Puget Sound, Snake River Basin, the Lower Columbia River, Middle Columbia River, Upper Columbia River, and the Upper Willamette River; sockeye salmon ESUs in Ozette Lake and the Snake River; the Southern DPS of the pacific eulachon; and the Southern DPS of the green sturgeon.

The WDFW also requests incidental take for the following unlisted species under FWS jurisdiction should they become listed during the term of the HCP: burrowing owl, greater sage-grouse, sharp-tailed grouse, slender-billed white breasted nuthatch, streak horned lark, northern leopard frog, Oregon spotted frog, Rocky Mountain tailed frog, sagebrush lizard, striped whipsnake, Van Dyke's salamander, western pond turtle, mardon skipper, Taylors checkerspot , valley silverspot, westslope cutthroat trout, fisher, Townsends western big-eared bat, Washington ground squirrel and the western pocket gopher.

The HCP proposes to cover approximately 900,000 acres within 32 state Wildlife Areas managed by WDFW for specific covered activities that the WDFW conducts or allows on the Wildlife Areas including: horseback riding and dog field trial events; construction, maintenance, removal, and operation of upland infrastructures, water control structures, and water crossing structures; non-chemical weed control; forest management; livestock grazing and associated activities; agriculture and associated activities; irrigation; upland bird stocking; wildlife feeding; routine habitat management; and habitat restoration.

The WDFW manages 32 designated Wildlife Areas across a broad and diverse spectrum of habitats throughout

Washington State. These Wildlife Areas are managed by the WDFW for the purposes of fish and wildlife conservation and for recreational opportunities. The different Wildlife Areas include forest and woodlands, wetlands, prairie, savanna and shrub steppe, upland grasslands, agricultural, and riparian habitats. The WDFW has identified specific goals and objectives for each Wildlife Areas depending upon the wildlife species present, the purpose for which the land was acquired, and the available outdoor recreational opportunities.

The draft HCP in support of the ITP applications will describe the impacts of land management and recreational activities on proposed covered species and detail a conservation strategy to minimize and mitigate those impacts to the maximum extent practicable. With technical assistance from the Services, WDFW will develop habitat conservation measures for fish and wildlife and their associated habitats. The Services are responsible for determining whether the HCP satisfies the ESA section 10 permit issuance criteria.

Section 9 of the ESA and implementing regulations prohibit the taking of endangered species. The term "take" is defined under the ESA (16 U.S.C. 1532(19)) as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. "Harm" is defined by FWS regulation to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). "Harm" is defined by NMFS regulation to include significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, spawning, migrating, rearing, or sheltering (64 FR 60727, November 8, 1999).

Section 10 of the ESA and its implementing regulations specify the requirements for the issuance of ITPs to non-Federal applicants for the take of endangered and threatened species. Any proposed take must be incidental to otherwise lawful activities and must not appreciably reduce the likelihood of the survival and recovery of the species in the wild. In addition, the applicant must prepare a HCP describing the impact that will likely result from such taking, what steps will be taken to minimize and mitigate the impacts of the take, the funding available to implement such steps, alternatives to such taking, and the reason such alternatives are not being implemented.

Environmental Impact Statement

NEPA (42 U.S.C. 4321 *et seq.*) requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. The Services have determined that an EIS should be prepared under NEPA for these two ITP requests. The Services will prepare the EIS as joint lead agencies (40 CFR 1506.2). It is anticipated that the WDFW will also adopt the EIS for purposes of compliance with the State of Washington Environmental Policy Act.

We will conduct an environmental review of the permit applications, including the HCP. We will prepare an EIS in accordance with NEPA requirements, as amended (40 U.S. C. 4321 *et seq.*) and NEPA implementing regulations (40 CFR 1500–1508), and in accordance with other Federal laws and regulations.

The primary purpose of the scoping process is for the public to assist the Services in developing the EIS by identifying issues and alternatives related to the applicant's proposed action. The scoping meetings will allocate time for presentations by the Services and WDFW, and also for receiving comments from the public. The public is encouraged to attend a public scoping meeting at 1 of the 4 locations.

The Services request data, comments, pertinent information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party regarding the proposed permit actions discussed in this notice. We will consider all comments we receive in complying with the requirements of NEPA and in development of the HCP and ITPs. We particularly seek specific comments concerning:

(1) The direct, indirect, and cumulative effects that implementation of any reasonable alternative could have on endangered and threatened species, and other unlisted species and their habitats;

(2) Other reasonable alternatives (in addition to the HCP), and their associated effects;

(2) Measures that would minimize and mitigate potentially adverse effects of the proposed project;

(3) Baseline environmental conditions and/or important species observations within the WDFW wildlife areas;

(4) The term of the ITPs;

(5) Covered activities that should or should not be part of the HCP;

(6) Wildlife areas that should or should not be part of the HCP;

(7) Species that should or should not be on the ITPs;

(8) Biological information regarding requested covered species;

(9) Monitoring and adaptive management that might be relevant to the project; and

(10) Other plans or projects that might be relevant to this project.

The EIS will analyze the effects that the various alternatives would have on the proposed covered species as well as the other aspects of the human environment, including but not limited to geology and soils, land use, air quality, water quality, wetlands, socioeconomics, recreation, cultural resources, noise, visual resources, climate change, and the cumulative impacts of the alternatives. A notice of availability for the draft EIS is expected to be published in the **Federal Register** in fall 2011, when it will be available for public review and comment.

Special Accommodation

Persons needing reasonable accommodations to attend and participate in the public meeting should contact Mark Ostwald, FWS, at 360–753- 9564 or David Molenaar, NMFS, at 360–753–9456. To allow sufficient time to process requests, please call no later than 1 week before the public meeting. Information regarding the applicant's proposed action is available in alternative formats upon request.

Dated: September 28, 2010.

Susan Pultz,

Acting Chief, Endangered Species Division, National Marine Fisheries Service.

Dated: September 28, 2010.

Theresa E. Rabot,

Deputy Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 2010–24692 Filed 9–30–10; 8:45 am]

BILLING CODES 3510–22–S, 4310–55–S

DEPARTMENT OF COMMERCE

International Trade Administration

Water Technology Trade Mission to India

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Water Technology Trade Mission to India; February 28–March 4, 2011

Mission Description

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service (CS), is organizing a Water Technology Trade Mission to India from February 28 to March 4, 2011. The purpose of the mission is to expose U.S. firms to India's rapidly expanding water and waste water market and to assist U.S. companies to seize export opportunities in this sector. The trade mission participants will be comprised of representatives from leading U.S. companies that provide state-of-the-art water and waste water technologies ranging from hydropower and desalination plants to appliances and purification systems. The mission will visit two cities: Bangalore and Mumbai, where participants will receive market briefings and meet with key government decision makers and prospective private sector partners on a one-on-one basis. During the Mumbai portion of the mission, delegates will use Aquatech India 2011, a leading international water technology show, as a platform for business meetings and networking with the option to exhibit either on their own or in a shared CS exhibition area that will be offered separately as a supplemental service to Trade Mission participants.

Commercial Setting

India faces a critical shortage of reliable, safe water for personal consumption and for industrial use. In recent years rapid industrialization and a growing population have placed increasing demands on the country's limited water resources. Although India receives substantial amounts of annual rainfall, the monsoon season is unpredictable and much of the rainfall is not captured. Furthermore, most of India's water resources are allocated to the agricultural sector, leaving little or no resources for other uses. To address this issue, the government of India and the private sector have made commitments to invest in water and wastewater treatment technologies. To explore these and other opportunities, the trade mission will visit two cities: Bangalore and Mumbai.

The city of Bangalore, located in the state of Karnataka, receives 70 percent of its water supply (714 million liters per day) from two rivers: The Cauvery and the Arkavati rivers, and the balance from groundwater systems (bore wells, lakes, etc.), yet demand still outstrips supply. The Bangalore Water Supply and Sewerage Board (BWSSB) and the Karnataka Water Supply and Sewerage Board (KWSSB) are the two main government agencies that provide drinking water and sewerage disposal systems to Bangalore and other villages throughout the state. The BWSSB and KWSSB are looking to the private sector to initiate projects on a public-private partnership basis to conserve, recycle, improve operation and maintenance of water treatment plants, and to improve management of water and wastewater utilities. In addition, private real estate developers are creating small residential/commercial townships and are looking for water technologies for conservation and reuse.

Mumbai, in the state of Maharashtra, is the commercial capital of India and a rapidly growing metropolis with a population nearing 20 million people. Mumbai has six lakes serving as freshwater resources, yet the city faces a chronic water shortage. The city does not have adequate supplies of safe drinking water as much of the groundwater is polluted due to sewage and industrial waste. Furthermore, given the Mumbai region's position as an industrial hub, industry needs for highly purified water are large and growing.

The Municipal Corporation of Greater Mumbai (MCGM) is responsible for water purification, supply, sewage treatment and disposal. The MCGM has proposed two recycling plants to be constructed to recycle 250 million liters of water every day. Also, the MCGM is exploring the feasibility of establishing a desalination plant with a capacity of 100 million liters. Private sector water players are looking for community-based wastewater treatment systems that would allow them to bypass the inadequate municipal system. Efforts are also underway to improve citywide rainwater harvesting systems, which creates opportunities for U.S. companies that have expertise in these technologies.

Mission Goals

The goals of the Water Technology Trade Mission to India are to help U.S. water and waste water technology companies initiate and/or expand their exports to India by providing introductions to industry representatives and potential partners, networking opportunities, current market information and a platform for policy discussions with the local Municipal Corporations. U.S. companies will find the best opportunities in sanitation, urban water supply improvement, rainwater capture, and municipal waste treatment. Additional opportunities exist in providing consulting and design services to the Indian water industry.

Mission Scenario

The mission will start in Bangalore, where participants will meet with officials from the state of Karnataka, the local Municipal Corporation and potential private sector partners. Next, the participants will visit Mumbai where they will meet with private water companies and officials from the state of Maharashtra. In Mumbai the participants will have the option to attend Aquatech India 2011, a leading international water technology show in India. The participants will also attend policy, market and commercial briefings by the U.S. Commercial Service as well as networking events offering further opportunities to speak with local business and government representatives. U.S. participants will be counseled before and after the mission by CS India staff. Participation in the mission will include the following:

- Pre-travel briefings on subjects ranging from business practices in India to security;
- Pre-scheduled meetings with potential partners, distributors, end users, or local industry contacts in Bangalore and Mumbai;
- Airport transfers in Bangalore and Mumbai;
- Meetings with state government and local Municipal officials; and,
- Participation in a networking reception in Bangalore.

For trade mission recruitment efforts CS India will work in conjunction with the Global Environmental Team, which will serve as a key facilitator in establishing strong commercial ties to the U.S. water industry. The Global Environmental Team will play an active role in promoting U.S. water technology exports, broadening the identification of NTE/NTM clients, deepening internal CS industry expertise, and contributing to relevant commercial diplomacy successes.

PROPOSED TIMETABLE

Sunday, February 27, 2011	Bangalore: • Delegates arrive in Bangalore/check-in and rest overnight.

PROPOSED TIMETABLE—Continued

Monday, February 28, 2011	Bangalore: • Briefing. • Meetings with State Government officials. • Meetings with local Municipal officials. • Business matchmaking sessions. • Networking reception.
Tuesday, March 1, 2011	Bangalore/Mumbai: • Site visit. • Travel to Mumbai. • Arrive in Mumbai/check-in and rest overnight.
Wednesday, March 2, 2011	Mumbai: • CS Mumbai briefing. • Aquatech India 2011 inauguration and exhibition (optional). • Business matchmaking sessions.
Thursday, March 3, 2011	Mumbai: • Meetings with State Government officials. • Meetings with local Municipal officials. • Business matchmaking sessions. • Aquatech India 2011—conference and exhibition (optional). • Delegates may depart for U.S. or stay for optional Friday activities.
Friday, March 4, 2011	Mumbai: • Site visit (optional). • Aquatech India 2011—conference and exhibition (optional). • Departure for the U.S.

Participation Requirements

All parties interested in participating in the Water Technology Trade Mission to India must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. The mission will open on a first come first served basis for up to 15 qualified U.S. companies.

Fees and Expenses

After a company has been selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee will be $3,000 for large firms and $2,400 for a small or medium-sized enterprise (SME), which includes one representative.* The fee for each additional firm representative (large firm or SME) is $250. Expenses for travel, lodging, most meals, and incidentals will be the responsibility of each mission participant.

Conditions for Participation

• An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation.

• Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content.

Selection Criteria for Participation

• Suitability of the company's products or services to the market or markets targeted by the mission.

• Consistency of the applicant's goals and objectives with the scope and design of the mission.

• Applicant's potential for business [in the target markets/in the mission country(ies)], including likelihood of exports resulting from the mission.

Diversity of company size, sector or subsector, and location may also be considered during the review process.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet Web sites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than January 15, 2011. The mission will be open on a first come first served basis. Applications received after that date will be considered only if space and scheduling constraints permit.

Contacts

U.S. Commercial Service India

Mr. Kamal Vora, U.S. Commercial Service, Mumbai, Tel: 91–22–22652511, E-mail: *Kamal.Vora@trade.gov.*

Mr. Leonard Roberts, U.S. Commercial Service, Bangalore, Tel: 91–80–2220 6403, E-mail: *leonard.roberts@trade.gov.* Contacts.

U.S. Commercial Service Export Assistance Centers

Ms. Julia Rauner Guerrero, Senior International Trade Specialist,U.S. Commercial Service, San Diego, Tel: 858–467–7038, E-mail: *Julia.Rauner@trade.gov.*

Mr. Bill Cline, Director, U.S. Commercial Service, Reno, Tel: 775–784–5203, E-mail: *Bill.Cline@trade.gov.*

Lisa Huot,

Trade Promotion Programs, International Trade Specialist, U.S. Commercial Service.

[FR Doc. 2010–24639 Filed 9–30–10; 8:45 am]

BILLING CODE 3510–FP–P

* An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (*see http://www.sba.gov/services/contracting opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (*see http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products from the Procurement List previously furnished by such agencies.

DATES: *Effective Date:* 11/1/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Additions

On 6/4/2010 (75 FR 31768–31769); 6/25/2010 (75 FR 36363–36371); 8/6/2010 (75 FR 47551); and 8/27/2010 (75 FR 52723–52724), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

PRODUCT NAME/NSN(s): Jacket, United States Coast Guard Running Suit.
NSN: 8415–00–NIB–0783—Size XS.
NSN: 8415–00–NIB–0784—Size SM.
NSN: 8415–00–NIB–0785—Size MD.
NSN: 8415–00–NIB–0786—Size LG.
NSN: 8415–00–NIB–0787—Size X–LG.
NSN: 8415–00–NIB–0788—Size XX–LG.
NPA: San Antonio Lighthouse for the Blind, San Antonio, TX
Contracting Activity: Department of Homeland Security, U.S. Coast Guard, Washington, DC
COVERAGE: C-List for 100% of the requirement of the U.S. Coast Guard as aggregated by the U.S. Coast Guard.

Services

Service Type/Location: Grounds Maintenance, Jonathan Wainwright Memorial VAMC, 77 Wainwright Drive, Walla Walla, WA.
NPA: Lillie Rice Center, Walla Walla, WA.
Contracting Activity: Department of Veterans Affairs, Network Business Office (10N20VBO), Vancouver, WA.
Service Type/Location: Property Management, Armed Forces Retirement Home-Gulfport, 1800 Beach Drive, Gulfport, MS.
NPA: AbilityWorks, Inc. of Harrison County, Gulfport, MS.
Contracting Activity: Bureau of the Public Debt, BPD/PSD3/ONDCP, Parkersburg, WV.
Service Type/Location: Base Operations Support, Joint Base Andrews Air Force Base, MD.
NPA: Davis Memorial Goodwill Industries, Washington, DC.
Contracting Activity: Dept of the Air Force, FA4416 316 Cons LGC, Andrews AFB, MD.
Service Type/Location: Custodial, Child Development Center, US Military Academy, 140 Buckner Loop, West Point, NY.
NPA: New Dynamics Corporation, Middletown, NY.
Contracting Activity: Dept of the Army, XR W6BA ACA, West Point, NY.

Deletions

On 7/23/2010 (75 FR 43153–43155), the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

Protector, Hospital Bed, Pillow
NSN: 7210–00–958–9118.
NPA: Bosma Industries for the Blind, Inc., Indianapolis, IN.
Contracting Activity: GSA/Federal Acquisition Service, Fort Worth, TX.
Mop, Sponge and Refill
NSN: 7920–01–383–7799.
NSN: 7920–01–383–7927.
NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA.
Contracting Activity: GSA/Federal Acquisition Service, Fort Worth, TX.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–24696 Filed 9–30–10; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to the procurement list.

SUMMARY: The Committee is proposing to add services to the Procurement List that will be provided by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must be Received On or Before: 11/1/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the services to the Government.

2. If approved, the action will result in authorizing small entities to provide the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Custodial, National Weather Service, 728 & 732 Woodlane Rd., Mt. Holly, NJ.
NPA: Occupational Training Center of Burlington County, Mt. Holly, NJ.
Contracting Activity: Dept. of Commerce, National Oceanic and Atmospheric Administration, Norfolk, VA.
Service Type/Location: Food Service Attendant, Pease Air National Guard Base, Newington, NH.
NPA: CW Resources, Inc., New Britain, CT.
Contracting Activity: Dept. of the Army, XRA W7NN USPFO Activity NH ARNG, Concord, NH.

Food Service Attendant services being considered for addition to the Procurement List are described in the Statement of Work, provided by the Contracting Activity, as food preparation, service of food, cashiering and housekeeping services and waste management. The facility provides two meals each weekend under military management and operation.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–24698 Filed 9–30–10; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision for the Base Closure and Realignment Beddown and Flight Operations of Remotely Piloted Aircraft at Grand Forks Air Force Base (AFB), ND

ACTION: Notice of Availability (NOA) of a Record of Decision (ROD).

SUMMARY: On September 17, 2010, the United States Air Force signed the ROD for the 2005 Base Closure and Realignment (BRAC 2005) directed Beddown and Flight Operations of Remotely Piloted Aircraft at Grand Forks AFB, North Dakota. The ROD states the Air Force decision to implement the mitigated preferred alternative (Alternative C—Southern Restricted Area Creation, Ground-Based Improvements and Personnel Changes—Airspace Scenario 2).

The decision was based on matters discussed in the Final Environmental Impact Statement (EIS) for the BRAC Beddown and Flight Operations of Remotely Piloted Aircraft at Grand Forks AFB, North Dakota, inputs from the public and regulatory agencies, and other relevant factors. The Final EIS was made available to the public on July 23, 2010 through a NOA in the **Federal Register** (Volume 75, Number 141, Page 43161) with a wait period that ended on August 23, 2010. The ROD documents only the decision of the Air Force with respect to the proposed Air Force actions analyzed in the Final EIS. Authority: This NOA is published pursuant to the regulations (40 CFR 1506.6) implementing the provisions of the NEPA of 1969 (42 U.S.C. 4321, *et seq.*) and the Air Force's Environmental Impact Analysis Process (EIAP) (32 CFR 989.21(b) and 989.24(b)(7))

FOR FURTHER INFORMATION CONTACT: Mr. Doug Allbright, HQ AMC/A7PI, 507 Symington Drive, Scott AFB, IL. 62225 Phone (618) 229–0841, e-mail: *earl.allbright@scott.af.mil.* 20762, *AnthonyM.mitchell@pentagon.af.mil.*

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 2010–24628 Filed 9–30–10; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Fulbright-Hays Faculty Research Abroad Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2011

Catalog of Federal Domestic Assistance (CFDA) Number: 84.019A.

Dates:

Applications Available: October 1, 2010.

Deadline for Transmittal of Applications: November 16, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Fulbright-Hays Faculty Research Abroad (FRA) Fellowship Program provides opportunities to faculty members of institutions of higher education (IHEs) to engage in research abroad in modern foreign languages and area studies.

Priorities: This notice contains one absolute priority and two competitive preference priorities, which are explained in the following paragraphs. In accordance with 34 CFR 75.105(b)(2)(ii), the absolute priority and the competitive preference priorities are from the regulations for this program (34 CFR 663.21(d)).

Absolute Priority: For FY 2011, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

A research project that focuses on one or more of the following geographic areas: Africa, East Asia, Southeast Asia and the Pacific Islands, South Asia, the Near East, Central and Eastern Europe and Eurasia, and the Western Hemisphere (excluding the United States and its territories). Please note that applications that propose projects focused on the following countries are not eligible: Andorra, Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, Norway, Portugal, San Marino, Spain, Sweden,

Switzerland, United Kingdom, Vatican City.

Within this absolute priority, we give competitive preference to applications that address the following priorities. For FY 2011, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) and 34 CFR 663.21(d), we award an additional five (5) points to an application for each competitive preference priority it meets (up to 10 additional points).

These priorities are:

Competitive Preference Priority 1: A research project that focuses on any of the seventy-eight (78) languages selected from the U.S. Department of Education's list of Less Commonly Taught Languages (LCTLs):

Akan (Twi-Fante), Albanian, Amharic, Arabic (all dialects), Armenian, Azeri (Azerbaijani), Balochi, Bamanakan (Bamana, Bambara, Mandikan, Mandingo, Maninka, Dyula), Belarusian, Bengali (Bangla), Berber (all languages), Bosnian, Bulgarian, Burmese, Cebuano (Visayan), Chechen, Chinese (Cantonese), Chinese (Gan), Chinese (Mandarin), Chinese (Min), Chinese (Wu), Croatian, Dari, Dinka, Georgian, Gujarati, Hausa, Hebrew (Modern), Hindi, Igbo, Indonesian, Japanese, Javanese, Kannada, Kashmiri, Kazakh, Khmer (Cambodian), Kirghiz, Korean, Kurdish (Kurmanji), Kurdish (Sorani), Lao, Malay (Bahasa Melayu or Malaysian), Malayalam, Marathi, Mongolian, Nepali, Oromo, Panjabi, Pashto, Persian (Farsi), Polish, Portuguese (all varieties), Quechua, Romanian, Russian, Serbian, Sinhala (Sinhalese), Somali, Swahili, Tagalog, Tajik, Tamil, Telugu, Thai, Tibetan, Tigrigna, Turkish, Turkmen, Ukrainian, Urdu, Uyghur/Uigur, Uzbek, Vietnamese, Wolof, Xhosa, Yoruba, and Zulu.

Competitive Preference Priority 2: Research projects that are proposed by applicants using advanced language proficiency in one of the 78 languages selected from the U.S. Department of Education's list of LCTLs, which are also listed in Competitive Preference Priority 1, in their research and focus on one of the following fields or topics: Environmental Science, Economics, Public Health, Education, or Political Science.

Program Authority: 22 U.S.C. 2452(b)(6).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 663.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants redistributed as fellowships to individual beneficiaries.

Estimated Available Funds: The Administration has requested $15,576,000 for the International Education and Foreign Language Studies Overseas Programs, of which we propose to allocate $1,700,000 for new awards for this program for FY 2011. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Fellowship Awards: $25,000–$115,000.

Estimated Average Size of Fellowship Awards: $77,000.

Estimated Number of Fellowship Awards: 22.

Note: The Department is not bound by any estimates in this notice.

Project Period: The institutional project period is 18 months beginning July 1, 2011. Faculty may request funding for a period of no less than three months and no more than twelve months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs. As part of the application process, faculty members submit individual applications to the IHE. The IHE then officially submits all eligible individual faculty applications with its grant application to the Department.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Both IHEs and faculty applicants can obtain an application package via the Internet at *http://e-grants.ed.gov/egWelcome.asp* or by contacting Carla White, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., Room 6000, Washington, DC 20006–8521. Telephone: (202) 502–7700 or by e-mail: *carla.white@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where the faculty applicant addresses the selection criteria that reviewers use to evaluate the application. The faculty applicant must limit the application narrative to no more than 10 pages and the bibliography to no more than 2 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. However, faculty applicants may single space all text in charts, tables, figures, graphs, titles, headings, footnotes, endnotes, quotations, bibliography, and captions.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch). Faculty applicants may use a 10 point font in charts, tables, figures, graphs, footnotes, and endnotes. However, these items are considered part of the narrative and counted within the 10 page limit.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limits only apply to the application narrative and bibliography. The page limits do not apply to the Application for Federal Assistance face sheet (SF 424); the supplemental information form required by the Department of Education; and the assurances and certification. However, faculty applicants must include their complete responses to the selection criteria in the application narrative.

We will reject a faculty applicant's application if the faculty applicant exceeds the page limits.

3. *Submission Dates and Times:*

Applications Available: October 1, 2010.

Deadline for Transmittal of Applications: November 16, 2010.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit an IHE's application electronically, or in paper format by mail or hand delivery if an IHE qualifies for an exception to the electronic submission requirement,

please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, (1) you must have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN); (2) you must register both of those numbers with the Central Contractor Registry (CCR), the Government's primary registrant database; and (3) you must provide those same numbers on your application.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless an IHE qualifies for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the FRA Fellowship Program—CFDA Number 84.019A must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov*.

We will reject an application if an IHE submits it in paper format unless, as described elsewhere in this section, the IHE qualifies for one of the exceptions to the electronic submission requirement *and* submits, no later than two weeks before the application deadline date, a written statement to the Department that the IHE qualifies for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

While completing the electronic application, both the IHE and the faculty applicant will be entering data online that will be saved into a database. Neither the IHE nor the faculty applicant may e-mail an electronic copy of a grant application to us.

Please note the following:

• The process for submitting applications electronically under the FRA Fellowship Program has several parts. The following is a brief summary of the process; however, all applicants should review and follow the detailed description of the application process that is contained in the application package. In summary, the major parts are as follows: (1) IHEs must e-mail the following information to *cynthia.dudzinski@ed.gov:* Name of university, and full name and e-mail address of potential project director. We recommend that applicant IHEs submit this information as soon as possible to ensure that applicant IHEs obtain access to the e-Application system well before the application deadline date. We suggest that applicant IHEs send this information no later than two weeks prior to the closing date, in order to facilitate timely submission of their applications; (2) Faculty must complete their individual applications and submit them to their IHE's project director using e-Application; (3) Persons providing references for individual faculty must complete reference forms for the faculty and submit them to the IHE's project director using e-Application; and (4) The IHE's project director must officially submit the IHE's application, which must include all eligible individual faculty applications, reference forms, and other required forms, using e-Application. Unless an IHE applicant qualifies for an exception to the electronic submission requirement in accordance with the procedures in this section, all portions of the application must be submitted electronically.

• The IHE must complete the electronic submission of the grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that both the IHE and the faculty applicant not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• Faculty applicants will not receive additional point value because the faculty applicant submits his or her application in electronic format, nor will we penalize the IHE or faculty applicant if the IHE or the faculty applicant qualifies for an exception to the electronic submission requirement, as described elsewhere in this section, and submits an application in paper format.

• IHEs must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Both IHEs and faculty applicants must attach any narrative sections of the application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If an IHE or a faculty applicant uploads a file type other than the three file types specified in this paragraph or submits a password protected file, we will not review that material.

• Both the IHE and the faculty applicant's electronic applications must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After the individual faculty applicant electronically submits his or her application to the faculty's IHE, the faculty member will receive an automatic acknowledgment. In addition, the applicant IHE's project director will receive a copy of this acknowledgment by e-mail. After a person submits a reference electronically, he or she will receive an online confirmation. After the applicant IHE submits its application, including all eligible individual faculty applications, to the Department, the applicant IHE will receive an automatic acknowledgment, which will include a PR/Award Number (an identifying number unique to the IHE's application).

• Within three working days after submitting the IHE's electronic application, the IHE must follow these steps:

(1) Print SF 424 from e-Application.

(2) The applicant IHE's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If an IHE is prevented from electronically submitting its application on the application deadline date because e-Application is unavailable, we will grant the IHE an extension of one business day to enable the IHE to transmit its application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) The IHE is a registered user of e-Application and the IHE has initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting the IHE an extension. To request this extension or to confirm our acknowledgement of any system unavailability, an IHE may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* section VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: An IHE qualifies for an exception to the electronic submission requirement, and may submit its application in paper format if the IHE is unable to submit an application through e-Application because—

• The IHE or a faculty applicant does not have access to the Internet; or

• The IHE or a faculty applicant does not have the capacity to upload large documents to e-Application; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), the IHE mails or faxes a written statement to the Department, explaining which of the two grounds for an exception prevents the IHE from using the Internet to submit its application. If an IHE mails a written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If an IHE faxes its written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax this statement to: Cynthia Dudzinski, U.S. Department of Education, 1990 K Street, NW., room 6007, Washington, DC 20006–8521. FAX: (202) 502–7860.

The IHE's paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If an IHE qualifies for an exception to the electronic submission requirement, the IHE may mail (through the U.S. Postal Service or a commercial carrier) its application to the Department. The IHE must mail the original and two copies of the application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.019A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

The IHE must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If the IHE mails its application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If the IHE's application is postmarked after the application deadline date, we will not consider its application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the IHE should check with its local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If an IHE qualifies for an exception to the electronic submission requirement, the IHE (or a courier service) may deliver its paper application to the Department by hand. The IHE must deliver the original and two copies of the application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.019A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If an IHE mails or hand delivers its application to the Department—

(1) The IHE must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA Number, including suffix letter, if any, of the competition under which the IHE is submitting its application; and

(2) The Application Control Center will mail a notification of receipt of the IHE's grant application. If the IHE does not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, the IHE should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *General:* For FY 2011, faculty applications are divided into seven categories based on the world area focus of their research projects, as described

in the absolute priority listed in this notice. Language and area studies experts in discrete world area-based panels will review the faculty applications. Each panel reviews, scores, and ranks its applications separately from the applications assigned to the other world area panels. However, all fellowship applications will be ranked together from the highest to lowest score for funding purposes.

2. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 663.21 and are listed in the following paragraphs. The maximum score for all of the criteria, including the competitive preference priorities, is 110 points. The maximum score for each criterion is indicated in parentheses.

Quality of proposed project (60 points): The Secretary reviews each application to determine the quality of the research project proposed by the applicant. The Secretary considers—

(1) The statement of the major hypotheses to be tested or questions to be examined, and the description and justification of the research methods to be used (10 points);

(2) The relationship of the research to the literature on the topic and to major theoretical issues in the field, and the project's originality and importance in terms of the concerns of the discipline (10 points);

(3) The preliminary research already completed or plans for research prior to going overseas, and the kinds, quality and availability of data for the research in the host country or countries (10 points);

(4) The justification for overseas field research and preparations to establish appropriate and sufficient research contacts and affiliations abroad (10 points);

(5) The applicant's plans to share the results of the research in progress with scholars and officials of the host country or countries and the American scholarly community (10 points); and

(6) The objectives of the project regarding the sponsoring institution's plans for developing or strengthening, or both, curricula in modern foreign languages and area studies (10 points).

Qualifications of the applicant (40 points): The Secretary reviews each application to determine the qualifications of the applicant. The Secretary considers—

(1) The overall strength of the applicant's academic record (teaching, research, contributions, professional association activities) (10 points);

(2) The applicant's excellence as a teacher or researcher, or both, in his or her area or areas of specialization (10 points);

(3) The applicant's proficiency in one or more of the languages (other than English and the applicant's native language) of the country or countries of research, and the specific measures to be taken to overcome any anticipated language barriers (15 points); and

(4) The applicant's ability to conduct research in a foreign cultural context, as evidenced by the applicant's previous overseas experience, or documentation provided by the sponsoring institution, or both (5 points).

VI. Award Administration Information

1. *Award Notices:* If a faculty application is successful, we notify the IHE's U.S. Representative and U.S. Senators and send the IHE a Grant Award Notification (GAN). We may notify the IHE informally, also.

If a faculty application is not evaluated or not selected for funding, we notify the IHE.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates the approved application as part of the binding commitments under the grant.

3. *Reporting:* At the end of the project period, the IHE must submit a final performance report, including the final reports of all of the IHE's fellows, and financial information, as directed by the Secretary. The IHE and fellows are required to use the International Resource Information System (IRIS) electronic reporting system to complete the final report.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993, the objective for the FRA Fellowship Program is to provide grants to IHEs to fund faculty to maintain and improve their area studies and language skills by conducting research abroad for periods of three to twelve months.

The Department will use the following FRA Fellowship Program measures to evaluate its success in meeting this objective:

Performance Measure 1: The average language competency score of FRA Fellowship Program recipients at the end of their period of research minus their average language competency score at the beginning of the period.

Performance Measure 2: Percentage of all FRA Fellowship Program projects judged to be successful by the program officer, based on a review of information provided in annual performance reports.

Efficiency Measure: Cost per FRA Fellowship Program grantee increasing language competency by at least one level in at least one area.

The information provided by grantees in their performance report submitted via IRIS will be the source of data for this measure. Reporting screens for IHEs and fellows may be viewed at: *http://www.ieps-iris.org/iris/pdfs/FRA_fellow.pdf. http://www.ieps-iris.org/iris/pdfs/FRA_director.pdf.*

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Cynthia Dudzinski, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., room 6007, Washington, DC 20006–8521. Telephone: (202) 502–7589 or by e-mail: *cynthia.dudzinski@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Assistance Secretary of Postsecondary Education has delegated the authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education to perform the functions of the Assistant Secretary for Postsecondary Education.

Dated: September 28, 2010.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. 2010–24718 Filed 9–30–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Availability of the Bonneville Purchasing Instructions (BPI) and Bonneville Financial Assistance Instructions (BFAI)

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of document availability.

SUMMARY: Copies of the Bonneville Purchasing Instructions (BPI), which contain the policy and establish the procedures that BPA uses in the solicitation, award, and administration of its purchases of goods and services, including construction, are available in printed form for $30, or without charge at the following Internet address: *http://www.bpa.gov/corporate/business/bpi.* Copies of the Bonneville Financial Assistance Instructions (BFAI), which contain the policy and establish the procedures that BPA uses in the solicitation, award, and administration of financial assistance instruments (principally grants and cooperative agreements), are available in printed form for $15 each, or available without charge at the following Internet address: *http://www.bpa.gov/corporate/business/bfai.*

ADDRESSES: Unbound copies of the BPI or BFAI may be obtained by sending a check for the proper amount to the Head of the Contracting Activity, Routing DGP–7, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621.

FOR FURTHER INFORMATION CONTACT: Manager, Communications,1–800–622–4519.

SUPPLEMENTARY INFORMATION: BPA was established in 1937 as a Federal Power Marketing Agency in the Pacific Northwest. BPA operations are financed from power revenues rather than annual appropriations. BPA's purchasing operations are conducted under 16 U.S.C. 832 *et seq.* and related statutes. Pursuant to these special authorities, the BPI is promulgated as a statement of purchasing policy and as a body of interpretative regulations governing the conduct of BPA purchasing activities. It is significantly different from the Federal Acquisition Regulation, and reflects BPA's private sector approach to purchasing the goods and services that it requires. BPA's financial assistance operations are conducted under 16 U.S.C. 839 *et seq.* and 16 U.S.C. 839 *et seq.* The BFAI express BPA's financial assistance policy. The BFAI also comprise BPA's rules governing implementation of the principles provided in the following Federal Regulations and/or OMB circulars:

2 CFR Part 220 Cost Principles for Educational Institutions (Circular A–21);

2 CFR Part 225 Cost Principles for State, Local and Indian Tribal Governments (Circular A–87);

Grants and Cooperative Agreements with State and Local Governments (Circular A–102);

Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations (Circular A–110);

2 CFR Part 230 Cost Principles for Non-Profit Organizations (Circular A–122); and

Audits of States, Local Governments and Non-Profit Organizations (Circular A–133)

BPA's solicitations and contracts include notice of applicability and availability of the BPI and the BFAI, as appropriate, for the information of offerors on particular purchases or financial assistance transactions.

Issued in Portland, Oregon, on September 17, 2010.

Damian J. Kelly,

Manager, Purchasing/Property Governance.

[FR Doc. 2010–24672 Filed 9–30–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Notice of Intent To Prepare a Supplemental Environmental Impact Statement for the Nuclear Facility Portion of the Chemistry and Metallurgy Research Building Replacement Project at Los Alamos National Laboratory, Los Alamos, NM

AGENCY: U.S. Department of Energy (DOE), National Nuclear Security Administration (NNSA).

ACTION: Notice of intent.

SUMMARY: The Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (NEPA) (40 CFR 1502.9[c][1] and [2]) and DOE's NEPA implementing regulations (10 CFR 1021.314) require the preparation of a supplement to an environmental impact statement (EIS) when there are substantial changes to a proposal or when there are significant new circumstances or information relevant to environmental concerns. DOE may also prepare a supplemental EIS at any time to further the purposes of NEPA. Pursuant to these provisions, the NNSA, a semi-autonomous agency within the DOE, intends to prepare a supplemental environmental impact statement (SEIS) to assess the potential environmental impacts of the construction and operation of the nuclear facility portion of the Chemistry and Metallurgy Research Building Replacement Project (CMRR–NF) at Los Alamos National Laboratory (LANL), Los Alamos, New Mexico.

The CMRR Project, including the CMRR–NF, was the subject of NNSA's *Final Environmental Impact Statement for the Chemistry and Metallurgy Research Building Replacement Project at Los Alamos National Laboratory, Los Alamos, New Mexico* (DOE/EIS–0350; the CMRR EIS) issued in November 2003, and a February 2004 Record of Decision (ROD) (69 FR 6967). Over time, due in large part to detailed site geotechnical investigations, some aspects of the CMRR–NF Project have changed from what was foreseen when the CMRR EIS was prepared. The potential environmental impacts of these proposed changes will be analyzed in the CMRR–NF SEIS.

DATES: NNSA invites stakeholders and members of the public to submit comments and suggestions on the scope of the SEIS during the SEIS scoping period, which starts with the publication of this Notice and will continue for 30 days until November 1, 2010. NNSA will consider all comments received or postmarked by that date in defining the scope of this SEIS. Comments received or postmarked after that date will be considered to the extent practicable. Two public scoping meetings will be held to provide the public with an opportunity to present comments, ask questions, and discuss concerns regarding the SEIS with NNSA officials. Public scoping meetings will be held on October 19, 2010, at the White Rock Town Hall, 139 Longview Drive, White Rock, New Mexico and October 20, 2010, at the Cities of Gold Casino Hotel, Pojoaque, New Mexico. Both meetings will begin at 4 p.m. and end at 7 p.m. The NNSA will publish additional notices regarding the scoping meetings in local newspapers in advance of the scheduled meetings. Any necessary changes will be announced in the local media.

Any agency, state, pueblo, tribe, or unit of local government that desires to be designated a cooperating agency should contact Mr. John Tegtmeier at the address listed below by the closing date of the scoping period.

ADDRESSES: Written comments or suggestions concerning the scope of the CMRR–NF SEIS or requests for more information on the SEIS and public scoping process should be directed to: Mr. John Tegtmeier, CMRR–NF SEIS Document Manager, U.S. Department of Energy, National Nuclear Security Administration, Los Alamos Site Office, 3747 West Jemez Road, TA–3 Building 1410, Los Alamos, New Mexico, 87544; facsimile at 505–667–5948; or e-mail at: *NEPALASO@doeal.gov.* Mr. Tegtmeier may also be reached by telephone at 505–665–0113.

In addition to providing comments at the public scoping meetings, all interested parties are invited to record their comments, ask questions concerning the EIS, or request to be placed on the EIS mailing or document distribution list by leaving a message on the SEIS Hotline at (toll free) 1–877–427–9439. The Hotline will provide instructions on how to record comments and requests.

FOR FURTHER INFORMATION CONTACT: For general information on the NNSA NEPA process, please contact: Ms. Mary Martin (NA–56), NNSA NEPA Compliance Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, or telephone 202–586–9438. For general information about the DOE NEPA process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone 202–586–4600, or leave a message at 1–800–472–2756. Additional information about the DOE NEPA process, an electronic archive of DOE NEPA documents, including those referenced in this announcement, and other NEPA resources are provided at *http://nepa.energy.gov.*

SUPPLEMENTARY INFORMATION: LANL is located in north-central New Mexico, 60 miles north-northeast of Albuquerque, 25 miles northwest of Santa Fe, and 20 miles southwest of Española in Los Alamos and Santa Fe Counties. It is located between the Jemez Mountains to the west and the Sangre de Cristo Mountains and Rio Grande to the east. LANL occupies an area of about 25,600 acres [10,360 hectares] or approximately 40 square miles and is operated for NNSA by a contractor, Los Alamos National Security, LLC. It is a multidisciplinary, multipurpose institution engaged in theoretical and experimental research and development. LANL has been assigned science, research and development, and production mission support activities that are critical to the accomplishment of the NNSA's national security objectives as reflected in the Stockpile Stewardship and Management Programmatic EIS (DOE/EIS–0236) and the Complex Transformation Supplemental Programmatic EIS (DOE/EIS–0236–S4). LANL's main role in NNSA mission objectives includes a wide range of scientific and technological capabilities that support nuclear materials handling, processing and fabrication; stockpile management; materials and manufacturing technologies; nonproliferation programs; research and development support for national defense and homeland security programs; and DOE waste management activities.

The capabilities needed to execute the NNSA mission activities require facilities at LANL that can be used to handle actinides and other radioactive materials in a safe and secure manner. (The actinides are any of a series of 14 chemical elements with atomic numbers ranging from 89 (actinium) through 103 (lawrencium)). Of primary importance are the facilities located within the Chemistry and Metallurgy Research (CMR) Building and the Plutonium Facility (located at Technical Areas (TAs) 3 and 55, respectively), which are used for processing, characterizing, and storage of special nuclear material. (Special nuclear material is defined by the Atomic Energy Act of 1954 as plutonium, uranium-233, or uranium enriched in the isotopes uranium-233 or uranium-235). Most of the LANL mission support functions previously listed require analytical chemistry, material characterization, and actinide research and development support capabilities that currently exist within the CMR Building and are not available elsewhere. Other unique capabilities are located at the adjacent Plutonium Facility. Work is sometimes moved between the CMR Building and the Plutonium Facility to make use of the full suite of capabilities that these two facilities provide. CMR Building operations and capabilities are currently restricted in scope due to safety and security constraints; it cannot be operated to the full extent needed to meet NNSA operational requirements.

The CMR building contains about 550,000 square feet (about 51,100 square meters) of floor space on two floors divided between a main corridor and seven wings. It was constructed in the early 1950s. DOE maintained and upgraded the building over time to provide for continued safe operations. However, beginning in 1997 and 1998, a series of operational, safety, and seismic issues surfaced regarding the long-term viability of the CMR Building. In January 1999, the NNSA approved a strategy for managing operational risks at the CMR Building. The strategy included implementing operational restrictions to ensure safe operations. These restrictions are impacting the assigned mission activities conducted at the CMR Building. This strategy also committed NNSA to develop plans to relocate the CMR capabilities elsewhere at LANL to maintain support of national security and other NNSA missions. The CMRR EIS was prepared and issued in 2003, followed by a ROD in 2004.

The CMRR EIS analyzed four action alternatives: (1) The construction and operation of a new CMRR facility at TA–55; (2) the construction of a new CMRR facility at a "greenfield" location within TA–6; (3) a "hybrid" alternative maintaining administrative offices and support functions at the existing CMR building with a new Hazard Category 2 laboratory facility built at TA–55; and, (4) a "hybrid" alternative with the laboratory facility being constructed at TA–6. The CMRR EIS also analyzed a no action alternative where the existing CMR building would continue to be kept in service. In the 2004 ROD, NNSA announced its decision to implement the preferred alternative (alternative 1): To construct a new CMRR facility which would include a single above-ground, consolidated nuclear material-capable, Hazard Category 2 laboratory building (construction option 3) with a separate, adjacent administrative office and support functions building, now referred to as the CMRR Radiological Laboratory/Utility/Office Building (CMRR RLUOB). Upon completion, the CMRR Facility would replace the CMR Building, operations would be moved to the new CMRR Facility, and the vacated CMR Building would undergo decommissioning, decontamination, and demolition. (While the CMRR RLUOB has been constructed in TA–55 at LANL, the installation of laboratory equipment has not been completed and operations have not begun). Since 2004, the planning process for the construction and operation of the CMRR–NF has continued to progress and take into consideration newly gathered site-specific data and safety and security requirements.

Purpose and Need: The NNSA's purpose and need for proposing the construction and operation of the CMRR–NF have not changed since the CMRR EIS was prepared and issued in 2003. NNSA needs to provide the physical means for accommodating the CMR Building's functional, mission-critical nuclear capabilities, and to

consolidate activities for safer and more efficient operations. In the 2003 CMRR EIS, NNSA analyzed the potential environmental impacts associated with the proposed relocation of LANL analytical chemistry (AC) and materials characterization (MC), and associated research and development capabilities that currently exist primarily at the existing CMR building, to a newly constructed facility, and operation of the new facility for the next 50 years. In the May 2008, *Final Site-Wide Environmental Impact Statement for Continued Operation of Los Alamos National Laboratory, Los Alamos, New Mexico* (DOE/EIS–0380), the CMRR was considered and its potential environmental impacts analyzed as a part of the No Action Alternative and each of the action alternatives for continued operation of LANL.

The potential environmental impacts associated with the construction and operation of the CMRR–NF were also analyzed within certain alternatives in the Complex Transformation SPEIS (DOE/EIS–0236–S4) as part of the proposal to reconfigure and streamline NNSA's nuclear security enterprise. NNSA issued two RODs based on the Complex Transformation SPEIS analysis in December 2008. In the SPEIS ROD for operations involving plutonium, uranium, and the assembly and disassembly of nuclear weapons (73 FR 77644), NNSA announced its decision to retain plutonium manufacturing and research and development at LANL, and in support of these activities, to proceed with construction and operation of the CMRR–NF at LANL as essential to its ability to meet national security requirements regarding the nation's nuclear deterrent.

Proposed Action and Alternatives

Proposed Action: The Proposed Action is to construct the CMRR–NF at TA–55. Over time some aspects of the proposed CMRR–NF Project plans have changed. These proposed changes include, for example:

- Changes to the CMRR–NF structure required for seismic safety based on new information from additional geotechnical investigations conducted at the site. These changes involve incorporating additional structural steel and concrete into the building construction and increasing the quantity of material that must be excavated for the building foundation;
- Changes to the infrastructure to support the CMRR–NF construction activities, such as concrete batch plants, construction material lay-down areas and warehouses, and temporary office trailers and parking areas. Some of these changes involve the use of additional acreage. Most of these proposed changes are temporary in duration;
- Changes to the CMRR–NF structure to ensure 10 CFR part 830 nuclear safety basis requirements are met for facility engineering controls to ensure protection of the public, workers, and the environment; and
- Changes to incorporate additional sustainable design principles and environmental conservation measures. These changes minimize the environmental impacts of construction and operation of the CMRR–NF.

The potential environmental impacts of these and similar changes will be analyzed in the CMRR–NF SEIS.

No Action Alternative: The No Action alternative would be the construction of the CMRR–NF and the ancillary and support activities as announced in the 2004 ROD.

CMR Alternative 1: Do not construct a replacement facility to house the capabilities planned for the CMRR–NF. Continue to perform analytical chemistry, material characterization, and actinide research and development activities in the CMR Building, with no facility upgrades, while performing routine maintenance at the level needed to sustain programmatic operations for as long as feasible.

CMR Alternative 2: Same as CMR Alternative 1, but includes making the extensive facility upgrades needed to sustain CMR programmatic operations for another 20 to 30 years.

Preliminary Identification of Environmental Issues. NNSA has tentatively identified the following issues for analysis in this SEIS. Additional issues may be identified as a result of the scoping process.

1. Potential impacts to air, water, soil, visual resources and viewsheds.
2. Potential impacts to plants and animals, and to their habitats, including Federally-listed threatened or endangered species and their critical habitats.
3. Potential impacts from irretrievable and irreversible consumption of natural resources and energy, including transportation issues.
4. Potential impacts to cultural resources, including historical and prehistorical resources and traditional cultural properties.
5. Potential impacts to infrastructure and utilities.
6. Potential impacts to socioeconomic conditions.
7. Potential environmental justice impacts to minority and low-income populations.
8. Potential cumulative impacts from the Proposed Action and alternatives together with other past, present, and reasonably foreseeable actions at LANL.

CMRR–NF SEIS Preparation Process: The scoping process for a NEPA document is an opportunity for the public to assist the NNSA in determining the alternatives and issues for analysis. Alternatives may be added, deleted, or modified as a result of scoping. The purpose of the scoping meetings is to receive oral and written comments from the public. The meetings will use a format to facilitate dialogue between NNSA and the public and will be an opportunity for individuals to provide written or oral statements. NNSA welcomes specific comments or suggestions on the content of these alternatives, or on other alternatives that should be considered. The above list of issues to be considered in the SEIS analysis is tentative and is intended to facilitate public comment on the scope of the SEIS. It is not intended to be all-inclusive, nor does it imply any predetermination of potential impacts. The CMRR–NF SEIS will describe the potential environmental impacts of the alternatives, using available data where possible and obtaining additional data where necessary. Copies of written comments and transcripts of oral comments will be available as soon as practicable after the public scoping meeting on the Internet at: *http://www.doeal.gov/laso/NEPADocuments.aspx.*

Following the scoping period announced in this Notice of Intent, and after consideration of comments received during scoping, NNSA will prepare a *Draft Supplemental Environmental Impact Statement for the Construction of the Chemistry and Metallurgy Replacement Project's Nuclear Facility at Technical Area-55 Within Los Alamos National Laboratory, Los Alamos, New Mexico* (DOE/EIS–0350–S1). Comments received on the Draft SEIS during the planned 45-day comment period will be considered and addressed in the Final SEIS, which NNSA anticipates issuing by July 2011. NNSA will issue a ROD no sooner than 30 days after publication by the Environmental Protection Agency of a Notice of Availability of the Final SEIS.

Issued in Washington, DC, this 28th day of September 2010.

Thomas P. D'Agostino,

Administrator, National Nuclear Security Administration.

[FR Doc. 2010–24681 Filed 9–30–10; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8992–9]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements filed 09/20/2010 through 09/24/2010 pursuant to 40 CFR 1506.9.

Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has been including its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, on March 31, 2010, EPA discontinued the publication of the notice of availability of EPA comments in the **Federal Register.**

EIS No. 20100386, Draft EIS, BLM, UT, Uinta Basin Natural Gas Development Project, To Develop Oil and Natural Gas Resources within the Monument Butte-Red Wash and West Tavaputs Exploration and Developments Area, Applications for Permit of Drill and Right-of-Way Grants, Uintah and Duchesne Counties, UT, Comment Period Ends: 11/15/2010, Contact: Mark Wimmer, 435–781–4464.

EIS No. 20100387, Draft EIS, USFS, OR, Three Trails Off-Highway Vehicle Project, Designated Off-Highway Vehicle (OHV) Trail System, Crescent Ranger District, Deschutes National Forest, Klamath County, OR, Comment Period Ends: 11/15/2010, Contact: Lilliam Cross, 541–433–3200.

EIS No. 20100388, Final EIS, BLM, OR, West Butte Wind Power Project, Construction and Operation of Access Roads and a Transmission Line, Application for Right-of-Way (ROW) Grant, Deschutes and Crook Counties, OR, Wait Period Ends: 11/01/2010, Contact: Steve Storo, 541–416–6700.

Amended Notices

EIS No. 20100308, Draft EIS, USFS, MN, South Fowl Lake Snowmobile Access Project, Proposing a Replacement Snowmobile Trail between McFarland Lake and South Fowl Lake, Gunflint Ranger District, Superior National Forest, Eatern Region, Cook County, MN, Comment Period Ends: 10/27/2010, Contact: Peter Taylor, 218–626–4368.

Revision to FR Notice published 08/13/2010. Extending Comment from 09/27/2010 to 10/27/2010.

EIS No. 20100380, Final EIS, USACE, 00, VOID -Sabine-Neches Waterway Channel Improvement Project, Proposed Ocean Dredged Material Disposal Site Designation, Southeast Texas and Southwest Louisiana, Wait Period Ends: 10/25/2010, Contact: Janelle Stokes, 409–766–3039.

Revision to FR Notice published 9/24/2010. EIS was filed in error.

Dated: September 28, 2010.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–24682 Filed 9–30–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2917]

Petitions for Reconsideration of Action in Rulemaking Proceeding

Sep 22, 2010.

SUMMARY: Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents is available for viewing and copying in Room CY–B402, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed within 15 days of the date of public notice of the petitions in the Federal Register. See Section 1.4(b) (1) of the Commission's rules (47 CFR 1.4(b) (1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In the Matter of Amendment of Part 27 of the Commission's Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band (WT Docket No. 07–293)

Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 23100–2360 MHz Frequency Band (IB Docket No. 95–91)

NUMBER OF PETITIONS FILED: [6]

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–24633 Filed 9–30–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 18, 2010.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Henry Lewis Gallegly and Marjorie Clair Gallegly, Dalhart, Texas; to acquire additional voting shares of First Dalhart Bancshares, Inc., and thereby indirectly acquire additional voting shares of First National Bank in Dalhart, both of Dalhart, Texas.

Board of Governors of the Federal Reserve System, September 28, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–24664 Filed 9–30–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or

the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 28, 2010.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Rigler Investment Co., New Hampton, Iowa; to acquire 100 percent of the voting shares of State Bank & Trust Company, Waverly, Iowa.

Board of Governors of the Federal Reserve System, September 28, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–24666 Filed 9–30–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

[Docket No. OP–1345]

Policy on Payment System Risk

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is announcing the implementation date of March 24, 2011, for revisions to part II of its Policy on Payment System Risk (PSR). The revisions explicitly recognize the role of the central bank in providing intraday credit to healthy depository institutions, and establish a zero fee for collateralized daylight overdrafts, a 50 basis point (annual rate) charge for uncollateralized daylight overdrafts, and a biweekly daylight overdraft fee waiver of $150. The Board approved these revisions in late 2008 for implementation in approximately two years following substantial changes to the Reserve Bank infrastructure.

DATES: *Effective Date:* The policy will take effect on March 24, 2011.

FOR FURTHER INFORMATION CONTACT: Jeffrey Marquardt, Deputy Director (202) 452–2360, Susan Foley, Deputy Associate Director (202) 452–3596, or Jeffrey Walker, Manager (202) 721–4559, Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System; for users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: On December 19, 2008, the Board approved revisions to part II of its PSR policy designed to improve intraday liquidity management and payment flows for the banking system, while also helping to mitigate credit exposures of the Federal Reserve Banks (Reserve Banks) from daylight overdrafts.[1] The revisions formally recognize the role of the central bank in providing intraday credit to depository institutions and encourage them to collateralize explicitly their daylight overdrafts. Collateralized daylight overdrafts will be charged a zero fee, while uncollateralized daylight overdrafts will be charged 50 basis points (annual rate), an increase from the current rate of 36 basis points (annual rate), to encourage the voluntary use of collateral. The Board also approved a biweekly daylight overdraft fee waiver of $150 to minimize the effect of the proposed policy changes on institutions that use small amounts of daylight overdrafts. In addition, the Board changed other elements of the PSR policy dealing with daylight overdrafts, including adjusting net debit caps, streamlining max cap procedures for certain FBOs (implemented in March 2009), eliminating the deductible for daylight overdraft fees, and increasing the penalty daylight overdraft fee for ineligible institutions to 150 basis points (annual rate). The revisions to the PSR policy will become effective on March 24, 2011.

The Board encourages depository institutions to review documentation explaining the implementation of the revised PSR policy. Institutions should review either the Overview of the Federal Reserve's Payment System Risk Policy (Overview) or the Guide to the Federal Reserve's Payment System Risk Policy (the Guide). The purpose of the Overview is to help depository institutions that use only minimal amounts of Federal Reserve intraday credit understand and comply with the PSR policy. The purpose of the Guide is to help institutions that use Federal Reserve intraday credit more regularly, foreign banking organizations, and those that may be considered "special situations" because of their legal structure or payment activity, understand and comply with more detailed aspects of the PSR policy. Versions of the Guide and Overview that have been updated with information related to the revised policy will be available on the Board's Web site later this year at *http://www.federalreserve.gov/paymentsystems/psr_relpolicies.htm*. The current versions of the Guide and Overview will be available on the Board's Web site until 30 days after the implementation date.

The Federal Reserve will also publish updated guidelines for collateral pledging and withdrawal to help institutions better understand the types of collateral eligible to pledge and the processing steps associated with these types of collateral. This information will be available on the discount window and PSR Web site later this year at *http://www.frbdiscountwindow.org*. In addition, to assist all institutions in understanding the effect of the revised policy on their daylight overdraft fees, the Board created a simplified fee calculator that is located on the Board's Web site at *https://www.federalreserve.gov/apps/RPFCalc/*. The calculator enables institutions to input daylight overdraft and collateral data to estimate their daylight overdraft fees under the revised PSR policy. The calculator will be available until 30 days after the implementation date.

By order of the Board of Governors of the Federal Reserve System, September 23, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–24649 Filed 9–30–10; 8:45 am]

BILLING CODE 6210–01–P

[1] *See* 73 FR 79109, December 24, 2008.

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C.

1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 18, 2010.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Raton Capital Corporation, Raton, New Mexico; to continue to engage *de novo* in lending activities, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, September 28, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–24665 Filed 9–30–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title 11 of the Hart-Scott Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Trans. No.	ET req status	Party name
17–AUG–10	20100346	G	Novartis AG.
		G	Nestle S.A.
		G	Alcon, Inc.
	20100920	G	Corn Products International, Inc.
		G	Akzo Nobel N.V.
		G	National Starch LLC.
		G	Brunob II BV.
	20100978	G	ValueAct Capital Master Fund, L.P.
		G	Biovail Corporation.
		G	Biovail Corporation.
	20100990	G	Blackstone Capital Partners III Merchant Banking Fund L.P.
		G	Liquid Container L.P.
		G	Liquid Container L.P.
18–AUG–10	20100935	G	Lance, Inc.
		G	Snyder's of Hanover, Inc.
		G	Snyder's of Hanover, Inc.
	20100937	G	Michael A. Warehime.
		G	Lance, Inc.
		G	Lance, Inc.
	20100979	G	Health Management Associates, Inc.
		G	Wuesthoff Health Systems, Inc.
		G	Wuesthoff Health Systems, Inc.
	20100981	G	Key Energy Services, Inc.
		G	ArcLight Energy Partners Fund III, L.P.
		G	OFS Holdings, LLC.
		G	OFS Energy Services, LLC.
		G	Davis Energy Services, LLC.
		G	QCP Energy Services, LLC.
		G	Swan Energy Services, LLC.
	20100982	G	ArcLight Energy Partners Fund III, L.P.
		G	Key Energy Services, Inc.
		G	Key Energy Services, Inc.
	20100983	G	Tyco Electronics Ltd.
		G	ADC Telecommunications, Inc.
		G	ADC Telecommunications, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans. No.	ET req status	Party name
19–AUG–10	20100839	G	Select Medical Holdings Corporation.
		G	Waud Capital Partners, L.P.
		G	Regency Hospital Company, L.L.C.
	20100944	G	Griffon Corporation.
		G	Castle Harlan Partners IV, L.P.
		G	CHATT Holdings, Inc.
	20100984	G	Audax Private Equity Fund III, L.P.
		G	General Electric Company.
		G	Distribution International, Inc.
	20100996	G	Community Health Systems, Inc.
		G	Forum Health Holding Company.
		G	Forum Health Holding Company.
20–AUG–10	20100974	G	UnitedHealth Group Incorporated.
		G	ABRY Partners V, L.P.
		G	EHR Intermediate Holdings, Inc.
	20100989	G	TCV VII, L.P.
		G	DataDirect Networks, Inc.
		G	DataDirect Networks, Inc.
	20100992	G	Arrow Electronics, Inc.
		G	LC Capital Offshore Fund, Ltd.
		G	Shared Technologies Inc.
	20100994	G	Regency Energy Partners LP.
		G	Zephyr Gas Services, LP.
		G	Zephyr Gas Services, LP.
	20100997	G	The Walt Disney Company.
		G	Playdom, Inc.
		G	Playdom, Inc.
	20101004	G	Danaher Corporation.
		G	Arbor Networks, Inc.
		G	Arbor Networks, Inc.
	20101005	G	WS Atkins plc.
		G	The PBSJ Corporation.
		G	The PBSJ Corporation.
	20101007	G	Pace plc.
		G	2Wire, Inc.
		G	2Wire, Inc.
23–AUG–10	20101003	G	Irving Place Capital Partners III, L.P.
		G	Total Pet Supplies, Inc.
		G	Royal Pet, LLC.
24–AUG–10	20101022	G	Cerberus Institutional Partners, L.P.
		G	Cerberus ABP Investor LLC.
		G	Cerberus ABP Investor LLC.
25–AUG–10	20100966	G	Brockway Moran Partners Fund III, L.P.
		G	Talisman Capital Partners I, L.P.
		G	Turning Tech Holdings, LLC.
	20101015	G	Algonquin Power Utilities Corp.
		G	NV Energy, Inc.
		G	Sierra Pacific Power Company.
26–AUG–10	20100956	G	AMN Healthcare Services, Inc.
		G	NF Investors, Inc.
		G	NF Investors, Inc.
	20100957	G	The Goldman Sachs Group, Inc.
		G	AMN Healthcare Services, Inc.
		G	AMN Healthcare Services, Inc.
	20100967	G	Mylan Inc.
		G	RoundTable Healthcare Partners II, L.P.
		G	Bioniche Pharma Holdings Limited.
	20101001	G	AIF VII Euro Holdings, L.P.
		G	Rio Tinto Limited.
		G	Pechiney World Trade S.A.S.
		G	Alcan Aluminum Valais S.A.
		G	Alcan International Network UK Limited.
		G	Alcan Rolled Products—Ravenswood LLC.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans. No.	ET req status	Party name
		G	Alcan Automotive LLC.
		G	AIN USA LLC.
		G	Engineered Products Switzerland A.G.
		G	Engineered Products Finance SAS.
		G	Alcan France Extrusions S.A.S.
		G	Alcan Centre de Recherches de Voreppe SAS.
		G	Societe des Fonderies d'Ussel SAS.
		G	Alcan Aerospace SAS.
		G	Alcan Rhenalu S.A.S.
		G	Alcan Decin Extrusions s.r.o, Decin V.
		G	Alcan Holdings Germany GmbH.
		G	Alcan Slovensko Extrusions s.r.o.
27–AUG–10	20100676	G	UAL Corporation.
		G	Continental Airlines, Inc.
		G	Continental Airlines, Inc.
	20100959	G	OCM Principal Opportunities Fund IV, L.P.
		G	Advance Food Company Holdings, Inc.
		G	Advance Food Company, Inc.
	20101002	G	Alfa S.A.B. de C.V.
		G	Timothy T. Day.
		G	Bar-S Foods Co.
	20101019	G	Pinafore Investment Cooperatief U.A.
		G	Tomkins plc.
		G	Tomkins plc.
	20101020	G	Nokia Corporation.
		G	Motorola, Inc.
		G	Motorola, Inc.
	20101019	G	Timothy T. Day.
	20101024	G	Onex Partners II L.P.
		G	Riverside Fund III, L.P.
		G	Quantum Medical Holdings, LLC.
	20101025	G	Constellation Energy Group, Inc.
		G	EBG Holdings LLC.
		G	BG Boston Services, LLC.
		G	Fore River Development, LLC.
		G	Mystic Development, LLC.
		G	Mystic I, LLC.
		G	Boston Generating, LLC.
		G	BG New England Power Services, Inc.
	20101028	G	Irving Place Capital Partners III, L.P.
		G	Stonebridge Partners Equity Fund III, L.P.
		G	Alpha Packaging Holdings, Inc.
	20101029	G	Knology, Inc.
		G	The World Company.
		G	The World Company.
	20101031	G	Markel Corporation.
		G	Luke W. Yeransian.
		G	Aspen Holdings, Inc.
	20101033	G	Li & Fung Limited.
		G	Jimlar Corporation.
		G	Jimlar Corporation.
	20101037	G	Koch Industries, Inc.
		G	The Royal Bank of Scotland Group plc.
		G	Hawkeye Menlo, LLC.
		G	Hawkeye Shell Rock, LLC.
		G	Hawkeye Growth, LLC.
31–AUG–10	20100962	G	American Electric Power Company, Inc.
		G	Valley Electric Membership Corporation.
		G	Valley Electric Membership Corporation.
01–SEP–10	20101017	G	Wyle Inc.
		G	ITT Corporation.
		G	CAS Inc.
	20101038	G	Safran S.A.
		G	HCM Custom Holdings, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans. No.	ET req status	Party name
		G	Harvard Custom Manufacturing Inc.
03–SEP–10	20101000	G	A.I. Global Investments Sarl.
		G	The Royal Bank of Scotland Group plc.
		G	RBS WorldPay, Inc.
	20101039	G	Thoma Bravo Fund IX, L.P.
		G	Emerson Electric Co.
		G	Crimson Acquisition Corp.
	20101041	G	Mr. Malvinder Mohan Singh.
		G	Northgate Capital L.P.
		G	Northgate Capital L.P.
	20101042	G	Mr. Shivinder Mohan Singh.
		G	Northgate Capital L.P.
		G	Northgate Capital L.P.
	20101046	G	GSW Sports LLC.
		G	Christopher Cohan.
		G	Golden State Warriors, LLC.
	20101048	G	PCM U.S. Acquisition Company.
		G	General Motors Company.
		G	GM Global Steering Holdings LLC.
	20101056	G	Triangle Acquisition Holdings, Inc.
		G	INC Research, Inc.
		G	INC Research, Inc.
	20101061	G	Emergent BioSolutions, Inc.
		G	Trubion Pharmaceuticals, Inc.
		G	Trubion Pharmaceuticals, Inc.
	20101062	G	E. Stanley Kroenke.
		G	Georgia Frontiere Revocable Trust u/d/t 2/18/03.
		G	The St. Louis Rams Partnership.
	20101063	G	Quad-C Partners VII, L.P.
		G	Stonebridge Partners Equity Fund III, L.P.
		G	Durcon Laboratory Tops Holdings, Inc.
	20101066	G	Gryphon Partners III, L.P.
		G	Olympus Growth Fund IV, L.P.
		G	Ann's House of Nuts, Inc.
	20101067	G	First Reserve Fund XI, L.P.
		G	Quicksilver Resources Inc.
		G	Quicksilver Gas Services Holdings LLC.
	20101070	G	VHS Holdings, LLC.
		G	The Detroit Medical Center.
		G	Metro TPA Services, Inc.
		G	Detroit Medical Central Cooperative Services.
		G	Huron Valley Hospital, Inc.
		G	Rehabilitation Institute, Inc.
		G	Children's Hospital of Michigan.
		G	Detroit Receiving Hospital and University Health Center.
		G	Harper-Hutzel Hospital.
		G	The Detroit Medical Center.
		G	Michigan Mobile Pet CT, LLC.
		G	HealthSource.
		G	DMC Primary Care Services II.
		G	Sinai Hospital of Greater Detroit.
		G	DMC Orthopedic Billing Associates, LLC.
07–SEP–10	20101050	G	Intel Corporation.
		G	Texas Instruments Incorporated.
		G	Texas Instruments Incorporated.
	20101057	G	NRG Energy, Inc.
		G	Harbinger Capital Partners Master Fund I, Ltd.
		G	Cottonwood Development LLC.
	20101069	G	Blackstone Capital Partners V, L.P.
		G	Dynegy Inc.
		G	Dynegy Inc.
08–SEP–10	20100991	G	Acergy S.A.
		G	Subsea 7 Inc.
		G	Subsea 7 Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans. No.	ET req status	Party name
	20101065	G	NRG Energy, Inc.
		G	Blackstone Capital Partners V, L.P.
		G	Dynegy Oakland, LLC.
		G	Dynegy Morro Bay, LLC.
		G	Casco Bay Energy Company, LLC.
		G	Dynegy, Inc.
		G	Dynegy Moss Landing, LLC.
	20101077	G	Sprint Nextel Corporation.
		G	Wirefree Partners II, LLC.
		G	Wirefree Partners III, LLC.
09–SEP–10	20101012	G	Goodrich Corporation.
		G	DLJ Merchant Banking Partners II, L.P.
		G	Precision Pattern, Inc.
		G	DeCrane Aerospace, Inc.
		G	DeCrane Cabin Interiors Canada, Inc.
		G	DeCrane Holdings Co.
		G	PCI Newco, Inc.
		G	Audio International, Inc.
		G	Carl F. Booth Co., LLC.
		G	DeCrane Aerospace Interior Products, LLC.
		G	DeCrane Aircraft Seating Company.
	20101034	G	Bruker Corporation.
		G	Veeco Instruments Inc.
		G	Veeco Korea Inc.
		G	Veeco Taiwan Inc.
		G	Veeco Instruments (Shanghai) Co. Ltd.
		G	Veeco Metrology Inc.
		G	Nippon Veeco K.K.
		G	Veeco Asia Pte. Ltd.
		G	Veeco Malaysia Sdn. Bhd.
		G	Veeco Instruments GmbH.
		G	Veeco Instruments Limited.
		G	Veeco Instruments S.A.S.
		G	Veeco Instruments B.V.
	20101053	G	Nestle S.A.
		G	Waggin' Train Holdings, LLC.
		G	Waggin' Train Holdings, LLC.
10–SEP–10	20101026	G	Life Technologies Corporation.
		G	Ion Torrent Systems Incorporated.
		G	Ion Torrent Systems Incorporated.
	20101082	G	3M Company.
		G	Francisco Partners II (Cayman), L.P.
		G	Attenti Holdings S.A.
	20101088	G	Kenexa Corporation.
		G	Salary.com.
		G	Salary.com.
	20101091	G	3M Company Cogent, Inc.
		G	Cogent, Inc.
13–SEP–10	20101016	G	Medco Health Solutions, Inc.
		G	United BioSource Corporation.
		G	United BioSource Corporation.
	20101072	G	SkyWest, Inc.
		G	ExpressJet Holdings, Inc.
		G	ExpressJet Holdings, Inc.
14–SEP–10	20101045	G	Windstream Corporation.
		G	Albert E. Cinelli.
		G	Q-Comm Corporation.
	20101073	G	American Securities Partners V, L.P.
		G	Advanced Drainage Systems, Inc.
		G	Advanced Drainage Systems, Inc.
	20101083	G	Marlin Equity III, L.P.
		G	Phoenix Technologies, Ltd.
		G	Phoenix Technologies, Ltd.
	20101085	G	General Atlantic Partners 88, L.P.
		G	Excellere Capital Fund, L.P.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans. No.	ET req status	Party name
		G	Urgent Care Holdings, Inc.
	20101086	G	Kelso Investment Associates VIII, L.P.
		G	LRI Holdings, Inc.
		G	LRI Holdings, Inc.
	20101087	G	Filmyard Holdings, LLC.
		G	Miramax Film NY, LLC.
		G	The Walt Disney Company.
	20101089	G	Green Equity Investors V, L.P.
		G	Prospect Medical Holdings, Inc.
		G	Prospect Medical Holdings, Inc.
	20101090	G	Court Square Capital Partners II, LP.
		G	Fibertech Networks, LLC.
		G	Fibertech Networks, LLC.
	20101092	G	First Reserve Fund XI, L.P.
		G	K-Sea Transportation Partners L.P.
		G	K-Sea Transportation Partners L.P.
	20101094	G	Arbor Investments II, L.P.
		G	FFC Parent Holding Company, LLC.
		G	FFC Parent Holding Company, LLC.
	20101095	G	Deep End Holdings, LLC.
		G	Leslie's Holdings, Inc.
		G	Leslie's Holdings, Inc.
	20101096	G	PricewaterhouseCoopers LLP.
		G	Diamond Management & Technology Consultants, Inc.
		G	Diamond Management & Technology Consultants, Inc.
	20101097	G	Wellspring Capital Partners IV, L.P.
		G	Allen J. Cohn.
		G	Forrest City Grocery Co.
	20101098	G	Wellspring Capital Partners IV, L.P.
		G	David J. Cohn, Settlor o/t David J. Cohn Revocable Trust.
		G	Forrest City Grocery Co.
	20101099	G	New Enterprise Associates 11, L.P.
		G	Tableau Software, Inc.
		G	Tableau Software, Inc.
	20101103	G	Emdeon Inc.
		G	Chamberlin Edmonds Holdings, LLC.
		G	Chamberlin Edmonds & Associates, Inc.
		G	Chamberlin Edmonds Holdings, Inc.
15–SEP–10	20101084	G	Cerberus Institutional Partners, L.P.
		G	GeoEye, Inc.
		G	GeoEye, Inc.
17–SEP–10	20101027	G	Experian plc.
		G	Mighty Net, Inc.
		G	Mighty Net, Inc.
	20101106	G	New Mountain Partners III, L.P.
		G	Stroz Friedberg, Inc.
		G	Stroz Friedberg, Inc.
	20101113	G	Bank of America Corporation.
		G	Unite Private Networks, L.L.C.
		G	Unite Private Networks, L.L.C.
	20101128	G	H.I.G. Bayside Debt & LBO Fund II, L.P.
		G	Dayton-Cox Trust A.
		G	Dent Wizard International Corporation.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, or Renee Chapman, Contact Representative, Federal Trade Commission Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2010–24415 Filed 9–30–10; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–00XX; Docket No. 2010–0002; Sequence 23]

Information Collection; OMB Control No. 3090–00XX; Reporting and Use of Information Concerning Integrity and Performance of Recipients of Grants and Cooperative Agreements

AGENCY: Office of Technology Strategy/Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of request for public comments regarding a new OMB information clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an emergency new information collection requirement regarding the Reporting and Use of Information Concerning Integrity and Performance of Recipients of Grants and Cooperative Agreements.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Reporting and Use of Information Concerning Integrity and Performance of Recipients of Grants and Cooperative Agreements, whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 30, 2010.

ADDRESSES: Submit comments identified by Information Collection 3090–00XX, Reporting and Use of Information Concerning Integrity and Performance of Recipients of Grants and Cooperative Agreements by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting "Information Collection 3090–XXXX, Reporting and Use of Information Concerning Integrity and Performance of Recipients of Grants and Cooperative Agreements" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 3090–XXXX, Reporting and Use of Information Concerning Integrity and Performance of Recipients of Grants and Cooperative Agreements". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 3090–XXXX, Reporting and Use of Information Concerning Integrity and Performance of Recipients of Grants and Cooperative Agreements" on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405. ATTN: Hada Flowers/IC 3090–XXXX.

Instructions: Please submit comments only and cite Information Collection 3090–XXXX, Reporting and Use of Information Concerning Integrity and Performance of Recipients of Grants and Cooperative Agreements, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Miller, Program Analyst, Office of Technology Strategy/Office of Governmentwide Policy, at *jan.miller@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection is necessary in order to comply with section 872 of the Duncan Hunter National Defense Authorization Act of 2009, Public Law 110–417, as amended by Public Law 111–212, hereafter referred to as "the Act." The Act requires GSA to establish and maintain a database of information regarding the integrity and performance of certain entities awarded Federal grants and contracts and use of the information by Federal officials making awards. OMB proposed implementing guidance for grants and cooperative agreements on February 18, 2010 (75 FR 7315). That guidance is in the process of being finalized. The proposed guidance requires appropriate Federal officials to report on terminations of awards due to material failure to comply with award terms and conditions; administrative agreements with entities to resolve suspension or debarment proceedings; and findings that entities were not qualified to receive awards. Through a new award term, each recipient would provide information about certain civil, criminal, and administrative proceedings that reached final disposition within the most recent five-year period and were connected with the award or performance of a Federal or State award. As section 872 requires, an entity also would be able to submit comments to the data system about any information that the system contains about the entity.

B. Annual Reporting Burden

Initial Response

Respondents: 11,500.
Responses per Respondent: 1.
Total Annual Responses: 11,500.
Hours per Response: .1.
Total Response Burden Hours: 1,150.

Additional Response

Respondents: 1,600.
Responses Per Respondent: 2.
Total Annual Responses: 3,200.
Hours Per Response: .5.
Total Response Burden Hours: 1,600.
Recordkeeping Hours: 160,000.
Total Burden Hours: 162,750.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–XXXX, Reporting and Use of Information Concerning Integrity and Performance of Recipients of Grants and Cooperative Agreements, in all correspondence.

Dated: September 24, 2010.

Casey Coleman,

Chief Information Officer.

[FR Doc. 2010–24707 Filed 9–30–10; 8:45 am]

BILLING CODE 6820–WY–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Public Meeting to Solicit Input for a Strategic Plan for Federal Youth Policy

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, DHHS.

ACTION: Notice of meeting.

SUMMARY: The U.S. Department of Health and Human Services, in its role as the Chair of the Interagency Working Group on Youth Programs, is announcing a meeting to solicit input from the public that will inform the

development of a strategic plan for federal youth policy.

DATES: October 14, 2010, from 9 a.m.–1 p.m.

ADDRESSES: The meeting will take place at the Richard Bolling Federal Building at 601 E. 12th Street, Kansas City, MO 644106.

FOR FURTHER INFORMATION CONTACT: Visit the Web site for the Interagency Working Group on Youth Programs at *http://www.FindYouthInfo.gov* for information on how to register, or contact the Interagency Working Group on Youth Programs help desk, by telephone at 1–877–231–7843 [**Note:** this is a toll-free telephone number], or by e-mail at *FindYouthInfo@air.org.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 11, 2009, the Congress passed the Omnibus Appropriations Act, 2009 (Pub. L. 111–8). The House Appropriations Committee Print, Division F—Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations included language providing $1,000,000 for the Interagency Working Group on Youth Programs, and directed that the funds be used to solicit input from young people, State children's cabinet directors, and non-profit organizations on youth programs and policies; develop an overarching strategic plan for Federal youth policy; and prepare recommendations to improve the coordination, effectiveness, and efficiency of programs affecting youth.

The Interagency Working Group on Youth Programs is comprised of staff from twelve Federal agencies that support programs and services that focus on youth: The U.S. Department of Agriculture; U.S. Department of Commerce; U.S. Department of Defense; U.S. Department of Education; U.S. Department of Health and Human Services (Chair); U.S. Department of Housing and Urban Development; U.S. Department of Justice (Vice-Chair); U.S. Department of Labor; U.S. Department of the Interior; U.S. Department of Transportation; Corporation for National and Community Service; and Office of National Drug Control Policy.

The Working Group seeks to promote achievement of positive results for at-risk youth through the following activities:

- Promoting enhanced collaboration at the Federal, state, and local levels, including with faith-based and other community organizations, as well as among families, schools and communities, in order to leverage existing resources and improve outcomes;
- Disseminating information about critical resources, including evidence-based programs, to assist interested citizens and decision-makers, particularly at the community level, to plan, implement, and participate in effective strategies for at-risk youth;
- Developing an overarching strategic plan for federal youth policy, as well as recommendations for improving the coordination, effectiveness and efficiency of youth programs, using input from community stakeholders, including youth; and
- Producing a Federal Web site, *FindYouthInfo.gov*, to promote effective community-based efforts to reduce the factors that put youth at risk and to provide high-quality services to at-risk youth.

II. Registration, Security, Building, and Parking Guidelines

For security purposes, members of the public who wish to attend the meeting must pre-register on-line at *http://www.findyouthinfo.gov* no later than October 7, 2010. Should problems arise with Web registration, call the help desk at 1–877–231–7843 or send a request to register for the meeting to *FindYouthInfo@air.org.* To register, complete the online registration form, which will ask for your name, title, organization or other affiliation, full address and phone, fax, and e-mail information or email this information to *FindYouthInfo@air.org.* Additional identification documents may be required. The meetings are held in a Federal government building; therefore, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. Space is limited. In order to gain access to the building and grounds, participants must bring government-issued photo identification as well as their pre-registration confirmation.

Authority: Division F, Pub. L. 111–8; E.O. 13459, 73 FR 8003, February 12, 2008.

Dated: September 20, 2010.

Sherry Glied,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 2010–24677 Filed 9–30–10; 8:45 am]

BILLING CODE 4154–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office for Civil Rights; Statement of Organization, Functions, and Delegations of Authority

The Office for Civil Rights (OCR) has reorganized to better meet its mission by consolidating its administrative and programmatic operations into three focal areas of responsibility: planning and administrative operations, programs and policy, and regional operations.

Part A, Office of the Secretary, Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Chapter AT, Office for Civil Rights (OCR), as last amended at 69 FR 48243–46, dated August 9, 2004, is amended to reflect the restructuring of the Office for Civil Rights (OCR) as follows:

I. Under Chapter AT, Office for Civil Rights (OCR), delete "Section AT.10 Organization" in its entirety and replace with the following:

Section AT.10 Organization. The Office for Civil Rights (OCR) is under the direction of the Director of the Office for Civil Rights (Director) who reports to the Secretary. OCR consists of the following components:

A. Immediate Office (AT)

B. Office of the Deputy Director for Planning and Business Administration Management (ATA)

C. Office of the Deputy Director for Programs and Policy (ATB)

D. Office of the Deputy Director for Enforcement and Regional Operations (ATC)

II. Under Chapter AT, Office for Civil Rights (OCR), delete "Section AT.20 Functions" in its entirety and replace with the following:

AT.20 Functions

A. Immediate Office (AT). As the Department's chief officer and adviser to the Secretary for the enforcement of civil rights and privacy and security rules, including the HIPAA Privacy and Security Rules and the Patient Safety and Quality Improvement Act (PSQIA) patient safety protections, the Director provides leadership, priorities, guidance and supervision to and is responsible for overall policy, programs, and operations of OCR. The Director also is responsible for representing the Secretary and the Department, in coordination and consultation with the Assistant Secretary for Legislation, before Congress and the Executive Office of the President on matters

relating to civil rights and the privacy and security rules and for liaising with other Federal departments and agencies charged with civil rights and privacy and security rules enforcement and compliance responsibilities.

B. Office of the Deputy Director for Planning and Business *Administration Management (ATA).* The Office of the Deputy Director for Planning and Business Administration Management is headed by the Deputy Director for Planning and Business Administration Management, who reports to the Director. The Office of the Deputy Director for Planning and Business Administration Management is responsible for performing the activities that support OCR's numerous offices and programs. These include: (1) Strategic planning and accountability; (2) management operations and policy; (3) budget planning, formulation and execution; (4) performance analysis and results management; (5) human resources activities, including position management, workforce planning, employee training and development, employee performance management and awards, etc.; (6) resource planning; (7) executive secretariat and administrative support; (8) Information Technologies and Systems; and (9) collaboration with the Deputy Director for Programs and Policy and the Deputy Director for Enforcement and Regional Operations on OCR's policy and program development. The Deputy Director for Planning and Business Administration Management also serves as the principal advisor to the Director on all matters pertaining to management and accountability operations of OCR in order to accomplish the Department's and OCR's goals and program objectives.

C. Office of the Deputy Director for Programs and Policy (ATB). The Office of the Deputy Director for Programs and Policy is headed by the Deputy Director for Programs & Policy, who reports to the Director. Responsibilities of the Deputy Director for Programs and Policy include: (1) Advising the Secretary and the Director on all matters pertaining to civil rights and privacy and security rules issues to accomplish the Department's and OCR's goals and program objectives; (2) developing and formulating policy and programs for the privacy and security of health information, such as under the HIPAA Privacy and Security Rules and PSQIA's patient safety protections, and for civil rights authorities compliance and enforcement, in collaboration with the Deputy Director for Planning and Business Administration Management and the Deputy Director for Enforcement and Regional Operations; (3) assisting implementation of civil rights and privacy and security rules compliance and enforcement programs; and (4) providing program support to OCR's programs and policy components, including development and implementation of training curricula and programs for staff and formulation of negotiation, enforcement and litigation strategies for both civil rights and privacy and security rules issues.

D. Office of the Deputy Director for Enforcement and Regional Operations (ATC). The Office of the Deputy Director for Enforcement and Regional Operations is headed by the Deputy Director for Enforcement and Regional Operations, who reports to the Director. OCR's Regional Managers report to the Deputy Director for Enforcement and Regional Operations. Responsibilities of the Deputy Director for Enforcement and Regional Operations include: (1) Providing leadership, oversight, supervision and coordination to a highly experienced team of Health Information Privacy and Security specialists to handle special assignments and compliance and enforcement actions that are unusually complex, sensitive, or of critical interest to HHS' senior management; (2) leading regional management operations; (3) disseminating and overseeing implementation of policies and programs in OCR's ten Regional Offices to ensure consistent application and to ensure achievement of program results and program efficiency objectives; and (4) participating in OCR's policy and program development in collaboration with the Deputy Director for Programs and Policy and the Deputy Director for Planning and Business Administration Management. The Deputy Director for Enforcement and Regional Operations also serves as the principal advisor to the Director on all matters pertaining to management and accountability operations of OCR's Regional Offices in order to accomplish the Department's and OCR's goals and program objectives.

VII. Delegation of Authority. Pending further delegation, directives or orders by the Secretary or by the Director of the Office for Civil Rights, all delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegations, provided they are consistent with this reorganization.

Dated: September 23, 2010.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–24678 Filed 9–30–10; 8:45 am]

BILLING CODE 4110–60–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: 2011 Opioid Treatment Program (OTP) Supplement Survey—NEW

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Behavioral Health Statistics and Quality (CBHSQ) (formerly the Office of Applied Studies—OAS), in conjunction with the Center for Substance Abuse Treatment (CSAT), will conduct a facility-level census survey of opioid treatment programs (OTPs). Approximately 1,200 substance abuse treatment facilities identified by SAMHSA as being certified OTPs will make up the survey universe. In order to realize efficiencies in cost and data analysis, the survey will be conducted in conjunction with the 2011 National Survey of Substance Abuse Treatment Facilities (N–SSATS,

OMB No. 0930–0106). However, a separate OMB approval will be requested for the OTP survey.

The OTP survey will use the same point prevalence date as the N–SSATS and will offer the same response options (paper questionnaire, online via the Internet, or by telephone with an interviewer). The information collected will include detailed information on OTP client characteristics and OTP facility operations, information that is not currently obtained by the N–SSATS or other federally-sponsored surveys.

The findings will supplement information collected by the annual N–SSATS and will be published by SAMHSA in a separate report on Opioid Treatment Programs. Survey data will also be used to update SAMHSA's "Medication-Assisted Treatment for Opioid Addiction State Profiles." These publications will be used by the Federal government, State and local governments, the U.S. Congress, researchers, and other health care professionals. The following Table summarizes the estimated response burden for the survey.

ESTIMATED TOTAL RESPONSE BURDEN FOR THE 2011 OTP SURVEY

	Number of respondents	Responses per respondent	Average hours per response	Total hour burden
Certified OTP Facilities—2011 Survey	1,200	1	.83	996

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 8–1099, One Choke Cherry Road, Rockville, MD 20857 *AND* e-mail a copy to *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Dated: September 23, 2010.

Elaine Parry,

Director, Office of Management, Technology, and Operations.

[FR Doc. 2010–24505 Filed 9–30–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–367]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506I(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approval collection; *Title of Information Collection:* Medicaid Drug Program Monthly and Quarterly Drug Reporting Format; *Use:* In order for payment to be made under Medicaid, the drug labeler must complete and sign a drug rebate agreement and fill in the information on the related documents. The Patient Protection and Affordable Care Act of 2010 added two new data elements to potentially be reported by manufacturers. In addition, the Food and Drug Administration has informed us that "DESI" is now obsolete; therefore, we are replacing it with a more appropriate "rebate eligibility code" that will more accurately describe how a product is eligible for coverage under the drug rebate program. *Form Number:* CMS–367 (OMB#: 0938–0578); *Frequency:* Monthly and Quarterly; Affected *Public:* Private Sector: Business or other for-profits; Number *of Respondents:* 580; Total *Annual Responses:* 9,280; *Total Annual Hours:* 137,344 (For policy questions regarding this collection contact Gail Sexton at 410–786–4583. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on November 1, 2010. OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, E-mail: *OIRA_submission@omb.eop.gov.*

Dated: September 24, 2010.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–24477 Filed 9–30–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0488]

Enforcement Action Plan for Promotion and Advertising Restrictions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Enforcement Action Plan for Promotion and Advertising Restrictions" (Enforcement Action Plan), which describes FDA's plan to enforce the restrictions on promotion and advertising of menthol and other cigarettes to youth and other requirements relating to tobacco product promotion and advertising established by the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act). As described in the Enforcement Action Plan, FDA intends to use a multipronged approach that includes surveillance, inspections, enforcement actions, and education to enforce and facilitate compliance with these restrictions and requirements. The Enforcement Action Plan includes

provisions designed to ensure enforcement of the restrictions on promotion and advertising of menthol and other cigarettes to youth in minority communities. The Enforcement Action Plan will serve to satisfy FDA's obligation under the Tobacco Control Act. As described in this notice, FDA is publishing the Enforcement Action Plan on its Web site and providing copies upon request.

ADDRESSES: Submit written requests for single copies of the Enforcement Action Plan to the Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the document may be sent. Single copies may also be requested by calling 1–877–287–1373. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the Enforcement Action Plan.

FOR FURTHER INFORMATION CONTACT: Office of Compliance and Enforcement, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 877–287–1373, *ctpcompliance@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Tobacco Control Act (Public Law 111–31, 123 Stat. 1776) was enacted on June 22, 2009, providing FDA with the authority to regulate tobacco products in order to protect the public health generally, and to prevent and reduce tobacco use by minors. In enacting the Tobacco Control Act, Congress found, among other things, that the use of tobacco products by children is a pediatric disease and virtually all new users of tobacco products are under the minimum legal age to purchase such products (sections 2(1) and (4) of the Tobacco Control Act). Advertising, marketing, and promotion of tobacco products have been "especially directed to attract young persons to use tobacco products, and these efforts have resulted in increased use of such products by youth" (section 2(15) of the Tobacco Control Act). Additionally, the rates of tobacco use and tobacco-related mortality are higher among certain racial and ethnic groups, including American Indian and Alaska Natives, Asian men and African-American men. As the National Cancer Institute (NCI) noted in Monograph 19, "[t]argeting of various population groups—including * * * specific racial and ethnic populations * * * has been strategically important to the tobacco industry."[1]

Section 105(a) of the Tobacco Control Act (21 U.S.C. 387f–1(a)) requires the Secretary of Health and Human Services (the Secretary) to develop and publish an action plan to enforce restrictions on promotion and advertising of menthol and other cigarettes to youth, including those provided in the final rule entitled "Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents" (75 FR 13225, March 19, 2010; 21 CFR part 1140). This action plan must also include provisions designed to ensure enforcement of the restrictions, including those provided in "Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents," on the promotion and advertising of menthol and other cigarettes to youth in minority communities.

Section 105(a) of the Tobacco Control Act also requires that the Secretary develop the Enforcement Action Plan in consultation with public health organizations and other stakeholders with demonstrated expertise and experience in serving minority communities. FDA created two dockets to solicit information, data, and views from all interested persons, including public health organizations and other stakeholders with demonstrated expertise and experience in serving minority communities, about the advertising and promotion of menthol and other cigarettes to youth in general, and to youth in minority communities. In the first docket, which was for the document entitled "Tobacco Product Advertising and Promotion to Youth and Racial and Ethnic Minority Populations; Request for Comments" (Docket No. FDA–2010–N–0207; 75 FR 29776, May 27, 2010), FDA requested information on ways in which the advertising and promotion of tobacco products may affect tobacco use among racial and ethnic minority populations; input on designing an action plan regarding enforcement of the regulations on advertising and promotion of menthol and other cigarettes to youth generally and to youth in minority communities; and information that will assist the Tobacco Products Scientific Advisory Committee to better understand, report on, and make recommendations regarding the impact of the use of menthol in cigarettes among children, African-Americans, Hispanics, and other racial and ethnic minority communities.

FDA also established a docket and published an announcement for a meeting entitled "Web-Based Public Meeting to Discuss Issues Related to the Development of an Enforcement Action Plan; Request for Data, Information, and Views" (Docket No. FDA–2010–N–0295; 75 FR 34750, June 18, 2010). FDA held the Web-based public meeting on June 30, 2010, to seek participation, information, and views from all interested parties, including but not limited to, public health organizations, minority community groups and leaders, other stakeholders with demonstrated expertise and experience in serving minority communities, groups serving youth, patient groups, advertising agencies, and industry. In addition to general information, FDA sought information on specific topics relating to the restrictions on promotion and advertising of menthol and other cigarettes to youth, including youth in minority communities. FDA also encouraged stakeholders and other interested parties to submit data, information, and views on these topics as well as other pertinent information to the relevant docket.

In developing the Enforcement Action Plan, FDA considered the available information, including the data, information, and views presented at the Web-based public meeting and provided in electronic and written materials submitted to FDA by public health organizations, other stakeholders with demonstrated expertise and experience in serving minority communities, and other parties.

II. Electronic Access

An electronic version of the Enforcement Action Plan is available on the Internet at *http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/default.htm*.

Dated: September 24, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–24685 Filed 9–30–10; 8:45 am]

BILLING CODE 4160–01–S

[1] National Cancer Institute, *The Role of the Media in Promoting and Reducing Tobacco Use*, Tobacco Control Monograph No. 19, Bethesda, MD, U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute, NIH Pub. No. 07–6242, June 2008, p. 11, available at *http://www.cancercontrol.cancer.gov/tcrb/monographs/19/index.html*.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Inhibitors of 6-hydroxymethyl-7,8-dihydropterin Pyrophosphokinase as Novel Antibiotics

Description of Invention: The invention offered for licensing describes and claims novel inhibitors of 6-hydroxymethyl-7,8-dihydropterin pyrophosphokinase (HPPK), a key enzyme in the folate biosynthetic pathway which is essential for microorganisms but absent in mammals. These novel inhibitors are based on linked purine pterin compounds. They can disrupt the folate biosynthesis of bacteria and thus can find utility as potential antimicrobials. Antibiotics based on these lead molecules can be specifically designed and synthesized to serve as broad-spectrum or narrow-spectrum antibiotics. None of the currently established antibiotics target HPPK.

Applications:

- Antimicrobial agents.
- Use in anti-bioterrorism.

Advantages:

- Potential as broad-spectrum or narrow-spectrum antibiotics.
- The antibiotics of present invention target a new biological pathway that has not been targeted by existing antibiotics, and thus circumvent issues related to drug resistance.

Inventors: Genbin Shi, Gary Shaw, Xinhua Ji (NCI).

Patent Status: U.S. Provisional Application No. 61/356,213 filed 18 Jun 2010 (HHS Reference No. E–170–2010/0–US–01).

Relevant Publications:

1. Blaszczyk J, Shi G, Li Y, Yan H, Ji X. Reaction trajectory of pyrophosphoryl transfer catalyzed by 6-hydroxymethyl-7,8-dihydropterin pyrophosphokinase. Structure 2004 Mar;12(3):467–475. [PubMed: 15016362].

2. Blaszczyk J, Shi G, Yan H, Ji X. Catalytic center assembly of HPPK as revealed by the crystal structure of a ternary complex at 1.25Å resolution. Structure 2000 Oct 15; 8(10):1049–1058. [PubMed: 11080626].

3. Wood HCS. 1975. Specific inhibition of dihydrofolate biosynthesis—a new approach to chemotherapy. Chemistry and Biology of Pteridines, W. Pfleiderer, ed. (Berlin-New York: Walter de Gruyter).

Licensing Status: Available for licensing.

Licensing Contacts:

- Uri Reichman, Ph.D., MBA; 301–435–4616; *UR7a@nih.gov.*
- John Stansberry, Ph.D.; 301–435–5236; *js852e@nih.gov.*

C*ollaborative Research Opportunity:* The National Cancer Institute, Biomolecular Structure Section, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the inhibitors of HPPK as novel antibiotics. Please contact John Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Compositions and Methods for the Treatment of Cancer

Description of Invention: Cancer is the second leading cause of human death next to coronary disease in the United States. Worldwide, millions of people die from cancer every year. In the United States alone, as reported by the American Cancer Society, cancer causes the death of well over a half-million people annually, with over 1.2 million new cases diagnosed per year. While deaths from heart disease have been declining significantly, those resulting from cancer generally are on the rise. Cancer is soon predicted to become the leading cause of death in the United States.

This application claims methods for inducing an immune response to a tumor. These methods include administering a therapeutically effective amount of apoptotic tumor cells conjugated to a K-type CpG oligodeoxynucleotide (ODN) to a subject. Methods for treating a tumor in a subject are also claimed in this application. These methods include administering a therapeutically effective amount of apoptotic tumor cells conjugated to a K-type CpG oligodeoxynucleotide (ODN) to a subject. More specifically, the tumor cells may be autologous, and the tumor may be a lymphoma, cervical cancer, prostate cancer, breast cancer, colon cancer, or a lung cancer.

Applications:

- Vaccines for the prevention of cancer and other indications
- Use of CpG oligonucleotides for prophylaxis and/or therapy

Advantages:

- Novel vaccine candidates
- Increased immunogenicity

Development Status: Preclinical studies have been conducted by the inventors.

Inventors: Dennis M. Klinman and Hidekazu Shirota (NCI).

Patent Status: U.S. Provisional Application No. 61/309,802 filed 02 Mar 2010 (HHS Reference No. E–266–2009/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Peter A. Soukas; 301–435–4646; *soukasp@mail.nih.gov.*

Collaborative Research Opportunity: The Center for Cancer Research, Laboratory of Experimental Immunology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: September 27, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–24679 Filed 9–30–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–N–0270]

Medical Device User Fee and Modernization Act; Notice to Public of Web site Location of Fiscal Year 2011 Proposed Guidance Development

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the Web site location where it will post a list of guidance documents the Center for Devices and Radiological Health (CDRH) is considering for development. In addition, FDA has established a docket where stakeholders may provide comments and/or draft language for those topics as well as suggestions for new or different guidances.

DATES: Submit either written or electronic comments at any time.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Nancy Pirt, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. WO66, rm. 4438, Silver Spring, MD 20993, 301–796–5739.

SUPPLEMENTARY INFORMATION:

I. Background

During negotiations over the reauthorization of the Medical Device User Fee and Modernization Act (MDUFMA), FDA agreed, in return for additional funding from industry, to meet a variety of quantitative and qualitative goals intended to help get safe and effective medical devices to market more quickly. These commitments include annually posting a list of guidance documents that CDRH is considering for development and providing stakeholders an opportunity to provide comments and/or draft language for those topics, or suggestions for new or different guidances. This notice announces the Web site location of the list of guidances on which CDRH is intending to work over the next Fiscal Year (FY). We note that the agency is not required to issue every guidance on the list, nor is it precluded from issuing guidance documents that are not on the list. The list includes topics that currently have no guidance associated with them, topics where updated guidance may be helpful, and topics for which CDRH has already issued level 1 drafts that may be finalized following review of public comments. We will consider stakeholder comments as we prioritize our guidance efforts.

FDA and CDRH priorities are subject to change at any time. Topics on this and past guidance priority lists may be removed or modified based on current priorities. We also note that CDRH's experience over the years has shown that there are many reasons CDRH staff does not complete the entire annual agenda of guidances it undertakes. Staff are frequently diverted from guidance development to other activities, including review of premarket submissions or postmarket problems. In addition, the Center is required each year to issue a number of guidances that it cannot anticipate at the time the annual list is generated. These may involve newly identified public health issues as well as special control guidance documents for de novo classifications of devices. It will be helpful, therefore, to receive comments that indicate the relative priority of different guidance topics to interested stakeholders.

Through feedback from stakeholders, including draft language for guidance documents, CDRH expects to be able to better prioritize and more efficiently draft guidances that will be useful to industry and other stakeholders. This will be the fourth annual list CDRH has posted. FDA intends to update the list each year.

FDA invites interested persons to submit comments on any or all of the guidance documents on the list. FDA has established a docket where comments about the FY 2011 list, draft language for guidance documents on those topics, and suggestions for new or different guidances may be submitted (see **ADDRESSES**). FDA believes this docket is an important tool for receiving information from interested parties and for sharing this information with the public. Similar information about planned guidance development is included in the annual agency-wide notice issued by FDA under its good guidance practices (21 CFR 10.115(f)(5)). This CDRH list, however, will be focused exclusively on device-related guidances and will be made available on FDA's Web site prior to the beginning of each FY from 2008 to 2012.

To access the list of the guidance documents CDRH is considering for development in FY 2011, visit the FDA Web site *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Overview/MedicalDeviceUserFeeandModernizationActMDUFMA/ucm109196.htm*.

II. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 28, 2010.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2010–24669 Filed 9–30–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Centers for Disease Control and Prevention

Board of Scientific Counselors (BSC), National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (NCEH/ATSDR)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), CDC and NCEH/ATSDR announces the following committee meeting:

TIMES AND DATES:
8:30 a.m.–4:15 p.m., October 21, 2010.
8:30 a.m.–12 p.m., October 22, 2010.

PLACE: CDC, 4770 Buford Highway, Atlanta, Georgia 30341.

STATUS: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

PURPOSE: The Secretary, Department of Health and Human Services (HHS) and by delegation, the Director, CDC and Administrator, NCEH/ATSDR, are authorized under Section 301 (42 U.S.C. 241) and Section 311 (42 U.S.C. 243) of the Public Health Service Act, as amended, to: (1) Conduct, encourage, cooperate with, and assist other appropriate public authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments; (2) assist States and their political subdivisions in the prevention of infectious diseases and other preventable conditions and in the promotion of health and well being; and (3) train State and local personnel in health work. The BSC, NCEH/ATSDR provides advice and guidance to the Secretary, HHS; the Director, CDC and Administrator, ATSDR; and the Director, NCEH/ATSDR, regarding program goals, objectives, strategies, and priorities in fulfillment of the agency's

mission to protect and promote people's health. The board provides advice and guidance that will assist NCEH/ATSDR in ensuring scientific quality, timeliness, utility, and dissemination of results. The board also provides guidance to help NCEH/ATSDR work more efficiently and effectively with its various constituents and to fulfill its mission in protecting America's health.

MATTERS TO BE DISCUSSED: The agenda items for the BSC Meeting on October 21–22, 2010 will include presentations from the Division of Environmental Hazards and Health Effects to the BSC on Air Pollution and Respiratory Health, Environmental Health Tracking, and Climate Control; a discussion of ATSDR Funded State Reports; an update on Amyotrophic Lateral Sclerosis (ALS) Registry; Director Updates on ATSDR; Director Updates on NCEH and Program Response to BSC Program Peer Review of the Division of Laboratory Sciences.

Agenda items are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: The public comment period is scheduled from 3:45 p.m. until 4 p.m. October 21, 2010.

CONTACT PERSON FOR MORE INFORMATION: Sandra Malcom, Committee Management Specialist, NCEH/ATSDR, CDC, 4770 Buford Highway, Mail Stop F–61, Chamblee, Georgia 30345; telephone 770/488–0575, fax 770/488–3377; E-mail: *smalcom@cdc.gov.* The deadline for notification of attendance is October 15, 2010.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and NCEH/ATSDR.

Dated: September 27, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–24671 Filed 9–30–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group, Biostatistical Methods and Research Design Study Section.

Date: October 21, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Mark Hopkins Hotel, 999 California Street, San Francisco, CA 94108.

Contact Person: Tomas Drgon, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301–435–1017, *tdrgon@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Enabling Bioanalytical and Imaging Technologies.

Date: October 29, 2010.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Allen Richon, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, 301–435–2902, *allen.richon@nih.hhs.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Topics in Microbial Diseases.

Date: November 1–2, 2010.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Liangbiao Zheng, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, 301–402–5671, *zhengli@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Diabetes, Obesity and Endocrine Disorders.

Date: November 2–3, 2010.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Krish Krishnan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Physiology and Pathobiology of Cardiovascular and Respiratory Systems.

Date: November 18–19, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont San Francisco, 950 Mason Street, San Francisco, CA 94108.

Contact Person: Abdelouahab Aitouche, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4222, MSC 7812, Bethesda, MD 20892, 301–435–2365, *aitouchea@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 27, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–24680 Filed 9–30–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Privacy Act of 1974; Report of an Altered System of Records

AGENCY: Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA).

ACTION: Notice of an Altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, the Health Resources and Services Administration (HRSA) is publishing a notice to alter the system of records for the National Practitioner Data Bank for Adverse Information on Physicians and other Health Care Practitioners, HHS/HRSA/BHPR. The SORN 09–15–0054 was last published March 17, 1997. In accordance with the Health Care Quality Improvement Act of 1986, as amended, title IV of Public Law 99–660 (42 U.S.C. 11101 *et seq.*) authorizes the Secretary to establish a National Practitioner Data Bank (NPDB) to collect and release certain information relating to the professional competence and conduct of physicians, dentists, and other health care practitioners. This information is releasable only to specific entities described in the SORN. It requires the

maintenance of records such as medical malpractice payments, adverse licensure and clinical privilege actions, disciplinary actions taken by Boards of Medical Examiners, and professional review actions taken by health care entities against physicians, dentists, and other healthcare practitioners. Section 1921 of the Social Security Act, as amended by Section 5(b) of the Medicare and Medicaid Patient and Program Protection Act of 1987 (MMPPPA), and as amended by the Omnibus Budget Reconciliation Act of 1990 (OBRA), expands reporting to the NPDB to authorize maintenance of records of adverse licensure actions and negative actions or findings taken by a State licensing authority, peer review organization, or private accreditation entity against all healthcare practitioners or healthcare entities.

The purpose of these alterations is to update: (1) System location; (2) Category of individuals covered by the system; (3) Category of records in the system; (4) Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system; (5) Notification procedure; (6) Record access procedures; (7) Contesting record procedures; and (8) Routine uses for the contractors accessing the system. Also, HRSA is proposing an additional routine use, number 17 (Responding to a breach of the security or confidentiality of information) for this system of records. The physical NPDB system which includes hardware and software will not be altered.

DATES: HRSA filed an altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on 6/13/10. To ensure all parties have adequate time in which to comment, the altered systems including the routine uses, will become effective 30 days from the publication of the notice or 40 days from the date it was submitted to OMB and Congress, whichever is later, unless HRSA receives comments that require alterations to this notice.

ADDRESSES: Please address comments to Associate Administrator, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8–103, Rockville, Maryland 20857. Comments received will be available for inspection at this same address from 9 a.m. to 3 p.m. (Eastern Standard Time Zone), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Director, Division of Practitioner Data Banks, Bureau of Health Professions, 5600 Fishers Lane, Room 8–103, Rockville, Maryland 20857; Telephone: (301) 443–2300. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Health Resources and Services Administration is proposing a change to: (1) System location; (2) Category of individuals covered by the system; (3) Category of records in the system; (4) Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system; (5) Notification procedure; (6) Record access procedures; (7) Contesting record procedures; and (8) Routine uses for the contractors accessing the system.

The above listed items are being modified to reflect changes in the business process and the addition of new information pursuant to Section 1921 of the Social Security Act. The specific changes are as follows: (1) System location reflects a move to new secure facility; (2) individual profession covered by the system is a new category; (3) record in the system changed from narrative to list format; (4) policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system to reflect changes in business practice and procedure; (5) notification procedures demonstrate the method used to notify a subject of a report; (6) record access procedures list the new Domain Name (DN); (7) contesting record procedures reflect a change from Health Care Financing Administration (HCFA) to Centers for Medicare and Medicaid Services (CMS); and (8) routine uses allow the contractor to perform their functions as it relates to the system.

HRSA is also proposing an additional routine use, number 17, to permit disclosures to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

Dated: September 16, 2010.

Mary K. Wakefield,

Administrator.

System Number: 09–15–0054.

SYSTEM NAME:

National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners, HHS/HRSA/BHPR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The contractor, SRA International, Inc., operates and maintains an internet-based system through a technical service contract for the Division of Practitioner Data Banks, Bureau of Health Professions, Health Resources and Services Administration. SRA's physical address is 4350 Fair Lakes Courts, Fairfax Virginia 22033–4233. This system is located at the AT&T Data Center, a secure facility; the street address will not be disclosed for security reasons.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system collects and maintains information in accordance with 5 U.S.C. 552a of the Privacy Act of 1974, as follows:

(1) Medical malpractice payment reports for all health care practitioners, *i.e.* physicians, dentists, nurses, optometrists, pharmacists, and podiatrists, etc.; (2) adverse clinical privilege action reports for physicians, dentists, and other healthcare practitioners who may have medical staff privileges either restricted or surrendered; (3) adverse licensure action reports for physicians, dentists and other healthcare practitioners and healthcare entities such as a suspension or revocation; (4) adverse professional society membership action reports for physicians and dentists; (5) reports of the results of formal proceedings by a State licensing authority, peer review organization, or private accreditation organization concluded against a health care practitioner or entity; (6) reports of Medicare/Medicaid exclusions of all healthcare practitioners; and (7) reports of adverse actions taken against the U.S. Drug Enforcement Administration (DEA) registration of all healthcare practitioners.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system collects and maintains categories of information concerning healthcare practitioners such as:

1. Name.
2. Work address.
3. Home address.
4. Social Security number.
5. Date of birth.
6. Name of each professional school attended and year of graduation.
7. Professional license(s) number.
8. Field of licensure.
9. Name of the State or Territory in which the license is held.

10. DEA registration numbers.
11. CMS unique practitioner identification number (for exclusions only).
12. Names of each hospital with which the practitioner is affiliated.
13. Name and address of the entity making the payment.
14. Name, title, and telephone number of the official responsible for submitting the report on behalf of the entity.
15. Payment information including the date and amount of payment and whether it is for a judgment or settlement.
16. Date action occurred.
17. Acts or omissions upon which the action or claim was based.
18. Description of the action/omissions and injuries or illnesses upon which the action or claim was based.
19. Description of the Board action, the date of action and its effective date.
20. Classification of the action/omission per reporting code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Health Care Quality Improvement Act of 1986, as amended, title IV of Public Law 99–660 [42 U.S.C. 11101 *et seq.*], authorizes the Secretary to establish a National Practitioner Data Bank (NPDB) to collect and release certain information relating to the professional competence and conduct of physicians, dentists, and other health care practitioners. This information is released only to specific entities described below. It requires the maintenance of records such as medical malpractice payments, adverse licensure and clinical privilege actions, disciplinary actions taken by Boards of Medical Examiners, and professional review actions taken by health care entities against physicians, dentists, and other healthcare practitioners. Section 1921 of the Social Security Act, as amended by Section 5(b) of the Medicare and Medicaid Patient and Program Protection Act of 1987 (MMPPPA), and as amended by the Omnibus Budget Reconciliation Act of 1990 (OBRA), expands reporting to the NPDB to authorize maintenance of records of adverse licensure actions and the results of formal proceedings by a State licensing authority, peer review organization, or private accreditation entity against all healthcare practitioners or healthcare entities.

PURPOSE(S):

The purpose of the system is to: (1) Receive information such as adverse licensure actions on all healthcare practitioners or entities, clinical privileges and professional society membership actions on physicians and dentists based on professional competence and conduct, medical malpractice payment history on all health care practitioners, as well as the results of formal proceedings by a State authority, peer review organization or private accreditation organization concluded against any health care practitioner or entity; (2) store such reports so that future queriers may have access to pertinent information regarding the review of a health care practitioner and/or a healthcare entity in their process of making important decisions related to the delivery of health care services; and (3) disseminate such data to entities that qualify to receive the reports under the governing statutes as authorized by the Health Care Quality Improvement Act of 1986 and Section 1921 of the Social Security Act to protect the public from unfit practitioners from providing patient care.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information shall be disclosed to:

1. Hospitals requesting information on adverse licensure actions, medical malpractice payments or exclusions from Medicare and Medicaid programs taken against all licensed healthcare practitioners such as physicians, dentists, nurses, podiatrists, chiropractors, and psychologists, among many. The information is accessible to both public and private sector hospitals who can request information concerning a physician, dentist or other health care practitioner who is on its medical staff (courtesy or otherwise) or who has clinical privileges at the hospital, for the purpose of: (a) Screening the professional qualifications of individuals who apply for staff positions or clinical privileges at the hospital; and (b) meeting the requirements of the Health Care Quality Improvement Act of 1986, which prescribes that a hospital must query the Data Bank once every 2 years regarding all individuals on its medical staff or who hold clinical privileges.

2. Other health care entities, as defined in 45 CFR 60.3, to which a physician, dentist or other health care practitioner has applied for clinical privileges or appointment to the medical staff or who has entered or may be entering an employment or affiliation relationship. The purpose of these disclosures is to identify individuals whose professional conduct may be unsatisfactory.

3. A health care entity with respect to professional review activity. The purpose of these disclosures is to aid health care entities in the conduct of professional review activities, such as those involving determinations of whether a physician, dentist, or other health care practitioner may be granted membership in a professional society; the conditions of such membership, or of changes to such membership; and ongoing professional review activities conducted by a health care entity which provides health care services, of the professional performance or conduct of a physician, dentist, or other health care practitioner.

4. A State healthcare practitioner and/or entity licensing or certification authority can request information expanded by Section 1921 of the Social Security Act in conducting a review of all healthcare practitioners or health entities. A State healthcare practitioner and entity licensing or certification authority may also request information when making licensure determinations about healthcare practitioners and entities. The purpose of these disclosures is to aid the board or certification authority in meeting its responsibility to protect the health of the population in its jurisdiction, by identifying individuals whose professional performance or conduct may be unsatisfactory.

5. Federal and State health care programs (and their contractors) can request information reported under Section 1921 of the Social Security Act. The purpose of these disclosures is to aid Federal and State health programs to ensure the integrity and professional competence of affiliated health care practitioners and uncovering information needed to make appropriate decisions in the delivery of healthcare.

6. State Medicaid Fraud Control Units (MFCUs) can request information reported under Section 1921 of the Social Security Act to assist with investigating fraud and prosecution of healthcare practitioners and providers in the administration of the Medicaid programs.

7. U.S. Comptroller General can request information reported under Section 1921 of the Social Security Act to assist in determining the fitness of individuals to provide healthcare services, and protect the health and safety of individuals receiving health care through programs who employ these individuals.

8. U.S. Attorney General and other law enforcement agencies can request information reported under Section 1921 of the Social Security Act to assist with healthcare investigations involving healthcare practitioners and healthcare entities. The purpose of the disclosure

would assist in determining the fitness of individuals to provide healthcare services, and protect the health and safety of individuals receiving health care through programs who employ these individuals.

9. Utilization and quality control Peer Review Organizations and those entities which are under contract with the CMS can request information reported under Section 1921 of the Social Security Act to protect and improve the quality of care for Medicare beneficiaries when performing quality of care reviews and other related activities.

10. A physician, dentist, or other health care practitioner can request information concerning himself or herself.

11. An entity that has been reported on may query the system to receive information concerning itself.

12. A person or entity can request statistical information, in a form which does not permit the identification of any individual or entity. An example of this disclosure involves researchers who may use statistical information to identify the total number of nurses with adverse licensure actions in a specific State.

13. An attorney, or individual representing himself or herself, who has filed a medical malpractice action or claim in a State or Federal court or other adjudicative body against a hospital, and who requests information regarding a specific physician, dentist, or other health care practitioner who is also named in the action or claim provided that: (a) This information will be disclosed only upon the submission of evidence that the hospital failed to request information from the Data Bank as required by law; and (b) the information will be used solely with respect to litigation resulting from the action or claim against the hospital. The purpose of these disclosures is to permit an attorney (or a person representing himself or herself in a medical malpractice action) to have information from the Data Bank on a health care practitioner, under the conditions set out in this routine use.

14. Any Federal entity, employing or otherwise engaging under arrangement (*e.g.,* such as a contract) the services of a physician, dentist, or other health care practitioner, or having the authority to sanction such practitioners covered by a Federal program, which: (a) Enters into a memorandum of understanding with HHS regarding its participation in the Data Bank; (b) engages in a professional review activity in determining an adverse action against a practitioner; and (c) maintains a Privacy Act system of records regarding the health care practitioners it employs, or whose services it engages under arrangement. The purpose of such disclosures is to enable hospitals and other facilities and health care providers under the jurisdiction of Federal agencies such as the Public Health Service, HHS; the Department of Defense; the Department of Veterans' Affairs; the U.S. Coast Guard; and the Bureau of Prisons, Department of Justice, to participate in the Data Bank. The Health Care Quality Improvement Act of 1986 includes provisions regarding the participation of such agencies and of the DEA.

15. In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to affect directly the operation of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice has agreed to represent such employee, for example in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosures may be made to the Department of Justice to enable the Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

16. The contractor, SRA International Inc., accesses the system to operate and maintain it. These functions include but are not limited to providing continuous user availability, develop system enhancements, upgrade of hardware and software, security information assurance, and system backups.

17. To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on database servers with disk storage, optical jukebox storage, backup tapes and printed reports.

RETRIEVABILITY:

Records are retrieved by name, date of birth, Social Security number, educational information, and license number. The matching algorithm uses these data elements to match reports to the subject.

SAFEGUARDS FOR ACCESSING RECORDS:

1. Authorized Users include internal users such as the government and contractor personnel staff who support the Data Banks and are required to obtain favorable adjudication for a Level 5 Position of Public Trust. New employees of the NPDB and the contractor must attend security training, sign a Non-Disclosure Agreement, and sign the Rules of Behavior which is renewed annually. Authorized users are given role-based access to the system on a limited need-to-know basis. All physical and logical access to the system is removed upon termination of employment. External users, who are responsible for meeting Title IV reporting and/or querying requirements to the Data Banks, are responsible for determining their eligibility to access the Data Banks through a self-certification process which requires completing an Entity Registration form. All external users must acknowledge the Rules of Behavior. All external users must re-register every two years to access the Data Banks. Both HRSA and the contractor maintain lists of authorized users.

2. Physical Safeguards involve physical controls that are in place 24 hours a day/7 days a week such as identification badge access, cipher locks, locked hardware cages, man trap with biometric hand scanner, security guard monitoring, and closed circuit TV. All sites are protected with fire and environmental safety controls.

3. Technical Safeguards include firewalls, network intrusion detection, host-based intrusion detection and file integrity monitoring, user identification, and passwords restrictions. All web-based traffic is encrypted using 128 bit SSL and all network traffic is encrypted internally.

4. Administrative Safeguards involve certification and accreditation that is required every three years, which authorizes operation of the system based on acceptable risk. Security assessments are conducted continuously throughout the year to verify compliance with all required controls.

RETENTION AND DISPOSAL OF RECORDS:

HRSA is working with NARA to obtain the appropriate retention value.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Practitioner Data Banks, Bureau of Health Professions, Health Resources and Services Administration, Room 8–103, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

Information is available upon request, to the persons or entities, or to the authorized agents in such form or manner as the Secretary prescribes. The subject of a report is notified via U.S. mail when a record concerning the individual is submitted to the Data Bank via Subject Notification Document (SND).

REQUESTS BY MAIL:

Practitioners may submit a "Request for Information Disclosure" to the address under system location for any report on themselves. The request must contain the following: Name, address, date of birth, gender, Social Security Number (optional), professional schools and years of graduation, and the professional license(s). For license, include: The license number, the field of licensure, the name of the State or Territory in which the license is held, and DEA registration number(s). The practitioner must submit a signed and notarized self-query request.

PENALTIES FOR VIOLATION:

Submitting a request under false pretenses is a criminal offense and subject to a civil monetary penalty of up to $11,000 for each violation.

REQUESTS IN PERSON:

Due to security considerations, the Data Bank cannot accept requests in person.

REQUEST BY TELEPHONE:

Practitioners may provide all of the identifying information stated above to the Data Bank Customer Service Center operator. Before the data request is fulfilled, the operator will return a paper copy of this information for verification, signature and notarization.

RECORD ACCESS PROCEDURES:

Request for access of records in the Data Bank may be completed online at: *http://www.npdb-hipdb.hrsa.gov.* The requests are submitted over the web using the Integrated Query and Reporting Service (IQRS), Query and Reporting Extensible Markup Language Service (QRXS), Interface Control Document (ICD) Transfer Program (ITP) or the Proactive Disclosure Service (PDS). Self-query, as described previously, may be initiated via the electronic system and is completed using the conventional mail system. Requesters, including self-queries, will receive an accounting of disclosure that has been made of their records, if any.

CONTESTING RECORD PROCEDURES:

The Data Bank routinely mails a copy of any report filed in it to the subject individual. A subject individual may contest the accuracy of information in the Data Bank concerning himself or herself and file a dispute. To dispute the accuracy of the information, the individual must contact the Data Bank and the reporting entity to: (1) Request for the reporting entity to file correction to the report; and (2) request the information be entered into a "disputed" status and submit a statement regarding the basis for the inaccuracy of the information in the report. If the reporting entity declines to change the disputed report or takes no actions, the subject may request that the Secretary of HHS review the disputed report. In order to seek a Secretarial Review, the subject must: (1) Provide written documentation containing clear and brief factual information regarding the information of the report; (2) submit supporting documentation or justification substantiating that the reporting entity's information is inaccurate; and (3) submit proof that the subject individual has attempted to resolve the disagreement with reporting entity but was unsuccessful. The Department can only determine whether the report was legally required to be filed and whether the report accurately depicts the action taken and the reporter's basis for action. Additional detail on the process of dispute resolution and Secretarial Review process can be found at 45 CFR § 60.14 of the Data Bank regulations.

RECORD SOURCE CATEGORIES:

The records contained in the system are submitted by the following entities: (1) Insurance companies and others who have made payment as a result of a malpractice action or claim, (2) State Boards of Medical and Dental Examiners; (3) State Licensing Boards; (4) hospitals and other health care entities; (5) DEA; and (6) Federal entities which employ health practitioners or who have authority to sanction such practitioners covered by a Federal program. Section 1921 of the Social Security Act expands reporting of actions submitted by State health care practitioner licensing and certification authorities (including medical and dental boards), State entity licensing and certification authorities, peer review organizations and private accreditation organizations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2010–24568 Filed 9–30–10; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0506]

Office of the Commissioner; Request for Comments on the Food and Drug Administration Fiscal Year 2011–2015 Strategic Priorities Document; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is seeking public comment on its draft Strategic Priorities FY 2011–2015. FDA has identified these strategic priorities and goals that will guide its efforts to achieve its public health mission. FDA is seeking public comment to help further refine these priorities and goals.

DATES: Submit either electronic or written comments by November 1, 2010.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Darian Tarver, Office of Planning, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 4219, Silver Spring, MD 20993–0002, 301–796–4850.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is posting its draft Strategic Priorities FY 2011–2015 to ensure that key stakeholders are given an opportunity to comment on this document.

The purpose of this document is to outline FDA's strategic intentions and plans for the next 5 years (fiscal year (FY) 2011 through 2015). This document identifies four key cross-cutting strategic priorities and four strategic program goals that will guide efforts to achieve FDA's public health mission and to fulfill its role in supporting the larger mission and strategic goals of the Department of

Health and Human Services. The four cross-cutting strategic priorities are: (1) Advance Regulatory Science and Innovation, (2) Strengthen the Safety and Integrity of the Global Supply Chain, (3) Strengthen Compliance and Enforcement Activities to Support Public Health, and (4) Expand Efforts to Meet the Needs of Special Populations. The four strategic program goals are: (1) Advance Food Safety and Nutrition, (2) Promote Public Health by Advancing the Safety and Effectiveness of Medical Products, (3) Establish an Effective Tobacco Regulation, Prevention, and Control Program, and (4) Manage for Organizational Excellence and Accountability.

The strategic planning process is an opportunity for FDA to further refine and strengthen the strategic management structure currently in place. For comparison purposes, the current FDA Strategic Action Plan 2007 can be viewed at *http://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Reports/StrategicActionPlan/UCM061415.pdf*.

FDA has made significant progress in its strategic planning efforts. As we build on this progress we look forward to receiving your comments by (see **DATES**). The text of the draft strategic priorities document is available in a "pdf" (portable document format) downloadable format through FDA's Web site: *http://www.fda.gov/AboutFDA/*.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 27, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–24603 Filed 9–30–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0257]

Single-Ingredient Oral Colchicine Products; Enforcement Action Dates

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or agency) is announcing its intention to take enforcement action against unapproved single-ingredient oral colchicine products and persons[1] who manufacture or cause the manufacture of such products or their shipment in interstate commerce. Unapproved single-ingredient oral colchicine products have been associated with serious adverse events, including fatalities. Single-ingredient oral colchicine products are new drugs that require approved applications because they are not generally recognized as safe and effective. Currently one firm has obtained approved applications to market single-ingredient oral colchicine for the treatment of acute gout flares, prophylaxis of gout flares, and prophylaxis of attacks of Familial Mediterranean Fever (FMF). All other manufacturers who wish to market single-ingredient oral colchicine products for these or other indications must obtain FDA approval of a new drug application (NDA) or an abbreviated new drug application (ANDA).

DATES: This notice is effective October 1, 2010. For information about enforcement dates, see **SUPPLEMENTARY INFORMATION**, section III.C.

ADDRESSES: All communications in response to this notice should be identified with Docket No. FDA–2010–N–0257 and directed to the appropriate office listed as follows:

Regarding applications under section 505(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(b)): Division of Anesthesia, Analgesia and Rheumatology Products, Office of New Drugs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Silver Spring, MD 20993–0002.

All other communications: See the **FOR FURTHER INFORMATION CONTACT** section of this document.

FOR FURTHER INFORMATION CONTACT: Karen Rothschild, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 5237, Silver Spring, MD 20993–0002, 301–796–3689, e-mail: *Karen.Rothschild@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Colchicine is an alkaloid of the *Colchicum autumnale* plant, also known as autumn crocus or meadow saffron. Colchicum was initially described in the 1st century A.D. by Dioscorides in the *Materia Medica*. Medical use of colchicum for gout pain dates back to the 6th century. It was used for several centuries, but the use of colchicum in the treatment of gout substantially declined by the 15th century because of its toxicity. Colchicum was reintroduced as a treatment for acute gout beginning in 1763. Colchicine was first isolated from colchicum in 1820 and made available in oral dosage form during the 19th century. Colchicine in oral dosage form is currently marketed in the United States as approved and unapproved products, both as a single ingredient and in combination with probenecid. Colchicine for injection has been available in the United States since the 1950s and has been administered intravenously for the treatment of acute gout flares. In the **Federal Register** of February 8, 2008 (73 FR 7565), FDA announced its intention to take enforcement action against unapproved drug products containing colchicine for injection. Single-ingredient oral colchicine products, the subject of this notice, have also been marketed in the United States without approved applications to treat acute gout flares, and are more commonly marketed in conjunction with uric acid lowering agents for the daily prophylaxis of flares of gout. Daily oral colchicine has also been the standard of care since the 1970s for the prophylaxis of attacks of FMF.

One firm, Mutual Pharmaceutical Co., Inc. (Mutual), of Philadelphia, PA, has received approval for three NDAs for single-ingredient oral colchicine. These approvals are: NDA 22–352 for the treatment of FMF,[2] approved on July 29,

[1] A "person" includes individuals, partnerships, corporations, or associations (section 201 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(e)).

[2] Because the incidence of FMF in the United States is rare, Mutual sought and was granted orphan drug status for its product covered by NDA 22–352 under section 526 of the act (21 U.S.C. 360bb). The term "orphan drug" refers to a product that treats a rare disease affecting fewer than 200,000 Americans. Enacted in 1983, the intent of the Orphan Drug Act is to stimulate the research, development, and approval of products that treat

2009; NDA 22–351 for the treatment of acute gout flares, approved on July 30, 2009; and NDA 22–353 for the treatment of chronic gout, approved on October 16, 2009. Mutual is marketing these products under the trade name COLCRYS. These approvals were based on extensive evaluation of studies and new data that permitted refinement of dosing regimens and labeling. When used in accordance with the approved labeling, single-ingredient oral colchicine was found to be well-tolerated and safe when taken at therapeutic doses and with appropriate dose reductions in susceptible populations or with potentially interacting drugs.

II. Safety Issues in the Use of Single-Ingredient Oral Colchicine Products

The most frequent adverse effects of oral colchicine in therapeutic doses are those involving the gastrointestinal tract, with the most common adverse events being diarrhea, nausea and vomiting, abdominal pain, and cramping. These events are often the first indication that colchicine therapy may need to be stopped or the dose reduced. Overdose with colchicine is uncommon, despite its narrow therapeutic index and despite wide variation in the dose required for significant morbidity and mortality. Approximately 20 adverse event reports including 5 deaths are reported to the agency on average per year. However, above the typical therapeutic doses (which range from a 2.4-milligram (mg) maximum daily chronic dose to the 4.8-mg maximum acute dose), there does not seem to be any clear separation between nontoxic, toxic, or lethal doses of colchicine. Overall, FDA is aware of 751 reports of adverse events associated with colchicine toxicity, including 169 deaths associated with oral colchicine, through June 2007.[3]

There is also evidence supporting a potentially lethal interaction between P-glycoprotein (P-gp) inhibitors/strong cytochrome P450 3A4 (CYP3A4) inhibitors (such as clarithromycin) and colchicine. Although these interactions have been published in the medical literature, fatal interactions continue to be reported to postmarketing adverse event databases. Postmarketing adverse event databases, including FDA's AERS database, reveal that half of non-overdose colchicine fatalities are related to the concommitant use of colchicine and clarithromycin. This information suggests that despite the literature, awareness regarding colchicine interactions may not be widespread in the healthcare community. Another variable in this equation is that interactions are potentially more severe and lethal in patients with an underlying susceptibility. Based on the published literature, a 4-fold decrease in colchicine clearance is noted in severely renally impaired subjects undergoing hemodialysis compared to healthy volunteers. A 2.5- to 10-fold lower clearance has been reported in cirrhotic patients when compared to healthy subjects. No pharmacokinetic studies have been performed in the elderly or in pediatric patients. However, because the elderly are more likely to have significant renal or hepatic impairment, as a whole, they are more at risk. In light of these safety concerns, there are specific dose modification and reduction recommendations in the recently approved colchicine labeling pertaining to drug interactions and to patients with renal impairment. Furthermore, a new clinical trial in acute gout that was conducted in support of the NDA found that a lower dose of oral colchicine than had been considered the standard of care was just as effective for the treatment of an acute gout flare, and resulted in fewer adverse events. The approved labeling for oral colchicine reflects this newly discovered information.

In general, the labeling for unapproved single-ingredient oral colchicine products listed with FDA under section 510(j) of the act (21 U.S.C. 360(j)) does not reflect the most current data regarding the safety and effectiveness of single-ingredient oral colchicine. As noted previously in this document, the newly approved labeling reflects the new dosing for acute gout flares. Additionally, based on pharmacokinetic studies conducted in support of the approved NDAs, new specific-dose modification and reduction recommendations are provided in the approved colchicine labeling for its use with drugs that use certain enzymes, such as CYP3A4 or P-gp, for their metabolism or absorption. Because no applications have been submitted to and reviewed by FDA for the unapproved single-ingredient oral colchicine products, the safety and effectiveness of these unapproved products cannot be assured.

The expected risks associated with use of oral products that contain single-ingredient colchicine are potentially greater for unapproved products because the quality, safety, and efficacy of unapproved formulations have not been demonstrated to FDA. For example, the ingredients and bioavailability of unapproved products have not been submitted for FDA review, nor has FDA had the opportunity to assess the adequacy of their chemistry, manufacturing, and controls specifications. Further, as noted previously, a clinical trial revealed that a substantially lower dose of colchicine is as effective as the higher dose traditionally considered to be the standard of care, with significantly reduced adverse reactions. Because FDA has not approved the labeling for unapproved single-ingredient colchicine products, their labeling likely does not contain appropriate dosing and drug interaction information.

III. Legal Status

A. Current Status of Single-Ingredient Oral Colchicine

As stated previously, only one firm, Mutual Pharmaceutical, Inc. (Mutual), has obtained approved applications for single-ingredient oral colchicine tablets. Mutual submitted three NDAs for its single-ingredient colchicine tablets: NDA 22-352 for the indication of FMF, which was approved on July 29, 2009; NDA 22-351 for the treatment of acute gout, which was approved on July 30, 2009; and NDA 22-353 for the prevention of gout flares in the chronic treatment of gout, which was approved on October 16, 2009. Mutual is marketing these products under the trade name COLCRYS. As stated previously, because the incidence of FMF in the United States is rare, Mutual sought and was granted orphan drug status for its product covered by NDA 22–352 under section 526 of the act.

Unapproved single-ingredient oral colchicine tablets are also available on the market. The agency reviewed the labeling of unapproved colchicine products listed with FDA under section 510(j) of the act. In general, labeling for the unapproved products does not reflect the most current data regarding single-ingredient oral colchicine. As noted previously, the newly approved labeling reflects the new dosing for acute gout flares. Based on pharmacokinetic studies, new specific-dose modification and reduction recommendations are provided in the approved colchicine label for its use

rare diseases. Under this law, which amended the act and is provided in sections 525 through 529 (21 U.S.C. 360aa through 360ee), a firm that receives approval for a product designated as an orphan drug receives for the product a special period of exclusivity of 7 years after the date of approval, during which the agency will not approve another application for the same drug for the same condition submitted by another applicant (see 21 CFR 316.3).

[3] Data in the current system (AERS) date back to when the adverse event reporting system was first implemented in 1969.

with drugs that use certain enzymes, such as CYP3A4 or P-gp, for their metabolism or absorption. Because no applications have been filed and reviewed by the agency for the unapproved products, the safety and effectiveness of these products cannot be ensured.

B. Single-Ingredient Oral Colchicine Products Are New Drugs Requiring Approved Applications

Based on both the safety considerations previously described and the absence of published literature documenting that single-ingredient oral colchicine is safe and effective, unapproved single-ingredient oral colchicine is not generally recognized as safe and effective for any indication including treatment of acute gout flares or for the daily prophylaxis of gout. Agency review of individual applications to ensure appropriate manufacturing and labeling is required to ensure the safe and effective use of the drug. Therefore, single-ingredient oral colchicine is regarded as a new drug as defined in section 201(p) of the act (21 U.S.C. 321(p)) and is subject to the requirements of section 505 of the act. As set forth in this notice, approval of an NDA or ANDA under section 505 of the act is required as a condition for manufacturing or marketing all single-ingredient oral colchicine products. Any person who submits an application for a single-ingredient oral colchicine product but has not received approval must comply with this notice.

C. Notice of Enforcement Action

Although not required to do so by the Administrative Procedure Act, the act, or any rules issued under its authority, or for any other legal reason, FDA is providing this notice to persons who are marketing unapproved single-ingredient oral colchicine products that after the dates identified in this notice, the agency intends to take enforcement action against such products and those who manufacture them or cause them to be manufactured or shipped in interstate commerce.

Manufacturing or shipping unapproved single-ingredient oral colchicine products can result in enforcement action, including seizure, injunction, or other judicial or administrative proceedings. Consistent with policies described in the agency's guidance entitled "Marketed Unapproved Drugs—Compliance Policy Guide" (the Marketed Unapproved Drugs CPG), the agency does not expect to issue a warning letter or any other further warning to firms marketing unapproved single-ingredient oral colchicine products prior to taking enforcement action. The agency also reminds firms that, as stated in the Marketed Unapproved Drugs CPG, any unapproved drug marketed without a required approved drug application is subject to agency enforcement action at any time. The issuance of this notice does not in any way obligate the agency to issue similar notices or any notice in the future regarding marketed unapproved drugs.[4]

As described in the Marketed Unapproved Drugs CPG, the agency may, at its discretion, identify a period of time during which the agency does not intend to initiate an enforcement action against a currently marketed unapproved drug solely on the ground that it lacks an approved application under section 505 of the act. With respect to unapproved single-ingredient oral colchicine products, the agency intends to exercise its enforcement discretion for only a limited period of time because single-ingredient oral colchicine products are drugs with potential safety risks and, in light of the fact that the agency has approved applications for single-ingredient oral colchicine products for the treatment of acute gout flairs, prophylaxis of gout flares, and prophylaxis of attacks of FMF, the continued marketing of unapproved single-ingredient oral colchicine products is a direct challenge to the drug approval process. Therefore, the agency intends to implement this notice as follows.

This notice is effective October 1, 2010. FDA intends to take action to enforce section 505(a) of the act against any unapproved single-ingredient oral colchicine products that are not listed with FDA in full compliance with section 510 of the act before September 30, 2010, and that are manufactured, shipped, or otherwise introduced or delivered for introduction into interstate commerce by any person on or after October 1, 2010. FDA also intends to take action to enforce section 505(a) of the act against any unapproved single-ingredient oral colchicine products that have a National Drug Code (NDC) number listed with FDA in full compliance with section 510 of the act but were not being commercially used or sold[5] in the United States on September 30, 2010, and that are manufactured, shipped, or otherwise introduced or delivered for introduction into interstate commerce by any person on or after October 1, 2010.

However, for unapproved single-ingredient oral colchicine products that are commercially used or sold in the United States, have an NDC number listed with FDA, and are in full compliance with section 510 of the act before September 30, 2010 ("currently marketed and listed"), the agency intends to exercise its enforcement discretion as follows. FDA intends to initiate enforcement action against any currently marketed and listed unapproved single-ingredient oral colchicine products that are manufactured on or after November 15, 2010, or that are shipped on or after December 30, 2010.[6] Further, FDA intends to take enforcement action against any person who manufactures or ships such products after these dates. Any person who has submitted or submits an application for a single-ingredient oral colchicine product but has not received approval must comply with this notice.

The agency, however, does not intend to exercise its enforcement discretion as outlined previously if either of the following applies: (1) A manufacturer or distributor of an unapproved single-ingredient oral colchicine product is violating any other provisions of the act (including but not limited to violations related to FDA's current good manufacturing practices, adverse drug event reporting, labeling or misbranding requirements) or (2) it appears that a firm, in response to this notice, increases its manufacture or interstate shipment of unapproved single-ingredient oral colchicine products above its usual volume.

Nothing in this notice, including FDA's intent to exercise its enforcement discretion, alters any person's liability or obligations in any other enforcement action or litigation, or precludes the agency from initiating or proceeding with enforcement action in connection with any other alleged violation of the act, whether or not related to an unapproved drug product covered by this notice. Similarly, a person who is

[4] The agency's general approach for dealing with these products in an orderly manner is spelled out in the Marketed Unapproved Drugs CPG.

[5] For the purpose of this notice, the term "commercially used or sold" means that the product has been used in a business or activity involving retail or wholesale marketing and/or sale.

[6] If FDA finds it necessary to take enforcement action against a product covered by this notice, the agency may take action relating to all of the defendant's other violations of the act at the same time. For example, if a firm continues to manufacture or market a product covered by this notice after the applicable enforcement date has passed, to preserve limited agency resources, FDA may take enforcement action relating to all of the firm's unapproved drugs that require applications at the same time (see, e.g., *United States* v. *Sage Pharmaceuticals*, 210 F. 3d 475, 479–480 (5th Cir. 2000) (permitting the agency to combine all violations of the act in one proceeding, rather than taking action against multiple violations of the act in "piecemeal fashion")).

or becomes enjoined from marketing unapproved drugs may not resume marketing of unapproved single-ingredient oral colchicine based on FDA's exercise of enforcement discretion as set forth in this notice.

Drug manufacturers and distributors should be aware that the agency is exercising its enforcement discretion as described previously only in regard to unapproved single-ingredient oral colchicine products that are marketed under an NDC number listed with the agency in full compliance with section 510 of the act before September 30, 2010. As previously stated, unapproved single-ingredient oral colchicine products that are currently marketed but not listed with the agency on the date of this notice must, as of the effective date of this notice, have approved applications before shipment in interstate commerce.

D. Discontinued Products

Some firms may have previously discontinued the manufacturing or distribution of products covered by this notice without removing them from the listing of their products under section 510(j) of the act. Other firms may discontinue manufacturing or marketing listed products in response to this notice. Firms that wish to notify the agency of product discontinuation should send a letter, signed by the firm's chief executive officer, fully identifying the discontinued product(s), including the product NDC number(s), and stating that the product(s) has (have) been discontinued. The letter should be sent electronically to *edrls@fda.hhs.gov*. Firms should also update the listing of their products under section 510(j) of the act to reflect discontinuation of unapproved single-ingredient colchicine products. FDA plans to rely on its existing records, the results of a subsequent inspection, or other available information when we evaluate whether to initiate enforcement action.

This notice is issued under the act (sections 502 (21 U.S.C. 352) and 505) and under authority delegated to the Deputy Commissioner, Office of Policy, Planning and Budget under section 1410.21 of the FDA Staff Manual Guide.

Dated: September 27, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–24684 Filed 9–30–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2010–0080]

Critical Infrastructure Partnership Advisory Council (CIPAC)

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Notice of CIPAC meeting.

SUMMARY: The CIPAC will meet on October 13, 2010 in Bethesda, MD. The meeting will be open to the public.

DATES: The CIPAC will meet Wednesday, October 13, 2010 from 8:30 a.m. to 12:30 p.m. Please note that the meeting may adjourn early if the committee has completed its business. For additional information, please consult the CIPAC Web site, *http://www.dhs.gov/cipac*, or contact the CIPAC Secretariat by phone at 703–235–3999 or by e-mail at *cipac@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Renee Murphy, Section Chief Partnership Programs, Partnership and Outreach Division, Office of Infrastructure Protection, National Protection and Programs Directorate, United States Department of Homeland Security, Mail Stop 0607, 245 Murray Lane, SW., Washington, DC 20528–0607, telephone 703–235–3999 or via e-mail at *CIPAC@dhs.gov.*

Responsible DHS Official: Renee Murphy, Section Chief Partnership Programs, Partnership and Outreach Division, Office of Infrastructure Protection, National Protection and Programs Directorate, United States Department of Homeland Security, Mail Stop 0607, SW., 245 Murray Lane, SW., Washington, DC 20528–0607, telephone 703–235–3999 or e-mail at *CIPAC@dhs.gov.*

SUPPLEMENTARY INFORMATION: CIPAC represents a partnership between the Federal Government and critical infrastructure owners and operators and provides a forum in which they can engage in a broad spectrum of activities to support and coordinate critical infrastructure protection.

The CIPAC will meet to discuss issues relevant to the protection of critical infrastructure. The October 13, 2010 meeting will include panel discussions between participating Sectors regarding Regionalization and Resilience and Information Sharing.

Procedural: While this meeting is open to the public, participation in the CIPAC deliberations is limited to committee members, DHS officials, and persons invited to attend the meeting for special presentations.

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the CIPAC Secretariat at 703–235–3999 as soon as possible.

Signed: September 24, 2010.

Renee Murphy,

Alternate Designated Federal Officer for the CIPAC.

[FR Doc. 2010–24670 Filed 9–30–10; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: New Information Collection; Comment Request

ACTION: 60-day notice of information collection under review: E-Verify Self Check Program (Internal File Number OMB–59).

The Department Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until November 30, 2010.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Officer, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please make sure to add Control No. OMB–59 in the subject box. Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* E-Verify Self Check Program.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Form Number. U.S. Citizenship and Immigration Services (USCIS).

(4) Affected public who will be asked or required to respond, as well as a brief abstract: *Primary:* Individuals or households. Self Check will allow U.S. workers to enter data into the E-Verify system to ensure that the information relating to their eligibility to work is correct and accurate.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* ID Authentication—2,900,000 responses at .0833 (5 Minutes) per response; Self Check Query—2,175,000 responses at .0833 (5 Minutes) per response; Further Action Pursued—5,582 responses at 1.183 (1 hour and 11 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 429,352 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/*.

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: September 27, 2010.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–24626 Filed 9–30–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0003.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit (CBP Form 7512). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (75 FR 43997) on July 27, 2010, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before November 1, 2010.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit.

OMB Number: 1651–0003.

Form Numbers: CBP Forms 7512 and 7512–A.

Abstract: CBP Forms 7512, "Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit", and 7512A, "Continuation Sheet", allow CBP to exercise proper control over merchandise moving in-bond (merchandise that has not entered the commerce of the United States). These forms provide documentation that CBP uses for enforcement, targeting and protection of the revenue. Forms 7512 and 7512A collect information such as the names of the importer and consignee; a description of the merchandise moving in-bond; and the ports of lading and unlading. These forms are provided for in 19 CFR 18.11, 19 CFR 18.20, 19 CFR 18.25, and 19 CFR 122.92 and can be found at *http://www.cbp.gov/xp/cgov/toolbox/forms/.*

Current Actions: This submission is being made to extend the expiration date with a change to the burden hours based on updated estimates by CBP. There is no change to the information being collected.

Type of Review: Extension (with change).

Affected Public: Businesses.

Estimated Number of Respondents: 6,200.

Estimated Number of Average Responses per Respondent: 871.

Estimated Number of Total Annual Responses: 5,400,000.

Estimated Total Annual Burden Hours: 896,400 hours.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC. 20229–1177, at 202–325–0265.

Dated: September 27, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–24636 Filed 9–30–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0017]

Voluntary Private Sector Accreditation and Certification Preparedness Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of PS-Prep Small Business Preparedness Plan; Request for Comment.

SUMMARY: The Department of Homeland Security (DHS) announces an initial plan to address small business concerns in the Voluntary Private Sector Accreditation and Certification Preparedness Program (PS-Prep Program). This initial plan identifies the separate classifications and the methods of certification available for small businesses under the PS-Prep Program. The purpose of this notice is to (1) present the plan for small business preparedness, and (2) invite public comment on the plan. DHS will continue to refine this plan, and will take comments into consideration in doing so.

Instructions: DHS will review any comments received for small business considerations or the PS-Prep Program generally and, when merited, will publish a **Federal Register** notice providing the results of that review.

Those interested may submit comments, identified by Docket ID FEMA–2008–0017, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. (**Note:** This process applies to all government requests for comments—even though as in the case of PS-Prep, they may not be for regulatory purposes.)
- *Fax:* 703–483–2999.
- *Mail/Hand Delivery/Courier:* Office of Chief Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 840, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID FEMA–2008–0017. All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Because comments are made available to the public, submitters should take caution to not include any sensitive, personal information, trade secret, or any commercial or financial information which is obtained from any person and which is deemed privileged or confidential. Submitters may wish to read the Privacy Act notice available on the Privacy Notice link located at the bottom of *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.* Submitted comments may also be inspected at FEMA, Office of Chief Counsel, 500 C Street, SW., Room 840, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Mr. Marcus Pollock, National Integration Center, National Preparedness Directorate, Protection and National Preparedness, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472. Phone: 202–646–2801 or E-mail: *FEMA–NIMS@dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the Implementing Recommendations of the 9/11 Commission Act of 2007, Congress in Public Law 110–53 (the 9/11 Act) mandated DHS to establish a voluntary private sector preparedness accreditation and certification program. This program, now known as the PS-Prep Program, will assess whether a private sector entity voluntarily complies with one or more preparedness standards adopted by DHS. It will do so through a system of accreditation and certification developed by DHS in close coordination with the private sector.

The 9/11 Act contains a provision, now codified at 6 U.S.C. 321m(b)(2)(D), which requires the PS-Prep Program to "establish separate classifications and methods of certification for small business concerns* * *." The definition of "small business concerns" is found in the Small Business Administration's regulations at 13 CFR part 121, published in accordance with Section 3 of the Small Business Act (15 U.S.C. 632).

DHS published a notice in the **Federal Register** on December 24, 2008, describing DHS implementation of the PS-Prep Program, requesting comment on the PS-Prep Program and the target criteria for selecting preparedness standards, and requesting recommendations for standards that DHS should consider. *See* 73 FR 79140. After reviewing the responses to the December 2008 notice, DHS published a notice in the **Federal Register** on October 16, 2009, which proposed the adoption of three standards for use in the PS-Prep Program and sought public comment. *See* 74 FR 53286. After reviewing comments received, DHS published a notice formally adopting those three standards on June 16, 2010. *See* 75 FR 34148.

DHS received additional information and comments about small business aspects of the PS-Prep Program through several public meetings in Washington, DC, 10 public meetings across the country, and multiple meetings with government agencies and organizations interested in preparedness and small business. These comments further defined small business and provided recommendations regarding appropriate considerations for separate classifications and methods for small business.

A. DHS Standards Adoption for the PS-Prep Program

DHS announced formal adoption of the following three standards on June 16, 2010 (PS-Prep standards).

1. ASIS International, "Organizational Resilience: Security Preparedness, and Continuity Management Systems—Requirements with Guidance for Use," ASIS SPC. 1–2009 (2009 Edition).

2. British Standards Institution, "Business Continuity Management Part 1: Code of Practice for Business Continuity Management," BS 25999–1: 2006 (2006 Edition); and "Business Continuity Management Part 2: Specification for Business Continuity Management," BS 25999–2: 2007 (2007 Edition).

3. National Fire Protection Association, "Standard on Disaster/Emergency Management and Business Continuity Programs," NPFA–1600 (2007 and 2010 Editions).

B. Initiation of the PS-Prep Accreditation and Certification Process

With the formal adoption of the three PS-Prep standards, the American National Standards Institute—American Society for Quality (ANSI–ASQ) National Accreditation Board (ANAB), the designated PS-Prep accrediting body, will finalize its process for accrediting third-party certifying bodies (CBs) for the PS-Prep Program. Businesses may voluntarily choose to seek third-party certification through

CBs accredited by ANAB. See *http://www.anab.org/accreditation/preparedness.aspx.*

C. Prior Solicitation of Comments Regarding Small Business Aspects

DHS received information and comments about small business aspects of the PS-Prep Program from many sources. These comments further reflected the concerns of small businesses and provided suggestions regarding appropriate considerations for separate classifications and methods of certification for small business.

Comments and suggestions included the following:

- Include affordable methods for providing support for implementing preparedness appropriate for small businesses.
- Provide a developmental model with progressive steps prior to third-party certification.
- Provide education, tools, technical assistance, and methods for self-assessment as part of a developmental model.
- Build on existing programs which use preparedness education and best practices.
- Include outreach and education through multiple sources to provide education and technical support that is accessible and convenient for small business.
- Include outreach through new and pre-existing networks to enhance awareness of the PS-Prep Program, its value, and ways to participate.

The draft Program outlined in this notice addresses, in part, the comments, concerns, and suggestions received during PS-Prep outreach activities to date.

II. PS-Prep Small Business Preparedness Plan

Using the size standards found at 13 CFR part 121 and authorized by 15 U.S.C. 632, the vast majority of the commerce in the United States is represented by small businesses. According to the 2007 Economic Census, there are approximately 7.6 million establishments with fewer than 500 employees, and they employ approximately 96 million employees. U.S. society's well-being depends on these businesses for goods and services. Should disaster strike, continued access to those services and products is an important part of recovery and resilience.

The resources required to obtain third-party certification to one of the DHS-adopted preparedness standards may pose a challenge and potential barrier for many small businesses. In the 9/11 Act, Congress recognized that differences in scale and resources require different strategies to effectively promote and implement preparedness for small businesses. Therefore, Congress directed DHS to "establish separate classifications and methods of certification for small business concerns * * *."

DHS is proposing to use three "classifications" of businesses when determining eligibility for participation in the two "certification methods" (see below). Small business concerns referred to in the PS-Prep Program's authorizing legislation are addressed through the creation of these classifications and through the provision of an additional, different method of certification, available only for small businesses and small not-for-profit concerns. Certification is the desired outcome of a formal process by which entities are assessed to determine their conformity to one or more of the PS-Prep standards.

A. Classifications of Businesses for PS-Prep

The three classifications of private sector entities for the PS-Prep Program are: (1) Small businesses as defined in the Small Business Administration's regulations at 13 CFR part 121, published in accordance with 15 U.S.C. 632; (2) other non-governmental entities with fewer than 500 employees that do not meet the requirements of 13 CFR part 121 and 15 U.S.C. 632; and (3) all private sector entities. These classifications will be used to distinguish eligibility of entities participating in the two methods of certification available under the PS-Prep Program.

For small businesses, 15 U.S.C. 632 provides the criteria for establishing size standards and the definitions of terms used throughout the Small Business Act. The responsibility of establishing size standards is given to the Administrator of the Small Business Administration. The Administrator has defined small businesses through established numerical definitions, or "size standards," for all for-profit industries. The complete list of size standards can be found in the table at 13 CFR 121.201, or see *http://www.sba.gov/contractingopportunities/officials/size/table/index.html.*

Classification (2), as described above, is intended to capture those small, not-for-profit entities which fall outside of the for-profit based definition for small business as found in 15 U.S.C. 632 and 13 CFR part 121. DHS recognizes that there are small not-for-profit entities which may also desire to achieve conformity with a DHS-adopted preparedness standard, but which face the same issues of limited resources and scale as small businesses. DHS has determined to enable these entities to participate in the PS-Prep Program, by creating classification (2) for not-for-profit entities with fewer than 500 employees. DHS's reasoning for choosing these qualifications is based on the Small Business Administration's regulations at 13 CFR part 121, which identify 500 or fewer employees as a common size for small organizations.

DHS will consider refining classification (2) to include a measure of gross receipts. A possible basis for this refinement would be the Internal Revenue Service's gross receipts requirements for tax-exempt 501(c)(3) organizations eligible to file form 990–N (annual gross receipts less than or equal to $25,000), or form 990–EZ (annual gross receipts between $25,001 and $500,000). Religious and other organizations exempt from filing and having fewer than 500 employees would still qualify to use the PS-Prep self-certification method. DHS seeks comment on this proposed method of defining classification (2).

Classification (3), all private sector entities, captures any private sector entity wishing to participate in the PS-Prep Program. Therefore, a small business would qualify for both classification (1) and classification (3). However, those entities which do not meet the requirements for classifications (1) and (2) would be included only in classification (3). The purpose of these classifications is to qualify for participation in the two methods of certification available in the PS-Prep Program.

B. Methods of Certification for PS-Prep

There will exist two methods for certification under the PS-Prep Program: (1) Self-declaration of conformity, and (2) third-party certification. Entities that can be classified as (1) small businesses as defined in 13 CFR part 121, published in accordance with 15 U.S.C. 632, or (2) other non-governmental entities with fewer than 500 employees, that do not meet requirements of 13 CFR part 121 and 15 U.S.C. 632, are eligible for both methods of certification. All other entities which do not meet the requirements for classifications (1) or (2) will be classified as (3), all private sector entities, and are only eligible for the third-party certification method.

Although DHS has at this time identified the two methods of certification described herein, other methods will be examined and considered. DHS reserves the right to

add other methods to the PS-Prep Program following future notice and opportunity for comment.

Businesses that successfully conform to any DHS-adopted PS-Prep standard, as measured by one of the methods outlined in this notice, may receive recognition from DHS. The process for and type of recognition that may be provided are still under consideration and more information will be provided in subsequent announcements or notices.

1. Self-Declaration of Conformity

Any private sector entity that is a member of classifications (1) or (2) as described above may assess and attest to its conformity to one or more of the PS-Prep standards.

The self-declaration of conformity process will be similar to what is sometimes known as a manufacturer's or supplier's declaration of conformance. This is based on an accepted industry practice whereby manufacturers or suppliers formally declare that their products or services conform to relevant standards. DHS proposes that self-declaration will be based upon the International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) standard 17050–1, "Conformity Assessment—Supplier's Declaration Assessment—Supplier's declaration of conformity—Part 1: General requirements" and ISO/IEC standard 17050–2, "Conformity Assessment—Supplier's declaration of conformity—Part 2: Supporting documentation." Together, these parts of the standard specify general requirements for a supplier's declaration of conformity in cases where conformity of an object to a specified requirement must be attested.

In the United States, ISO/IEC standard 17050–1 and 17050–2 are available for the respective fees of $49.00 and $37.00. To purchase, search the American National Standards Institute online store, at *http://webstore.ansi.org/default.aspx.* In addition, FEMA will maintain a copy of the standard, and make it available upon request for viewing in person at FEMA's reading room, located at 500 C Street, SW., Room 840, Washington, DC 20472. Due to licensing and copyright restrictions, however, these documents will be available for review only, not for copying.

DHS is still considering the plan for management and oversight of the self-declaration of conformity process, and will provide more information through subsequent announcements or notices. DHS will consider other processes of self-declaration of conformity. One example may be a comprehensive, Web-based self-assessment that could include a document review of key business continuity protocols.

2. Third-Party Certification

Any private sector entity may undertake an independent, third-party validation that it conforms to one or more of the PS-Prep standards, using a certifying body (CB) that is accredited by ANAB. This is the general certification scheme outlined in PS-Prep's authorizing legislation. This process is notably more rigorous and measurable than self-declaration of conformity. Many CBs have a conformity assessment process that tailors to the needs and possible resource constraints of small businesses. Under this method, any entity is eligible to seek certification from an ANAB-accredited CB. For more information, see the prior **Federal Register** notices referenced above and *http://www.anab.org/accreditation/preparedness.aspx.*

C. Additional Small Business Support

DHS recognizes that some small businesses may desire additional guidance and assistance to help them in achieving preparedness and to prepare for participating in a method of certification. Participation in such guidance and support activities is not required to participate in the PS-Prep Program. However, small businesses might find it useful as they seek conformance to one of the DHS-adopted preparedness standards.

There are a number of public and private entities that provide programs and activities that support preparedness. These entities include academic institutions, community-based non-profit, and for-profit institutions that provide education, training, assessment and technical assistance to small business. DHS encourages the development of tools and programs that will assist small businesses in improving preparedness and reaching conformance to an adopted standard. Businesses may participate in a variety of preparedness related activities such as classroom or web-based courses, technical assistance to conduct a hazard and/or vulnerability assessments, or to establish governance or planning activities.

DHS will develop guidance for small businesses based on public input from this **Federal Register** notice and other outreach activities. This guidance will assist small businesses in identifying organizations that can help them both improve their preparedness and potentially become certified to one of the DHS-adopted standards using one of the methods outlined herein. This guidance will include attributes that these organizations' small business support activities have or should have. These attributes will be used by DHS to evaluate organizations that provide small business support services. For example, the organizations providing support to small businesses should have some or all of the elements listed below:

- Demonstrated expertise and experience in preparedness and small business concerns.
- A recognized program sponsorship, preferably at a national organization level (*e.g.,* American Red Cross, Ready.gov, etc.) or at a State or Tribal government level.
- Web-based and/or local delivery mechanisms for accessibility to small business at a local level.
- Relevant programs or components that are demonstrated to be affordable to small business.
- Intent to develop substantive relationships between its program or component tools and elements of PS-Prep standards.
- Administrative mechanisms for tracking participants in order to recognize achievement or progress.

By choosing a support organization with elements like these, small businesses should be able to increase their preparedness in an affordable manner with the support of a reputable organization that uses proven practices.

III. Request for Comment

This notice describes the plan for implementing separate classifications and methods of certification for small businesses. DHS intends for the third-party certification method to be formally announced in September 2010 and will continue to refine the PS-Prep Small Business Preparedness Plan based on public feedback. DHS invites comments on the PS-Prep Small Business Preparedness Plan as outlined in this notice and, specifically, invites comments regarding the following:

- The classifications of businesses in the PS-Prep Program, including how they are used to distinguish eligibility for the methods of certification outlined in this notice.
- The methods of certification (self-declaration of conformity and/or third-party certification).
- The use of the ISO/IEC 17050-Parts 1 and 2 to guide the self-declaration of conformity process.
- Recommendations for:
  - Information to include in the guidance for small business support activities attributes referenced in

Section II.C., above, including the types of organizations and programs to consider and the attributes that should be considered.

○ Additional approaches to providing support for small business education, training, and development.

○ How businesses can be recognized under each method of certification.

○ Whether classification (2) as discussed in II.A, above, should be based upon the Internal Revenue Service's use of gross receipts to determine reporting requirements for tax-exempt 501(c)(3) organizations.

○ How to encourage small businesses considering participation in self-declaration of conformity to participate in third-party certification instead.

○ Recommendations on the use of a limited conformity assessment process that would include an off-site document review without an accompanying on-site assessment. A limited conformity assessment process may potentially reduce some of the costs associated with conformity assessment.

○ Recommendations on whether DHS should consider other methods of certification for the PS-Prep Program, and what those methods might entail.

○ Recommendations on whether the use of this process should be associated with either self-declaration or third-party assessment, or both.

Authority: 6 U.S.C. 321m(b)(2)(D).

Dated: September 24, 2010.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–24673 Filed 9–30–10; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5374–N–19]

Buy American Exceptions under the American Recovery and Reinvestment Act of 2009

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: In accordance with the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–05, approved February 17, 2009) (Recovery Act), and implementing guidance of the Office of Management and Budget (OMB), this notice advises that certain exceptions to the Buy American requirement of the Recovery Act have been determined applicable for work using Capital Fund Recovery Formula and Competition (CFRFC) grant funds. Specifically, exceptions were granted to the New Smyrna Beach Housing Authority in New Smyrna Beach, FL for the purchase and installation of tankless water heaters for the Donnelly Homes, Greenlawn Terrace, Live Oaks Homes, and Enterprise Homes projects.

FOR FURTHER INFORMATION CONTACT: Dominique G. Blom, Deputy Assistant Secretary for Public Housing Investments, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC, 20410–4000, telephone number 202–402–8500 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Section 1605(a) of the Recovery Act provides that none of the funds appropriated or made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605(b) provides that the Buy American requirement shall not apply in any case or category in which the head of a Federal department or agency finds that: (1) Applying the Buy American requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality; or (3) inclusion of iron, steel, and manufactured goods will increase the cost of the overall project by more than 25 percent. Section 1605(c) provides that if the head of a Federal department or agency makes a determination pursuant to section 1605(b), the head of the department or agency shall publish a detailed written justification in the **Federal Register.**

In accordance with section 1605(c) of the Recovery Act and OMB's implementing guidance published on April 23, 2009 (74 FR 18449), this notice advises the public that, on September 16, 2010, upon request of the New Smyrna Beach Housing Authority, HUD granted an exception to the Buy American requirement with respect to work, using CFRFC grant funds, based on the fact that the relevant manufactured goods, tankless water heaters, are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

Dated: September 24, 2010.

Deborah Hernandez,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 2010–24620 Filed 9–30–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5374–N–18]

Buy American Exceptions Under the American Recovery and Reinvestment Act of 2009

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: In accordance with the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–05, approved February 17, 2009) (Recovery Act), and implementing guidance of the Office of Management and Budget (OMB), this notice advises that certain exceptions to the Buy American requirement of the Recovery Act have been determined applicable for work using Capital Fund Recovery Formula and Competition (CFRFC) grant funds. Specifically, exceptions were granted to the Cambridge Housing Authority for the purchase and installation of energy efficient bathroom exhaust fans for the Washington Elms project.

FOR FURTHER INFORMATION CONTACT: Dominique G. Blom, Deputy Assistant Secretary for Public Housing Investments, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC, 20410–4000, telephone number 202–402–8500 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Section 1605(a) of the Recovery Act provides that none of the funds appropriated or made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605(b) provides that the Buy American requirement shall not apply in any case or category in which the

head of a Federal department or agency finds that: (1) Applying the Buy American requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality, or (3) inclusion of iron, steel, and manufactured goods will increase the cost of the overall project by more than 25 percent. Section 1605(c) provides that if the head of a Federal department or agency makes a determination pursuant to section 1605(b), the head of the department or agency shall publish a detailed written justification in the **Federal Register**.

In accordance with section 1605(c) of the Recovery Act and OMB's implementing guidance published on April 23, 2009 (74 FR 18449), this notice advises the public that, on September 10, 2010, upon request of the Cambridge Housing Authority, HUD granted an exception to the Buy American requirement with respect to work, using CFRFC grant funds, based on the fact that the relevant manufactured goods, energy efficient bathroom exhaust fans, are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

Dated: September 24, 2010.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

Deborah Hernandez,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 2010–24619 Filed 9–30–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–38]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *COE:* Mr. Scott Whiteford, Army Corps of Engineers, Director of Real Estate, CEMP–CR, 441 G St., NW., Washington, DC 20314; (202) 761–5542; *Coast Guard:* Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St., SW., Stop 7901, Washington, DC 20593–0001; (202) 475–5609; *GSA:* Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; *Interior:* Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., Washington, DC 20240: (202) 208–5399; *Navy:* Mr. Albert Johnson, Director of Real Estate, Department of the Navy, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave., SW., Suite 1000, Washington, DC 20374; (202) 685–9305; *NASA:* Mr. Frank Bellinger, Facilities Engineering Division, National Aeronautics & Space Administration, Washington, DC 20546;

(202) 358–1124; (These are not toll-free numbers).

Dated: September 23, 2010.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 10/01/2010

Suitable/Available Properties

Building

Maryland

Appraisers Store
Baltimore, MD 21202
Landholding Agency: GSA
Property Number: 54201030016
Status: Excess
GSA Number: 4–G–MD–0623
Comments: Redetermination: 169,801 sq. ft., most recent use—federal offices, listed in the Natl. Register of Historic Places, use restrictions

Michigan

CPT George S. Crabbe USARC
2901 Webber Street
Saginaw, MI
Landholding Agency: GSA
Property Number: 54201030018
Status: Excess
GSA Number: 1–D–MI–835
Comments: 3891 sq. ft., 3-bay garage maintenance building

West Virginia

Bldg. WIN–01–S–09
Winfield Locks & Dam
Redhouse, WV 25168
Landholding Agency: COE
Property Number: 31201030006
Status: Unutilized
Comments: 1872 sq. ft., most recent use—storage, off-site use only

Unsuitable Properties

Building

California

Bldg. PM42
Naval Base
Point Mugu, CA 93043
Landholding Agency: Navy
Property Number: 77201030032
Status: Unutilized
Reasons: Secured Area

Bldg. 922
Naval Weapons Station
Seal Beach, CA
Landholding Agency: Navy
Property Number: 77201030033
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

Bldgs. 152, 3410 Naval Base
San Diego, CA
Landholding Agency: Navy
Property Number: 77201030034
Status: Excess
Reasons: Secured Area

District of Columbia

Bldgs. 97, 106, 471
Naval Support Facility
Anacostia
Washington, DC 20373
Landholding Agency: Navy
Property Number: 77201030038
Status: Excess
Reasons: Secured Area, Extensive deterioration

Hawaii

Bldg. 237
NCTAMS Pacific
Wahiawa HI 96786
Landholding Agency: Navy
Property Number: 77201030035
Status: Excess
Reasons: Secured Area, Extensive deterioration

Kentucky

3 Bldgs.
Nolin River Lake Project
Bee Spring, KY
Landholding Agency: COE
Property Number: 31201030007
Status: Excess
Reasons: Floodway, Extensive deterioration

Bldg. DA–473
USGC Obion
Owensboro, KY 42303
Landholding Agency: Coast Guard
Property Number: 88201030003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Maryland

Bldgs. 27501, 27509
Ft. McHenry Natl. Monument
Baltimore, MD 21230
Landholding Agency: Interior
Property Number: 61201030001
Status: Excess
Reasons: Extensive deterioration

Bldg. 2
Goddard Space Flight Center
Greenbelt, MD 20771
Landholding Agency: NASA
Property Number: 71201030001
Status: Excess
Reasons: Secured Area

Bldg. 536
Naval Air Station
Patuxent River, MD
Landholding Agency: Navy
Property Number: 77201030037
Status: Underutilized
Reasons: Secured Area

Massachusetts

Bldg. 6211
Tully Lake Project
Royalston, MA 01368
Landholding Agency: COE
Property Number: 31201030008
Status: Unutilized
Reasons: Extensive deterioration

Michigan

Alpena Federal Building
145 Water Street
Alpena, MI 49707
Landholding Agency: GSA
Property Number: 54201030017
Status: Excess
GSA Number: 1–G–MI–0836
Reasons: Within 2000 ft. of flammable or explosive material

Land

Hawaii

875 sq. ft.—land
Marine Corps Training Area
Bellows, HI
Landholding Agency: Navy
Property Number: 77201030036
Status: Underutilized
Reasons: Secured Area

[FR Doc. 2010–24345 Filed 9–30–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–N–04]

Announcement of Funding Awards for Fiscal Year 2010 Historically Black Colleges and Universities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year (FY) 2010 Historically Black Colleges and Universities Program. The purpose of this document is to announce the names, addresses and the amount awarded to the winners to be used to help Historically Black Colleges and Universities (HBCUs) expand their role and effectiveness in addressing community development needs in their localities, consistent with the purposes of Title I of the Housing and Development Act of 1974, as amended.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8226, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 402–3852. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on 800–877–8339 or 202–708–1455. (Telephone number, other than "800" TTY numbers are not toll free).

SUPPLEMENTARY INFORMATION: The Historically Black Colleges and Universities Program was approved by the Consolidated Appropriations Act, 2010 (Pub. L. 111–117, approved December 16, 2009) and is administered by the Office of University Partnerships under the Office of the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships

administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The HBCU Program provides funds for a wide range of CDBG eligible activities including housing rehabilitation, property demolition or acquisition, public facilities, economic development, business entrepreneurship, a wide range of public service activities, and fair housing programs.

The Catalog of Federal Domestic Assistance number for this program is 14.520.

On July 16, 2010, a Notice of Funding Availability (NOFA) was posted on Grants.gov announcing the availability of approximately $9.7 million to fund HBCU grants. Under this program, HUD awarded two kinds of grants: Previously Unfunded HBCU Grants and Previously Funded HBCU Grants. Previously Unfunded HBCU Grants were awarded to applicants who have never received an HBCU grant or have not received a grant since FY 2000. The maximum amount a Previously Unfunded HBCU applicant could request for award is $500,000 for a three-year (36 months) grant performance period. Previously Funded HBCU Grants were awarded to applicants that had received funding between FY 2001 through FY 2009. The maximum amount a Previously Funded HBCU applicant could request for award is $800,000 for three-year (36 months) grant performance period.

The Department reviewed, evaluated, and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications below, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545). More information about the winners can be found at *http://www.oup.org*.

List of Awardees for Grant Assistance Under the FY 2010 Historically Black Colleges and Universities Program Funding Competition, by Institution, Address, and Grant Amount

Region IV

1. Winston-Salem State University, Ms. Valerie Howard, Winston Salem State University, 601 South Martin Luther King, Jr. Drive, Winston Salem, NC 27110. Grant: $800,000.

2. Benedict College, Dr. David Swinton, Benedict College, 1600 Harden Street, Columbia, SC, 29204–1086. Grant: $800,000.

3. Voorhees College, Mr. Willie Owens, Voorhees College, P.O. Box 678, 422 Beech Avenue, Denmark, SC 29042. Grant: $800,000.

4. North Carolina Agricultural and Technical State University, Dr. Celestine Ntuen, North Carolina Agricultural and Technical State University, 1601 East Market Street, Greensboro, NC 27411. Grant: $800,000.

5. St. Augustine's College, Ms. Tammalyn Thomas-Golden, St. Augustine's College, 1315 Oakwood Avenue, Raleigh, NC 27610. Grant: $498,682.

6. Fayetteville State University, Ms. Emily Dickens, Fayetteville State University, 1200 Murchison Road, Fayetteville, NC 28301. Grant: $499,602.

7. Tuskegee University, Ms. Danette Hall, Tuskegee University, 301 Kresge Center, Tuskegee, AL 36088. Grant: $800,000.

Region VI

8. Southern University and A&M College, Dr. Alma Thorton, Southern University and A&M College, P.O. Box 12596, Baton Rouge, LA 70813. Grant: $800,000.

9. University of Arkansas at Pine Bluff, Mr. Henry Golatt, University of Arkansas at Pine Bluff, 1200 North University Drive, Mail Slot 4934, Pine Bluff, AR 71601. Grant: $800,000.

Region VII

10. Langston University, Ms. Linda Tillman, Langston University, 4205 North Lincoln Blvd., Oklahoma City, OK 73105. Grant: $800,000.

Dated: September 20, 2010.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2010–24618 Filed 9–30–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–N–03]

Announcement of Funding Awards for Fiscal Year 2010; Hispanic-Serving Institutions Assisting Communities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102 (a)(4)(C) of the Department of Housing and Urban Development (HUD) Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2010 Hispanic-Serving Institutions Assisting Communities Program (HSIAC). The purpose of this document is to announce the names, addresses and the amount awarded to the winners to be used to help Hispanic-Serving Institutions of Higher Education to expand their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing and economic development, principally for persons of low-and moderate-income consistent with the purposes of Title I of the Housing and Community Development Act of 1974 as amended.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8226, 451 Seventh Street, SW., Washington, DC 20410, Telephone (202) 402–3852. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on (800) 877–8339 or (202) 708–1455. (Telephone numbers, other than "800" TTY numbers, are not toll free).

SUPPLEMENTARY INFORMATION: The Hispanic-Serving Institutions Assisting Communities Program was approved by Congress under the Consolidated Appropriations Act, 2010 (Pub. L. 111–117, approved December 16, 2009) and is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The HSIAC program provides funds for a wide range of CDBG-eligible activities including housing rehabilitation and financing, property demolition or acquisition, public facilities, economic development, business entrepreneurship, and fair housing programs.

The Catalog of Federal Domestic Assistance number for this program is 14.514.

On July 16, 2010 a Notice of Funding Availability (NOFA) for this program was posted on Grant.gov (Attachment 1) announcing the availability of approximately $6 million for funding grants under this program. HUD will

award two kinds of grants under this program; Previously Unfunded HSIAC Grants (Applicants who have never received a HUD HSIAC program grant) and Previously Funded HSIAC Grants. The maximum amount an applicant can request for award is $600,000 for a three-year (36 months) grant performance period. In order to ensure that institutions that have never received a HUD HSIAC program grant (Previously Unfunded HSIAC applicants) have an opportunity to receive awards in this competition, approximately $1.8 million was made available to fund Previously Unfunded HSIAC applicants. In addition, approximately, $4.7 million was made available to fund Previously Funded HSIAC applicants. The maximum amount an applicant can be awarded is $600,000 for a three-year (36 months) grant performance period

The Department reviewed, evaluated, and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications below, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545). More information about the winners can be found at *http://www.oup.org*.

List of Awardees for Grant Assistance Under the FY 2010 Hispanic-Serving Institutions Assisting Communities Program Funding Competition, by Institution, Address and Grant Amount

Region II

1. New Jersey City University, Ms. Gina Boesch, New Jersey City University, 2309 Kennedy Boulevard, Jersey City, NJ 07305. Grant: $599,916.

2. Passaic County Community College, Mr. Todd Sorber, Passaic County Community College, One College Boulevard, Paterson, NJ 07505. Grant: $599,952.

Region VI

3. South Texas College, Mrs. Luzelma Canales, South Texas College, 3201 W. Pecan Blvd., McAllen, TX 78501. Grant: $599,495.

4. San Antonio College, Mr. Steven Lewis, San Antonio College, 1300 San Pedro Avenue, San Antonio, TX 78212. Grant: $600,000.

5. The University of Texas at San Antonio, Dr. Harriett Romo, The University of Texas at San Antonio, One USTA Circle, San Antonio, TX 78249. Grant: $600,000.

6. Midland College, Mr. Alfredo Chaparro, Midland College, 3600 N. Garfield, Midland, TX 79705. Grant: $600,000.

Region VII

7. Donnelly College, Ms. Amy Neufeld, Donnelly College, 608 N. 18th Street, Kansas City, KS 66102. Grant: $598,608.

Region VIII

8. Otero Junior College, Mr. Gray Ashida, Otero Junior College, 1802 Colorado Avenue, La Junta, CO 81050. Grant: $599,987.

Region IX

9. Fresno City College, Dr. Cynthia Azari, Fresno City College, 1101 E. University Ave, Fresno, CA 93741. Grant: $600,000.

10. Yosemite Community College District, Mr. George Boodrookas, Yosemite Community College District, 2201 Blue Gum Avenue, Modesto, CA 95352. Grant: $600,000.

11. The University Corporation-California State University Northridge, Dr. Joyce Gilbert, The University Corporation-California State University Northridge, 18111 Nordhoff Street, Northridge, CA 91330. Grants: $502,042.

Dated: September 20, 2010.

Raphael Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2010–24623 Filed 9–30–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–N–05]

Announcement of Funding Awards for Fiscal Year 2010 Alaska Native/Native Hawaiian Institutions Assisting Communities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development (HUD) Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year (FY) 2010 Alaska Native/Native Hawaiian Institutions Assisting Communities (AN/NHIAC) Program. The purpose of this document is to announce the names, addresses and the amount awarded to the winners to be used to assist Alaska Native/Native Hawaiian institutions of higher education to expand their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing and economic development, principally for persons of low- and moderate-income, consistent with the purpose of Title I of the Housing and Community Development Act of 1974, as amended.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8226, 451 Seventh Street, SW., Washington, DC 20410, Telephone (202) 402–3852. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on 800–877–8339 or 202–708–1455. (Telephone number, other than "800" TTY numbers are not toll free).

SUPPLEMENTARY INFORMATION: The Alaska Native/Native Hawaiian Institutions Assisting Communities Program was approved by Congress under the Consolidated Appropriations Act, 2010 (Pub. L. 111–117 approved December 16, 2009) and is administered by the Office of University Partnerships under the Office of the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The AN/NHIAC program provides funds for a wide range of CDBG-eligible activities including housing rehabilitation and financing, property demolition or acquisition, public facilities, economic development, business entrepreneurship, and fair housing programs. The Catalog Federal Domestic Assistance number for this program is 14.515.

On July 16, 2010, a Notice of Funding Availability (NOFA) was posted on Grants.gov announcing the availability of $3.23 million in FY10. Each eligible campus was permitted to apply individually for $800,000, the maximum amount that can be awarded for a period of 36 months.

The Department reviewed, evaluated, and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications below, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545). More information about

the winners can be found at *http://www.oup.org*.

List of Awardees for Grant Assistance Under the FY 2010 Alaska Native/Native Hawaiian Institutions Assisting Communities Program Funding Competition, by Institution, Address and Grant Amount

Region IX

1. University of Hawaii-Kapiolani Community College, Dr. Robert Franco, University of Hawaii-Kapiolani Community College, 4303 Diamond Head Road, Honolulu, HI 96816. Grant: $800,000.

Region X

2. University of Alaska Fairbanks-Bristol Bay Campus, Dr. Deborah McLean, University of Alaska Fairbanks-Bristol Bay Campus, 527 Seward Street, Dillingham, AK 99576. Grant: $798,523.
3. University of Alaska Fairbanks-Chukchi Campus, Ms. Pauline Harvey, University of Alaska Fairbanks-Chukchi Campus, P.O. Box 297, Kotzebue, AK 99752. Grant: $787,191.

Dated: September 20, 2010.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2010–24617 Filed 9–30–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–N–06]

Announcement of Funding Awards for Fiscal Year 2010 Tribal Colleges and Universities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development (HUD) Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year (FY) 2010 Tribal Colleges and Universities Program (TCUP). The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards, which are to be used to enable Tribal Colleges and Universities (TCU) to build, expand, renovate, and equip their own facilities, and expand the role of the TCUs into the community through the provision of needed services such as health programs, job training, and economic development activities.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, Department of Housing and Urban Development, Room 8226, 451 Seventh Street, SW., Washington, DC 20410, Telephone (202) 402–3852. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on 800–877–8339 or 202–708–1455 (Telephone number, other than "800" TTY numbers are not toll free).

SUPPLEMENTARY INFORMATION: The Tribal Colleges and Universities Program was approved by Congress under the Consolidated Appropriations Act, 2010 (Pub. L. 111–117 approved December 16, 2009) and is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The Tribal Colleges and Universities Program assists tribal colleges and universities to build, expand, renovate, and equip their own facilities, and expand the role of the TCUs into the community through the provision of needed services such as health programs, job training, and economic development activities.

The Catalog of Federal Domestic Assistance number for this program is 14.519.

On July 16, 2010 a Notice of Funding Availability (NOFA) was posted on Grants.gov announcing the availability of $6.3 million in Fiscal Year (FY) 2010 funding for the Tribal Colleges and Universities Program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD funded eight applications.

The Department reviewed, evaluated, and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications below, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545). More information about the winners can be found at *http://www.oup.org*.

List of Awardees for Grant Assistance Under the FY 2010 Tribal Colleges and Universities Program Funding Competition, by Institution, Address, and Grant Amount

Region V

1. White Earth Tribal College, Wannetta Bennett, White Earth Tribal College, 124 South First Street, Mahnomen, MN 56557. Grant: $800,000.

Region VIII

2. Fort Peck Community College, Craig Smith, Fort Peck Community College, 605 Indian Avenue, Poplar, MT 59201. Grant: $800,000.
3. Sitting Bull College, Koreen Ressler, Sitting Bull College, 9299 Highway 24, Fort Yates, ND 58538. Grant: $800,000.
4. Salish Kootenai College, Lon Whitaker, Salish Kootenai, 58138 U.S. Highway 93, Pablo, MT 59855. Grant: $800,000.
5. Stone Child College, Melody Henry, Stone Child College, 8294 Upper Box Elder Road, Box Elder, MT 59521. Grant: $800,000.
6. Fort Berthold Community College, Keith Smith, Fort Berthold Community College, 220 8th Ave., P.O. Box 490, New Town, ND 58763. Grant: $800,000.

Region X

7. Northwest Indian College, Dave Orerio, Northwest Indian College, 2522 Kwina Road, Bellingham, WA 98226. Grant: $800,000.

Region IX

8. Diné College, Cliff John, Diné College, One Circle Drive, Route 12, Tsaile, AZ 86556. Grant: $700,000.

Dated: September 17, 2010.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2010–24615 Filed 9–30–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–N–10]

Announcement of Funding Awards for Fiscal Year 2010 Doctoral Dissertation Research Grant Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development (HUD) Reform Act of 1989, this document notifies the public of funding awards for the Fiscal Year (FY) 2010 Doctoral Dissertation Research Grant (DDRG) Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to help doctoral candidates complete dissertations on topics that focus on housing and urban development issues.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8226, 451 Seventh Street, SW., Washington, DC 20410, Telephone (202) 402–3852. To provide service for persons who are hearing-or speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on (800) 877–8339 or (202) 708–1455. (Telephone numbers, other than "800" TTY numbers, are not toll free).

SUPPLEMENTARY INFORMATION: The DDRG Program was created as a means of expanding the number of researchers conducting research on subjects of interest to HUD. Doctoral candidates can receive grants of up to $25,000 to complete work on their dissertations. Grants are awarded for a two-year period.

The Office of University Partnerships under the Assistant Secretary for Policy Development and Research (PD&R) administers this program. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The Catalog of Federal Domestic Assistance number for this program is 14.517.

On July 16, 2010, a Notice of Funding Availability (NOFA) for this program was posted on Grants.gov announcing the availability of $400,000 in FY 2010 for the DDRG Program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications announced below, and in accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545). More information about the winners can be found at *http://www.oup.org*.

Dated: September 17, 2010.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

List of Awardees for Grant Assistance Under the Fiscal Year (FY) 2010 Doctoral Dissertation Research Grant Program Funding Competition, by Institution, Address, Grant Amount and Name of Student Funded

1. The George Washington University, Mr. Anthony Yezer, The George Washington University, 2121 I Street, NW, Suite 601, Washington, DC 20052. Grant: $14,500 to William Larson.

2. President and Fellows of Harvard College, Mr. Robert J. Sampson, President and Fellows of Harvard College, 1350 Massachusetts Avenue, Cambridge, MA 02138. Grant: $25,000 to Corina Graif.

3. Northeastern University, Dr. Barry Bluestone, Northeastern University, 360 Huntington Avenue, Boston, MA 02115. Grant: $24,960 to Justin Betz.

4. The Trustees of Columbia University in the City of New York, Dr. Angela Aidala, The Trustees of Columbia University in the City of New York, 630 W. 168th Street, Box 49, New York, NY 10032. Grant: $24,765 to Jocelyn Apicello.

5. Colorado Seminary-University of Denver, Dr. Jean East, Colorado Seminary-University of Denver, 2199 S. University Blvd., Denver, CO 80208. Grant: $11,547 to Laurie Walker.

6. Brandeis University, Mr. Tom Shapiro, Brandeis University, 415 South Street, Waltham, MA 02454. Grant: $ 25,000 to Hannah Thomas.

7. President and Fellows of Harvard College, Dr. Antoine Picon, President and Fellows of Harvard College, 1350 Massachusetts Avenue, Cambridge, MA 02138. Grant: $25,000 to Wanda Liebermann.

8. New York University, Dr. Ingrid Gould Ellen, New York University, 665 Broadway, Suite 801, New York, NY 10012. Grant: $25,000 to Keren Horn.

9. The Regents of the University of California, Mr. John Hipp, The Regents of the University of California, 5171 California Avenue, Suite 150, Irvine, CA 92697. Grant: $24,725 to Alyssa Whitby Chamberlain.

10. The Regents of the University of California, Ms. Katen Chapple, The Regents of the University of California, 2150 Shattuck Avenue, Suite 313, Berkeley, CA 94704. Grant: $25,000 to Anne Martin.

11. The University of Chicago, Mr. Rob Chaskin, The University of Chicago, 5801 S. Ellis Avenue, Chicago, IL 60637. Grant: $25,000 to Benjamin Roth.

12. University of Maryland, Ms. Alexander Chen, University of Maryland, 3112 Lee Building, College Park, MD 20742. Grant: $25,000 to Lynette Boswell.

13. The Regents of the University of California, Dr. Julian Chow, The Regents of the University of California, 2150 Shattuck Avenue, Suite 313, Berkely, CA. 94704. Grant: $25,000 to Catherine Vu.

14. The Trustees of Columbia University in the City of New York, Mr. Robert Beauregard, The Trustees of Columbia University in the City of New York, 1210 Amsterdam Avenue, Mail Code 2205, New York, NY 10027. Grant: $25,000 to James Connolly.

15. The Regents of the University of California, Richard Walker, The Regents of the University of California, 2150 Shattuck Avenue, Suite 313, Berkely, CA 94704. Grant: $24,505 to Catherine Guimond.

16. The New School, Alex Schwartz, The New School, 66 West 12th Street, New York, NY 10011. Grant: $25,000 to Jamie Taylor.

17. Board of Trustee of the University of Illinois, Dr. Laura Lawson, Board of Trustee of the University of Illinois, 1901 S. First Street, Suite A, Champaign, IL 61820. Grant: $24,998 to Abbilyn Harmon.

[FR Doc. 2010–24614 Filed 9–30–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5420–N–02]

Notice of Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2010

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on April 1, 2010 and ending on June 30, 2010.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Department of Housing and Urban Development, 451 7th Street, SW., Room 10282, Washington, DC 20410–0500, telephone 202–708–1793 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the second quarter of calendar year 2010.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from April 1, 2010 through June 30, 2010. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, *etc.*). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the second quarter of calendar year 2010) before the next report is published (the third quarter of calendar year 2010), HUD will include any additional waivers granted for the third quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: September 24, 2010.

Helen R. Kanovsky,

General Counsel.

APPENDIX

Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development April 1, 2010 Through June 30, 2010

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.

II. Regulatory waivers granted by the Office of Housing.

III. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 58.22(a).

Project/Activity: The Town of Jean Lafitte, LA received an Economic Development Initiative Special Purpose (EDI–SP) grant in the amount of $248,000 for the construction of the Lafitte Multi-Purpose Center. The Lafitte Multi-Purpose Center is an education theater, civic center/emergency shelter, and a fisheries museum that will provide educational opportunities, cultural opportunities and emergency response functions. Subsequent to the December 8, 2004 appropriation for the EDI–SP grant, but prior to the completion of a Federal environmental review and any release of funds from HUD, the Town of Jean Lafitte spent non-HUD funds on construction activities for the project.

Nature of Requirement: HUD's regulation at 24 CFR 58.22(a) requires that an environmental review be performed and a request for release of funds be completed and certified prior to the commitment of non-HUD funds to a project using HUD funds.

Granted By: Mercedes M. Márquez, Assistant Secretary for Community Planning and Development.

Date Granted: April 12, 2010.

Reason Waived: The waiver was granted based on the following findings: the project would further the HUD mission and advance HUD program goals related to community development; the errors made in the environmental process for the commitment of non-HUD funds were made in good faith and the Town of Jean Lafitte did not willfully violate the applicable regulations; no HUD funds were committed; and, based on the revised environmental assessment and the HUD field inspection, granting a waiver would not result in any unmitigated, adverse environmental impact.

Contact: Danielle Schopp, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7250, Washington, DC 20410–7000, telephone (202) 402–4442.

• *Regulation:* 24 CFR 58.22(a).

Project/Activity: Hopewell Village involves the new construction of a 71 unit apartment complex to serve independent elderly residents in Elverson, PA. The residential portion of the development is to consist of a single three story structure. A portion of the

existing former fire station on site is to be retained to serve as a senior community center and dining facility. Chester County conditionally awarded HUD HOME funds to the Hopewell Village project in February 2007. Subsequent to the application and conditional award of HOME funds, but prior to any release of funds from HUD, the project developer initiated choice-limiting actions including demolition and site clearance. Chester County completed the environmental review on January 5, 2010.

Nature of Requirement: HUD's regulation at 24 CFR 58.22(a) requires that an environmental review be performed and a request for release of funds be completed and certified prior to the commitment of non-HUD funds to a project using HUD funds.

Granted By: Mercedes M. Márquez, Assistant Secretary for Community Planning and Development.

Date Granted: April 28, 2010.

Reason Waived: The waiver was granted based on the following findings: the above project would further the HUD mission and advance HUD program goals related to develop affordable housing; the errors made in the environmental process for the commitment of non-HUD funds were made in good faith and Chester County did not willfully violate the applicable regulations; no HUD funds were committed; and, based on the environmental assessment and the HUD field inspection, granting a waiver would not result in any unmitigated, adverse environmental impact.

Contact: Danielle Schopp, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7250, Washington, DC 20410–7000, telephone (202) 402–4442.

• *Regulation:* 24 CFR 58.22(a).

Project/Activity: Miraflores Housing Development involves the construction of 80 rental units of housing for low-income seniors and 150 homeownership units on a former commercial nursery in Richmond, CA. The City of Richmond intends to use $1 million in Section 108 loan guarantee funds for the development. HUD funds were also used for predevelopment costs with $400,000 from HOME and $429,000 from CDBG. Violations occurred when subsequent to application for HUD Section 108 loan guarantee, the City of Richmond used non-HUD funds to purchase two parcels of property prior to the completion of an environmental review.

Nature of Requirement: HUD's regulation at 24 CFR 58.22(a) requires that an environmental review be performed and a request for release of funds be completed and certified prior to the commitment of non-HUD funds to a project using HUD funds.

Granted By: Mercedes M. Márquez, Assistant Secretary for Community Planning and Development.

Date Granted: June 16, 2010.

Reason Waived: The waiver was granted based on the following findings: the above project would further the HUD mission and advance HUD Section 108 loan guarantee program, provides needed housing for low-income seniors, and appropriately remediates and redevelops a brownfield site; no HUD funds were committed; and, based on the environmental assessment and the HUD field inspection, granting a waiver would not result in any unmitigated, adverse environmental impact.

Contact: Danielle Schopp, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7250, Washington, DC 20410–7000, telephone (202) 402–4442.

• *Regulation:* 24 CFR 91.105(c)(1).

Project/Activity: The city of Harrisonburg, VA, received over two feet of snow during a storm in February, 2010 and requested a waiver of Consolidated Plan requirements applicable to its CDBG program, in order to use CDBG funds to assist with snow removal by private contractors.

Nature of Requirement: Under the Consolidated Plan regulations, a grantee may amend its plan in order to change its allocation priorities, to carry out an activity not previously described in the plan, or to change the purpose, scope, location, or beneficiaries of an activity. Under normal circumstances, a grantee follows its own amendment procedures which require public notice and comment periods. Section 91.105(c)(1) of HUD's regulations (24 CFR 91.105(c)(1)) requires that any change in the use of CDBG funds from one eligible activity to another be treated as a substantial amendment. Given the urgency of the situation, the city requested to amend its plan.

Granted By: Mercedes M. Márquez, Assistant Secretary for Community Planning and Development.

Date Granted: May 24, 2010.

Reason Waived: Given the urgency of the snow emergency situation it faced, the city requested approval to amend its plan to include snow removal as a CDBG-funded activity. Section 104(a)(2)(E) of the Housing and Community Development Act of 1974, as amended, requires citizens to be provided notice and given the opportunity to comment on substantial changes that are proposed to be made in a grantee's Consolidated Plan's use of funds. However, the statute does not define the term "substantial change." HUD's regulation at 24 CFR 91.105(c)(1) requires that any change in the use of CDBG funds from one eligible activity to another be treated as a substantial amendment. HUD has discretion in this case to waive this provision, given that this latter requirement is regulatory and not statutory. The amount of CDBG funds involved can be characterized as a *de minimus* level of money to be re-programmed. Thus, HUD accepted that the use of funds for snow removal in this emergency situation does not constitute a *substantial* amendment. HUD therefore waived the provisions of 24 CFR 91.105(c)(1) to the extent necessary to allow the city to determine that this reprogramming of funds does not constitute a substantial amendment.

Contact: Julia Neidecker Gonzales, Office of Block Grant Assistance, Office of Community Planning and Development, Entitlement Communities Division, 451 7th Street, SW., Room 7282, Washington, DC 20410–7000, telephone (202) 708–1577.

• *Regulation:* 24 CFR 91.500(d).

Project/Activity: Waiver of the 30-day period to review an amended Consolidated Plan.

Nature of Requirement: HUD's regulations at 24 CFR 91.500(d) provide that a jurisdiction may revise or resubmit a Consolidated Plan within 45 days after the first notification approval. This section further requires that HUD must respond to approve or disapprove the plan with 30 days of receiving the revisions or resubmission.

Granted By: Mercedes M. Márquez, Assistant Secretary for Community Planning and Development.

Date Granted: April 30, 2010.

Reason Waived: On January 15, 2010, HUD notified the city of Joliet that the city's 2010 Consolidated Plan was disapproved because the plan did not contain all certifications, satisfactorily completed, required as part of a complete Consolidated Plan submission under 24 CFR part 91. In accordance with HUD's regulations in 24 CFR 91.500(d), the city had until March 1, 2010, to revise and resubmit its Consolidated Plan submission. The city timely completed its revised submission on March 1, 2010, but HUD determined that it needed time beyond the 30-day review period to ensure that the certifications presented the assurances in a satisfactory manner that are required by HUD's regulations.

Contact: Julia Neidecker Gonzales, Office of Block Grant Assistance, Office of Community Planning and Development, Entitlement Communities Division, 451 7th Street, SW., Room 7282, Washington, DC 20410–7000, telephone (202) 708–1577.

• *Regulation:* 24 CFR 92.212(b).

Project Activity: Yakima County, WA HOME Consortium requested permission to permit it to incur administrative and planning costs prior to the submission of its Consolidated Plan.

Nature of Requirement: The HOME regulations at 24 CFR 92.104 requires all jurisdictions seeking designation as a participating jurisdiction (PJ) under the HOME program to submit a Consolidated Plan to HUD. Once the jurisdiction has complied with this and other requirements, HUD designates the jurisdiction as a HOME Participating Jurisdiction. Pursuant to § 92.212(b), PJs may not incur eligible administrative and planning pre-award costs until the beginning of the PJ's program year, or the date the Consolidated Plan is received by HUD, whichever is later. This provision precludes a jurisdiction that has not yet been designated as a HOME PJ from incurring pre-award costs for Consolidated Plan preparation and reimbursing itself when it receives its HOME allocation.

Granted By: Mercedes M. Márquez, Assistant Secretary, Community Planning and Development.

Date Granted: June 7, 2010.

Reason Waived: The Consortium requested a waiver of the pre-award cost provision to permit it to incur administrative and planning costs prior to the submission of its Consolidated Plan. The Consortium comprises a very rural, low-income area without substantial governmental resources. The Consortium members have limited

funding to develop the required Consolidated Plan and would suffer a financial hardship without a waiver. A waiver of 24 CFR 92.212(b) would permit the Consortium to charge eligible administrative and planning costs related to the development of the Consolidated Plan to its first HOME allocation.

Contact: Virginia Sardone, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7158, Washington, DC 20410–7000, telephone 202–708–2470.

• *Regulation:* 24 CFR 92.252(e).

Project/Activity: Washington County, Oregon requested a waiver to reduce, by six months, the period of affordability of a fire damaged four bedroom facility that provided transitional housing for persons with mental illness in order to build 14 one-bedroom units of permanent supportive housing with a Section 811 Capital Advance.

Nature of Requirement: The HOME regulations at 24 CFR 92.252(e) requires that "HOME-assisted units meet the affordability for not less than the applicable period * * * beginning after project completion."

Granted By: Mercedes M. Márquez, Assistant Secretary for Community Planning and Development.

Date Granted: June 16, 2010.

Reason Waived: HUD approved the waiver request because continuing the use of the project would create an unnecessary hardship on the non-profit and the tenants. The interests of the low-income community would be better served by facilitating construction of the new Section 811 project.

Contact: Virginia Sardone, Deputy Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7164, Washington, DC 20410–7000, telephone (202) 708–2470.

• *Regulation:* Notice of Allocations, Application Procedures, and Requirements for Homelessness Prevention and Rapid Re-Housing Program (HPRP) Grantees under the American Recovery and Reinvestment Act of 2009 (Recovery Act of 2009), issued March 19, 2009 (HPRP Notice).

Project/Activity: Homelessness Prevention and Rapid Re-Housing (HPRP) grantee, the State of Washington, requested a waiver of the requirement stating grantees may not directly carry out data collection and evaluation activities under HPRP.

Nature of Requirement: Subsection III.A. of the HPRP Notice provides that a State grantee must make available all of its formula allocation, except for an appropriate share of funds for administrative costs, to units of general local government and private nonprofit organizations in the State to carry out all eligible activities.

Granted By: Mercedes Márquez, Assistant Secretary for Community Planning and Development.

Date Granted: May 24, 2010.

Reason Waived: The grantee provided sufficient information for HUD to conclude the following: (1) The HMIS is already in place; (2) the HMIS is administered by the State of Washington; and (3) the alternative proposal of utilizing a fee structure to administer HMIS and meet the requirements in the Recovery Act would impose additional administrative burdens for the State.

Contact: Ann M. Oliva, Director, Office of Special Needs Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7262, Washington, DC 20410–7000, telephone (202) 708–4300.

• *Regulation:* Notice of Allocations, Application Procedures, and Requirements for Homelessness Prevention and Rapid Re-Housing Program (HPRP) Grantees under the American Recovery and Reinvestment Act of 2009 (Recovery Act of 2009), issued March 19, 2009 (HPRP Notice).

Project/Activity: Homelessness Prevention and Rapid Re-Housing Program (HPRP) grantee, Adams County, Colorado requested a waiver of the limitation on eligible subgrantees in order to subgrant HPRP funds to the Adams County Housing Authority (ACHA).

Nature of Requirement: Subsections III.B. and III.C. of the HPRP Notice provides that metropolitan cities, urban counties, and territories may distribute all or part of their grant amounts to private non-profit organizations or another local government.

Granted By: Mercedes M. Márquez. Assistant Secretary for Community Planning and Development.

Date Granted: June 22, 2010.

Reason Waived: The grantee provided sufficient information for HUD to conclude the following: (1) HPRP participants would be selected in a manner that ensure ACHA residents are not unfairly selected over other eligible individuals and families; (2) utilizing the ACHA as a subgrantee would result in an efficient and effective program that benefits HPRP participants; and (3) the ACHA has proven capacity to serve homeless persons.

Contact: Ann M. Oliva, Director, Office of Special Needs Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7262, Washington, DC 20410–7000, telephone (202) 708–4300.

• *Regulation:* Notice of Allocations, Application Procedures, and Requirements for Homelessness Prevention and Rapid Re-Housing Program (HPRP) Grantees under the American Recovery and Reinvestment Act of 2009 (Recovery Act of 2009), issued March 19, 2009 (HPRP Notice).

Project/Activity: Homelessness Prevention and Rapid Re-Housing Program (HPRP) grantee, the State of Minnesota Department of Human Services (MDHS), requested a waiver of the prohibition against placing HPRP participants in subsidized housing owned by the subgrantee, Anoka County Community Action Program (ACCAP).

Nature of Requirement: Subsections IV.A. of the HPRP Notice provides that HPRP financial assistance may not be used in connection with housing owned by the grantee, subgrantee, or the parent, subsidiary, or affiliated organization of the subgrantee.

Granted By: Mercedes M. Márquez, Assistant Secretary for Community Planning and Development.

Date Granted: May 12, 2010.

Reason Waived: The subgrantee provided sufficient information for HUD to conclude the following: (1) The use of the housing owned by AACAP was necessary to provide an adequate supply of appropriate housing options for HPRP participants; (2) AACAP had disclosed the conflict of interest; (3) ACCAP's attorney reviewed the conflict of interest and determined that the use of housing owned by the subgrantee would not violate State or local law; (4) HPRP participants would not be required or steered to live in AACAP's housing in order to receive financial or other assistance under HPRP; and (5) the use of the housing owned by AACAP would not result in any personal or financial gain for any employee of the grantee, subgrantee, or the parent, subsidiary, or affiliated organization of the subgrantee.

Contact: Ann M. Oliva, Director, Office of Special Needs Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7262, Washington, DC 20410–7000, telephone (202) 708–4300.

• *Regulation:* Notice of Allocations, Application Procedures, and Requirements for Homelessness Prevention and Rapid Re-Housing Program (HPRP) Grantees under the American Recovery and Reinvestment Act of 2009 (Recovery Act of 2009), issued March 19, 2009 (HPRP Notice).

Project/Activity: Homelessness Prevention and Rapid Re-Housing Program (HPRP) grantee, Maine State Housing Authority (MSHA), requested a waiver of the prohibition against placing HPRP participants in subsidized housing owned by the subgrantee, York County Shelter Programs, Inc. (YCSPI).

Nature of Requirement: Subsection IV.A. of the HPRP Notice provides that HPRP financial assistance may not be used in connection with housing owned by the grantee, subgrantee, or the parent, subsidiary, or affiliated organization of the subgrantee.

Granted By: Mercedes M. Márquez, Assistant Secretary for Community Planning and Development.

Date Granted: April 7, 2010.

Reason Waived: The grantee provided sufficient information for HUD to conclude the following: (1) The use of the housing owned by YCSPI was necessary to provide an adequate supply of appropriate housing options for HPRP participants; (2) YCSPI had disclosed the conflict of interest; (3) MSHA's attorney reviewed the conflict of interest and determined that the use of the housing owned by the subgrantee would not violate State or local law; (4) HPRP participants would not be required or steered to live in YCSPI's housing in order to receive financial or other assistance under HPRP; and (5) the use of the housing owned by YCSPI would not result in any personal or financial gain for any employee of the grantee, subgrantee, or the parent, subsidiary, or affiliated organization of the subgrantee.

Contact: Ann M. Oliva, Director, Office of Special Needs Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room

7262, Washington, DC 20410–7000, telephone (202) 708–4300.

• *Regulation:* Notice of Allocations, Application Procedures, and Requirements for Homelessness Prevention and Rapid Re-Housing Program (HPRP) Grantees under the American Recovery and Reinvestment Act of 2009 (Recovery Act of 2009), issued March 19, 2009 (HPRP Notice).

Project/Activity: Homelessness Prevention and Rapid Re-Housing Program (HPRP) grantee, the Spartanburg County Community & Economic Development Department, Spartanburg County, South Carolina, requested a waiver of the prohibition against placing HPRP participants in subsidized housing owned by the subgrantee, Upstate Homeless Coalition of South Carolina (UHCSC).

Nature of Requirement: Subsection IV.A. of the HPRP Notice provides that HPRP financial assistance may not be used in connection with housing owned by the grantee, subgrantee, or the parent, subsidiary, or affiliated organization of the subgrantee.

Granted By: Mercedes M. Márquez, Assistant Secretary for Community Planning and Development.

Date Granted: May 12, 2010.

Reason Waived: The grantee provided sufficient information for HUD to conclude the following: (1) The use of the housing owned by UHCSC was necessary to provide an adequate supply of appropriate housing options for HPRP participants; (2) UHCSC had disclosed the conflict of interest; (3) UHCSC's attorney reviewed the conflict of interest and determined that the use of the housing owned by UHCSC would not violate State or local law; (4) HPRP participants would not be required or steered to live in UHCSC's housing in order to receive financial or other assistance under HPRP; and (5) the use of the housing owned by UHCSC would not result in any personal or financial gain for any employee of the grantee, subgrantee, or the parent, subsidiary, or affiliated organization of the subgrantee.

Contact: Ann M. Oliva, Director, Office of Special Needs Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7262, Washington, DC 20410–7000, telephone (202) 708–4300.

II. Regulatory Waivers Granted by the Office of Housing—Federal Housing Administration (FHA)

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 202.3(a)(3).

Project/Activity: All FHA Approved Title II Mortgagees

Nature of Requirement: This regulation subsection contains the requirements for principal—authorized agent relationship originations of FHA single family loans. It was revised by a May 20, 2010, final rule to require: (1) Both mortgagees to have unconditional direct endorsement approval, (2) the principal mortgagee originate the loan, and (3) the authorized agent mortgagee underwrites the loan.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 11, 2010 by issuance of Mortgagee Letter 2010–20.

Reason Waived: The effective date of the May 20, 2010, was delayed to allow mortgagees sufficient time to meet the new requirement that they must have unconditional direct endorsement approval and for FHA to make changes to the single family loan origination system to comply with the revised regulations.

Contact: Richard G. Toma, Deputy Director, Office of Lender Activities and Program Compliance, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room P3214, Washington, DC 20410–8000, telephone (202) 708–1515.

• *Regulation:* 24 CFR 202.8(b)(3).

Project/Activity: FHA Approved Title I and Title II Nonsupervised Loan Correspondents with fiscal years ending on or after December 31, 2009.

Nature of Requirement: A HUD May 20, 2010, final rule removed the annual renewal requirement for nonsupervised loan correspondent previously in 24 CFR 202.8(b)(3) and replaced them with a provision in the revised 24 CFR 208.8(c) which allows loan correspondents that are currently FHA-approved as of the May 20, 2010, effective date of the final rule to maintain their FHA approval through December 31, 2010. Any loan correspondent that had not met the old annual renewal requirements by May 20, 2010, were still subject to the prior annual renewal requirement of paying the annual renewal fee, submitting audited financial statements and completing the annual certification report. A waiver of the requirement to submit audited financial statements was made for all nonsupervised loan correspondents whose fiscal year ended on or after December 31, 2009, who were otherwise in good standing with the Department.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 11, 2010 by issuance of Mortgagee Letter 2010–20.

Reason Waived: The Department determined that requiring submission of audited financial statements, and the costs associated with such a requirement, would place an unreasonable burden on loan correspondents, especially in light of the fact that their approval would only continue for less than one year.

Contact: Richard G. Toma, Deputy Director, Office of Lender Activities and Program Compliance, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., P3214, Washington, DC 20410–8000, telephone (202) 708–1515.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: M. L. King, Jr. Apartments, Seattle, Washington—FHA Project Number 127–35004. The owner is requesting to defer repayment of the Flexible Subsidy Operating Assistance Loan on this project to give the owner a longer term to pay off the loan.

Nature of Requirement: Section 219.220(b) governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: "Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy loan would be repaid, in whole, at that time.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 5, 2010.

Reason Waived: The owner requested waiver of the requirement to defer repayment of the Flexible Subsidy Operating Assistance Loan because the project did not have sufficient funds to repay the loan at maturity of the mortgage. Permission was granted because the owner is in compliance with all business agreements with HUD and has met required HUD standards. The loan was reamortized and interest has been deferred over a 25-year period. The owner has recorded a Use Agreement for the 25-year period allowing the project to remain as vital affordable housing for the area.

Contact: Robert G. Iber, Acting Director, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–7000, telephone: (202) 708–3730, extension 7538.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Friendship Terrace, FHA No. 000–SH0001/Pre 1974. The owner requested permission to defer repayment of the Flexible Subsidy loan on this project. The deferral would enable urgent repairs and rehabilitation to be completed for revitalization of the project.

Nature of Requirement: Section 219.220(b) of HUD's regulations govern the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996, and states: "Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the mortgage, or sale of the project * * *" Either of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy Loan would be repaid, in whole, at that time.

Granted By: Ronald Y. Spraker, Associate General Deputy Assistant Secretary for Housing.

Date Granted: May 20, 2010.

Reason Waived: This regulation was waived in order to exempt Episcopal Church Home, Friendship, Incorporated, from the requirement to repay the Flexible Subsidy Operating Assistance Loan upon prepayment/refinancing of the loan; thereby allowing financing to rehabilitate the property and ensure preservation of the project as an affordable housing resource.

Contact: Robert G. Iber, Acting Director, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–7000, telephone: (202) 708–3730, extension 7538.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Faush-Metropolitan Manor (Jefferson County), FHA No. 062–

EH022. The owner requested permission to continue deferral of repayment of the Flexible Subsidy loan on this project, following a one-year deferral granted on March 27, 2009. The deferral would enable improved security upgrades for the elderly residents of the project.

Nature of Requirement: Section 219.220(b) of HUD's regulations govern the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996, and states: "Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the mortgage, or sale of the project * * *" Either of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy Loan would be repaid, in whole, at that time.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 28, 2010.

Reason Waived: This regulation was waived in order to extend the exemption of Faush Metropolitan Manor, Incorporated, from the requirement to repay the Flexible Subsidy Operating Assistance Loan upon prepayment/refinancing of the loan; thereby allowing improved security upgrades for the elderly residents of the project.

Contact: Robert G. Iber, Acting Director, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–7000, telephone: (202) 708–3730, extension 7538.

• *Regulation:* 24 CFR 290.30(a).

Project/Activity: The Winery Apartments, Fresno, California—FHA Project Number 121–35490A. The owner has requested a waiver to allow the Department of HUD to sell the current unsubsidized mortgage loan on a non-competitive basis.

Nature of Requirement: HUD's regulations governing the sale of HUD–Held mortgages are set forth in 24 CFR part 290, subpart B. Section 290.30(a) of those regulations state that "[e]xcept as otherwise provided in Section 290.31(a)(2), HUD will sell HUD–Held multifamily mortgages on a competitive basis." Section 290.31(a)(2) permits "negotiated" sales to State or local governments for mortgage loans that are current and secured by subsidized projects, provided such loans are sold with FHA insurance.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 30, 2010.

Reason Waived: This regulation was waived in order to allow the sale of The Winery Apartments to the California Housing Finance Agency. Sale to a profit-motivated purchaser could have placed demands on the property in order to obtain a return on its investment and given the thin operating margins at the project, demands could lead to a foreclosure of the Note and loss of this much-needed low-income housing.

Contact: Robert G. Iber, Acting Director, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–7000, telephone (202) 708–3730, extension 7538.

• *Regulation:* 24 CFR 236.725.

Project/Activity: New Vista I Apartments, Chicago, Illinois—FHA Project Number 071–031NI. A Decoupling proposal was made by the owner to pay off the Section 236 non-insured mortgage, continue Interest Reduction Payments and complete redevelopment of the property.

Nature of Requirement: Section 236.725 of HUD's regulations limits the term of the rental assistance contract to the term of the mortgage or 40 years from the date of the first payment made under the contract, whichever is the lesser.

Granted By: David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 29, 2010.

Reason Waived: This regulation waiver was approved to allow for continuance of the Rental Assistance Payments contract and to refinance its Section 236 non-insured mortgage. The waiver is predicated on the project entering into a new recorded Use Agreement restricting the project to be operated under the Section 236 mortgage plus an additional statutorily mandated five years. The preservation of this affordable housing project will thereby continue until 2021.

Contact: Robert G. Iber, Acting Director, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–7000, telephone (202) 708–3730, extension 7538.

• *Regulation:* 24 CFR 236.725.

Project/Activity: Shalom Towers Apartments, Newark, New Jersey—FHA Project Number 031–072NI. The owner has requested waiver of this regulation to permit continuation of Rent Assistance Payments after prepayment of the non-insured Section 236 mortgage.

Nature of Requirement: Section 236.725 of HUD's regulations limits the term of the rental assistance contract to the term of the mortgage or 40 years from the date of the first payment made under the contract, whichever is the lesser.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 29, 2010.

Reason Waived: Granting waiver of this regulation will provide stability of the project-based rental assistance and enhance the long-term financial feasibility through the proposed rehabilitation and refinancing of the property. The waiver will also allow the current tenants to remain and the property to be preserved as a low-income housing resource through 2021.

Contact: Robert G. Iber, Acting Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–3730, extension 7538.

• *Regulation:* 24 CFR 883.308(d).

Project/Activity: Treemont Apartments, Buena Vista, Virginia—Section 8 Contract number VA36HO27229. The owner has requested waiver of the regulation requiring that Section 8 Contract Rents be reduced if debt service on the permanent project financing is reduced below the debt service on which the rents were based. The owner proposes to acquire and renovate the project.

Nature of Requirement: Section 883.308 of HUD's regulations governs the reduction of contract rents for in projects financed under the Section 8 Housing Assistance Payments Program for State Housing Agencies. The regulation states: "If the actual debt service to the owner under the permanent financing is lower than the anticipated debt service on which the Contract Rents were based, the initial Contract Rents, or the Contract Rents currently in effect, must be reduced commensurately, and the amount of the savings credited to the project account."

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 16, 2010.

Reason Waived: This waiver was granted in order to allow the owner, who is a developer of affordable housing, to acquire and renovate the project with benefit of new loans at reduced interest rates and Low Income Housing Tax Credits. They plan to request a new Housing Assistance Payments Contract and comply with a Use Agreement requirement, maintaining the property for 50 years as much needed affordable housing.

Contact: Robert G. Iber, Acting Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–3730, extension 7538.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Robertson Hill Apartments, Raleigh, NC, Project Number: 053–HD245/NC19–Q081–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 14, 2010.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: North Highlands VOA Living Center, North Highlands, CA, Project Number: 136–HD019/CA30–Q061–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 13, 2010.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Mosaic Housing XX, Garden City, Garden City, KS, Project Number: 102–HD040/KS16–Q081–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.
Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: May 21, 2010.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: St. John's Commons, Havre de Grace, MD, Project Number: 052–EE058/MD06–Q071–002.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.
Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: May 21, 2010.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Mapleway Achievement Center, Monmouth, IL, Project Number: 072–HD156/IL06–Q081–004.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.
Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: May 27, 2010.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: St. Augustine Manor, New Iberia, LA, Project Number: 064–EE229/LA48–S081–007.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.
Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: June 9, 2010.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Chadwick Place II, Marion, OH, Project Number: 043–EE123/OH16–S081–002.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.
Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: June 11, 2010.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: New Meadow Elderly Housing, Newington, CT, Project Number: 017–EE102/CT26–S081–003.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.
Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: June 16, 2010.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Sueno Real Apartments, Arroyo, PR, Project Number: 056–HD031/RQ46–Q061–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.
Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: June 25, 2010.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Grace Place Retirement Community, Memphis, TN, Project Number: 081–EE045/TN40–S081–002.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.
Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: June 25, 2010.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.
Project/Activity: Fillmore Haciendas, Phoenix, AZ, Project Number: 123–EE105/AZ20–S071–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: May 13, 2010.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources and additional time was needed to achieve an initial closing.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban

Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: RJ Piltz Vista Bonita Apartments, Mesa, AZ, Project Number: 123–HD041/AZ20–Q061–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 21, 2010.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources and additional time was needed for issuance of the firm commitment and for the project to achieve an initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Independence Place, Conroe, TX, Project Number: 114–HD039/TX24–Q071–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 11, 2010.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources and additional time was needed for additional funds to be approved, issuance of the firm commitment and for the project to achieve an initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: The Warren Project, Warren, NJ, Project Number: 031–HD154/NJ39–Q071–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 14, 2010.

Reason Waived: Additional time was needed for the initial closing documents to be updated and corrected and for the project to achieve an initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Oakridge Park Apartments, Lake Oswego, OR, Project Number: 126–EE059/OR16–S061–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 14, 2010.

Reason Waived: Additional time was needed for the sponsor/owner to reapply for tax credit funding for the mixed finance project and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Parkside Apartments, Terra Alta, WV, Project Number: 045–EE031/WV15–S071–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 16, 2010.

Reason Waived: Additional time was needed for the firm commitment to be processed and for the project to reach an initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Villa Serena, Chico, CA, Project Number: 136–HD021/CA30–Q071–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 26, 2010.

Reason Waived: Additional time was needed for the project to achieve an initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Odd Fellows Senior Housing, Bronx, NY, Project Number: 012–EE351/NY36–S061–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 26, 2010.

Reason Waived: Additional time was needed for the initial closing documents to be reviewed by HUD and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Cedar Street Apartments, Redwood City, CA, Project Number: 121–HD090/CA39–Q071–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 13, 2010.

Reason Waived: Additional time was needed to resolve an environmental issue involving noise, for the firm commitment to be issued and for the project to achieve an initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Harrison Street Senior Housing, Oakland, CA, Project Number: 121–EE204/CA39–S071–008.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18

months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 21, 2010.

Reason Waived: Additional time was needed for the sponsor/owner to obtain low income housing tax credit and tax exempt bond, commitment and submit missing exhibits for the firm commitment and for the project to achieve an initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Five Talents Apartments, Lexington, MS, Project Number: 065–HD044/MS26–Q081–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 21, 2010.

Reason Waived: Additional time was needed to issue and submit the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: San Marino Apartments, Montclair, CA, Project Number: 143–EE062/CA43–S061–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 27, 2010.

Reason Waived: Additional time was needed for the sponsor/owner to submit the cost certification documents for this mixed finance project to reach an initial/final closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Orchard Housing, Orchard Park, NY, Project Number: 014–EE266/NY06–S071–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 28, 2010.

Reason Waived: Additional time was needed for the sponsor/owner to resolve a re-zoning issue with the town and for the project to achieve an initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: St. Joseph Place, Kansas City, MO, Project Number: 084–EE073/MO16–S071–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 17, 2010.

Reason Waived: Additional time was needed for amendment of the disposition approval for the project site to be processed and for the project to achieve an initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Hamilton Heartwood Homes, Columbus, OH, Project Number: 046–HD036/OH10–Q071–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 17, 2010.

Reason Waived: Additional time was needed for the sponsor/owner to resolve site control issues with the City of Hamilton, obtain additional funds, and for the project to reach an initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Council Towers VI Senior Housing, Queens, NY, Project Number: 012–EE360/NY36–S071–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 28, 2010.

Reason Waived: Additional time was needed for completion of the sale of tax exempt bonds by the New York City Housing Development Corporation (NYCHDC) and for the project to reach an initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165, 24 CFR 891.830(b) and 24 CFR 891.830(c)(4).

Project/Activity: Peralta Senior Housing, Fremont, CA, Project Number: 121–EE205/CA39–S081–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis. Section 891.830(b) allows the capital advance funds be drawn down only in an approved ratio to other funds, in accordance with draw down schedule approved by HUD. Section 891.830(c)(4) permits the capital advance drawn down will be used only for eligible costs actually incurred in accordance with the provisions of this subpart and the approved mixed-finance project. Section 891.830(c)(5) allows the amount of the draw down is consistent with the ratio of 202 or 811 supportive housing units to other units.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 7, 2010.

Reason Waived: Additional time was needed for issuance of the firm commitment, construction of the project and for initial/final closing of this capital advance upon completion of project. Also, to allow the capital advance to be drawn down in one requisition to pay off that portion of the financing that strictly relate to capital advance eligible costs after completion of construction at initial/final closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.830(c)(4).

Project/Activity: Village at St. Peter's, Pleasantville, NJ, Project Number: 035–EE053/NJ39–S071–001.

Nature of Requirement: Section 891.830(c)(4) prohibits the capital advance funds from paying off bridge or construction financing, or repaying or collateralizing bonds.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 7, 2010.

Reason Waived: The waiver was granted to permit capital advance funds to be used to pay off that portion of the financing that strictly relate to capital advance eligible costs.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.830(c)(4).

Project/Activity: Council Towers VI Senior Housing, Queens, NY, Project Number: 012–EE360/NY36–S071–006.

Nature of Requirement: Section 891.830(c)(4) prohibits the capital advance funds from paying off bridge or construction financing, or repaying or collateralizing bonds.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 7, 2010.

Reason Waived: The waiver was granted to permit capital advance funds to be used to pay off that portion of the financing that strictly relate to capital advance eligible costs.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6130, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* ML 2009–46 B (Baseline Condo Guidance—ML serves as regulation as defined under the Housing and Economic Recovery Act (HERA)).

Project/Activity: Blanket Waiver for all FHA-approved lenders.

Nature of Requirement: ML 2009–46 B requires homeowner (HO)–6 insurance coverage for individual condominium units when the project Master Policy does not include interior unit coverage. HO–6 coverage is a "walls-in" policy that protects the interior improvements and betterments in the event of perils such as bad weather, fire, explosion, and theft. HO–6 policies also generally cover improvements made, including private balconies or entrances, special fixtures or other additions to the property not covered by the Master Policy.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 29, 2010.

Reason Waived: FHA-approved lenders' information technology (IT) infrastructure, including processing and underwriting systems do not currently accommodate for collection and management of this data. FHA-approved lenders advise HUD that any attempts to solve the problem immediately would pose significant risks that could ultimately lead to unsalable or uninsurable loans to FHA. Without the waiver, lenders would have to discontinue the condominium program; thereby, affecting purchasers who intend to purchase a condominium unit and will diminish affordable housing opportunities. The sale of condominium units was determined to be vital to the recovery of the housing market.

Contact: Joanne B. Kuczma, Housing Program Officer, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 9266, Washington, DC 20410–8000, telephone (202) 708–2121.

• *Regulation:* ML 2009–46 B (Baseline Condo Guidance—ML serves as regulation as defined under HERA).

Project/Activity: Taconic Investment, Meadow Wood at Gateway Condominium Project, Brooklyn, New York.

Nature of Requirement: ML 2009–46 B requires that no more than ten (10) percent of the units may be owned by one investor. Previously, the ten (10) percent investor ownership limitation only applied to FHA's "spot loan" approval process, permitted under 24 CFR 234.26(i). This limitation also applies to builders/developers that subsequently rent vacant and unsold units.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 21, 2010.

Reason Waived: In New York City, tenants are protected under the Rent Stabilization Law. Issuance of the waiver was determined to allow for lenders to continue making FHA-insured loans in the condominium; posed a low risk to the Mutual Mortgage Insurance (MMI) fund; was determined important due to the critical need for additional affordable housing in New York City; and would not violate any statutory requirements.

Contact: Joanne B. Kuczma, Housing Program Officer, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 9266, Washington, DC 20410–8000, telephone (202) 708–2121.

• *Regulation:* ML 2009–46 B (Baseline Condo Guidance—ML serves as regulation as defined under HERA).

Project/Activity: Taconic Investment, Meadow Wood at Gateway Condominium Project, Brooklyn, New York.

Nature of Requirement: ML 2009–46 B requires that no more than ten (10) percent of the units may be owned by one investor. Previously, the ten (10) percent investor ownership limitation only applied to FHA's "spot loan" approval process, permitted under 24 CFR 234.26(i). This limitation also applies to builders/developers that subsequently rent vacant and unsold units.

Granted By: David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 21, 2010.

Reason Waived: In New York City, tenants are protected under the Rent Stabilization Law. Issuance of the waiver was determined to allow for lenders to continue making FHA-insured loans in the condominium; posed a low risk to the Mutual Mortgage Insurance (MMI) fund; was determined important due to the critical need for additional affordable housing in New York City; and would not violate any statutory requirements.

Contact: Joanne B. Kuczma, Housing Program Officer, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 9266, Washington, DC 20410–8000, telephone (202) 708–2121.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 5.216(b).

Project/Activity: Louisiana Housing Authority (LHA), LA.

Nature of Requirement: HUD's regulation at 24 CFR 5.216(b) requires that applicants submit Social Security Numbers while eligibility is being determined.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 17, 2010.

Reason Waived: Vital records of many of the individuals to be served were destroyed by the hurricanes and in some instances the offices where this information was maintained were also destroyed. As a result, there were delays in obtaining these documents.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–500, telephone (202) 708–0477.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Phillipsburg Housing Authority, (KS036), Phillipsburg, KS.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 6, 2010.

Reason Waived: The HA requested a waiver of the Transition Year 2 management operations certification requirements under the Management Assessment Subsystem (MASS) indicator for fiscal year ending September 30, 2009, because the HA was not confident that it could accurately comply or replicate the requested information to meet the requirements of the regulation and believed that any attempt to do so would likely result in inaccurate data and incorrect submission. The waiver was granted for fiscal year ending September 30, 2009. Consequently, the most recent management operations score of record would be carried over to the fiscal year being assessed.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate

Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Leon Housing Authority, (IA027), Leon, IA.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 6, 2010.

Reason Waived: The HA requested a waiver of the Transition Year 2 management operations certification requirements under the Management Assessment Subsystem (MASS) indicator for fiscal year ending September 30, 2009, because the HA had neither a viable method for reconstructing the data, nor the staff resources to devote to this task given other program requirements. The waiver was granted for fiscal year ending September 30, 2009. Consequently, the most recent management operations score of record would be carried over to the fiscal year being assessed.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Hillsboro Housing Authority, (KS096), Hillsboro, KS.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 6, 2010.

Reason Waived: The HA requested a waiver of the Transition Year 2 management operations certification requirements under the Management Assessment Subsystem (MASS) indicator for fiscal year ending September 30, 2009, because the HA's effort to replicate the data needed for an accurate management operations certification would result in an administrative burden as the HA no longer had a viable method for reconstructing the data. The waiver was granted for fiscal year ending September 30, 2009. Consequently, the most recent management operations score of record would be carried over to the fiscal year being assessed.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Brunswick Housing Authority, (GA009), Brunswick, GA.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 09, 2010.

Reason Waived: The HA contends that it acquired a new business system to capture the relevant data required for its conversion to asset management. To complete the Management operations certification requirement under the old system would impose an administrative burden. The waiver was granted for fiscal year ending June 30, 2009, and the most recent management operations score of record would be carried over to the fiscal year being assessed.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Housing Authority of the City of Iola, (KS049), Iola, KS.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 12, 2010.

Reason Waived: The HA contends that it revised its manual system to capture relevant data required for its conversion to asset management, and no longer had a viable method for reconstructing the data. The HA's action would result in an administrative burden in an effort to replicate the data needed for accurate management operations certification. The waiver was granted for fiscal year ending March 31, 2010, and the most recent management operations score of record would be carried over to the fiscal year being assessed.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Washington County Housing Authority, (PA017), Washington, PA.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 16, 2010.

Reason Waived: The HA contends that it requested a waiver due to resulting hardship created by an extensive reorganization of personnel, procedures, staffing and on-going modification of its computer software to facilitate reporting in its conversion to asset management. The waiver was granted for fiscal year ending September 30, 2010, and the most recent management operations score of record would be carried over to the fiscal year being assessed.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Altoona Housing Authority, (PA031), Washington, PA.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 16, 2010.

Reason Waived: The HA requested a waiver of the Transition Year 2 management

operations certification requirements under the Management Assessment Subsystem (MASS) indicator for fiscal year ending June 30, 2009, because the HA converted its public housing operations to asset management and had its staff attend the HUD asset management training workshops, provided in house-training, and implemented new software to convert all of their housing data to the new system. Reconstructing the current management operations certification data would impose an administrative hardship for the PHA. Consequently, the waiver was granted for fiscal year ending June 30, 2009, and the most recent management operations score of record would be carried over to the fiscal year being assessed.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Housing Authority of Clackamas County, (OR001), Oregon City, OR.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 20, 2010.

Reason Waived: The HA contends that it has been fine tuning its internal systems in order to accurately track and report progress in meeting requirements based on the expectation that a PHAS III Final rule would be published by the end of the transition year. The waiver was granted for fiscal year ending June 30, 2009, and the most recent management operations score of record would be carried over to the fiscal year being assessed.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Housing Authority of New Orleans (LA001), New Orleans, LA.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 28, 2010.

Reason Waived: The HA contends that it recently underwent an in-depth assessment of its operations and identified significant deficiencies in the areas of housing management, maintenance, finance and management information systems. The assessment confirmed that internal recordkeeping and reporting systems were insufficient to produce accurate, comprehensive data necessary to complete a management operations certification. The waiver was granted for fiscal year ending September 30, 2009.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Housing Authority City of Dell (AR078), Dell, AR.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 28, 2010.

Reason Waived: The HA requested a waiver because it (1) operates fourteen public housing units managed by a part-time manager, (2) was not converting to asset management and (3) had not maintained adequate records and documentation to submit its management operations certification. The waiver was granted because the HA has fewer than 400 public housing units, and the HA had not maintained adequate records and documentation sufficient to comply with the requirements of 24 CFR 902.40 and 24 CFR 902.43, subpart D. Compiling the data necessary to meet the requirements of Subpart D would impose an administrative hardship. The most recent management operations score of record would be carried over for the fiscal year ending December 31, 2009.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Housing Authority City of Augusta (GA001), Augusta, GA.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 28, 2010.

Reason Waived: The HA contends that it converted to asset management, completed its staffing reorganization, updated its job descriptions and has been conducting on-going staff training in preparation for the new roles under asset management. Additionally, the HA reported it has been developing computer software to comply with the new reporting requirements. Retrieving the data needed for an accurate management operations certification would result in an administrative hardship. The waiver was granted because the HA needed the time to complete the conversion to asset management. Therefore, the most recent management operations score of record would be carried over for fiscal year ending March 31, 2010.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Housing Authority City of Newnan (GA095), Newnan GA.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 29, 2010.

Reason Waived: The HA contends that it converted to asset management, established three Asset Management Projects (AMPS) with a project manager for each AMP, and adopted project-based budgeting for each AMP. The HA also established a Central Office Cost Center (COCC) and has been developing its software systems, reporting procedures and internal controls in order to further enhance the conversion to asset management. The waiver was granted because to interrupt the HA's progress and require submission of a management operations certification would impose an

administrative hardship. The most recent management operations score of record would be carried over for the fiscal year ending June 30, 2009.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Jefferson Metropolitan Housing Authority, (OH014), Steubenville, OH.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 30, 2010.

Reason Waived: The HA contends that it divided its operations into three Asset Management Projects (AMPS) and decentralized maintenance and purchasing activities. As a result, the HA no longer tracks management operations information. The waiver was granted because to submit a management operations certification would impose an administrative hardship. The most recent management operations score of record would be carried for fiscal year ending December 31, 2009.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Housing Authority of the County of Los Angeles, (CA002), Monterey Park, CA.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 30, 2010.

Reason Waived: The HA contends that it initiated asset management on July 1, 2007, and decentralized budget, accounting and its management systems for its housing developments including a new management software system. The waiver was granted because to submit a management operations certification would require re-programming the current software and reconciling data from prior software system. This would result in increased costs and create an administrative hardship. Consequently, the most recent management operations score of record would be carried over for the fiscal year ending June 30, 2009.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Tacoma Housing Authority, (WA005), Tacoma, WA.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 30, 2010.

Reason Waived: The HA contends that it initiated asset management on July 1, 2008, and converted to a new management software system for tracking its operations on a property versus agency basis. The waiver was granted because to submit a management operations certification would require site staff to manually track the information and would result in administrative hardship. The most recent management operations score of record would be carried over for fiscal year ending June 30, 2009.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Fayette County Housing Authority, (PA015), Uniontown, PA.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 30, 2010.

Reason Waived: The HA implemented and transitioned to asset management. The waiver was granted because it would require manually collecting the data required for certification and would result in administrative hardship. The most recent management operations score of record would be carried over for fiscal year ending June 30, 2009.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Lucas Metropolitan Housing Authority, (OH006), Toledo, OH.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: May 10, 2010.

Reason Waived: The HA contends that it began converting to asset management in January 2008 and has implemented and transitioned to asset management. The conversion included a realignment of staff, revised position descriptions and major shift in property management staff duties, project-based budgeting and accounting and software upgrades to track and report relevant data. The waiver was granted because it would result in administrative hardship to gather the data for the management operations certification. Consequently, the most recent management operations score of record would be carried over for the fiscal year ending December 31, 2009.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Guam Housing and Urban Renewal Authority, (GQ001), Sinajana, Guam.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS

Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: May 10, 2010.

Reason Waived: The HA contends that retrieving and compiling the data from four property sites into one composite report would be an administrative hardship. The waiver was granted because it would take time and focus away to concentrate on fully converting the four property sites into full asset management. The most recent management operations score of record would be carried over for fiscal year ending September 30, 2009.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: City of Phoenix Housing Department, (AZ001), Phoenix, AZ.

Nature of Requirement: The regulation establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: May 10, 2010.

Reason Waived: The HA contends that it acquired a new business system that has capability to track information at the project level. However the system was not instituted for the entire 2009 fiscal year. To accurately reflect management operations certification data, the HA would have to extract data from old and new systems and compare the two to ensure there is no duplicate information. The waiver was granted because it would result in administrative hardship. The most recent management operations score of record would be carried over for fiscal year ending June 30, 2009.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Housing Authority of Winston-Salem, (NC012), Winston-Salem, NC.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: May 25, 2010.

Reason Waived: The HA contends that it spent a large sum of money, time and resources in converting existing software to track property operations at each site and to comply with the new reporting requirements for asset management. The HA no longer tracks management operations PHA-wide and any certification provided would likely be inaccurate. The waiver was granted because it would result in administrative hardship. The most recent management operations score of record would be carried over for fiscal year ending September 30, 2009.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Mississippi Regional Housing Authority, (MS030), Newton, MS.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: May 25, 2010.

Reason Waived: The HA contends that it is converting to asset management and has installed project managers and is in the process of converting and revising its software systems for tracking and reporting operations on a decentralized property versus centralized agency. The waiver was granted because compiling the information using the current format, based on a centralized model would result in administrative hardship. The most recent management operations score of record would be carried over for fiscal year ending June 30, 2009.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Oklahoma City Housing Authority, (OK002), Oklahoma City, OK.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: May 25, 2010.

Reason Waived: The HA contends that it is in its second year of its transition to asset management and has begun modifying the automated information systems to support asset management. The waiver was granted because to convert this data back to project designations in order to provide a management certification would pose an administrative hardship. The most recent management operations score of record would be carried over for fiscal year ending December 31, 2009.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Junction City Housing Authority, (KS105), Junction City, KS.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: May 28, 2010.

Reason Waived: The HA contends that it discontinued collecting the data required for a management assessment certification based on the expectation that a PHAS III Final Rule would be published by the end of the transition year. The waiver was granted because the HA would not be able to certify to the quality or accuracy of the information and that would pose an administrative hardship. The most recent management operations score of record would be carried over for fiscal year ending December 31, 2009.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Mobile Housing Board, (AL002), Mobile, AL.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public

housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: May 28, 2010.

Reason Waived: The HA contends that a new management team has been working to compile, authenticate and verify the key management-related information to provide a management assessment certification. Many of the electronic records were apparently lost prior to the removal of the former executive director. The waiver was granted because the HA's efforts to certify its management operations information would pose an administrative hardship. The most recent management operations score of record would be carried over for fiscal year ending December 31, 2009.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Laurinburg Housing Authority, (NC018), Laurinburg, NC.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 17, 2010.

Reason Waived: The HA requested a waiver of the Transition Year 2 management operations certification requirements under the Management Assessment Subsystem (MASS) indicator for the fiscal year ending June 30, 2009, because the HA is in the process of converting to asset management. The HA divided its properties into two Asset Management Project (AMPs), expended large sums of money, time and resources in converting its existing software to track property operations at each site to comply with the new reporting requirements for asset management. In order to compile the information needed for certification, the HA would have to reconstruct the data manually by pulling all vacancy files and work orders. Retrieving the data needed for certifying MASS performance would result in an administrative hardship. The waiver was granted for fiscal year ending June 30, 2009, and the most recent management operations score of record would be carried over to the fiscal year being assessed.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Butler Metropolitan Housing Authority, (OH015), Hamilton, OH.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 9, 2010.

Reason Waived: The HA requested a waiver of the Transition Year 2 management operations certification requirements under the Management Assessment Subsystem (MASS) Indicator for fiscal year ending June 30, 2009. Submission of the management operations certification would impose an administrative burden on the HA because the HA has been modifying its automated information system to comply with asset management. Additionally, the HA encountered significant changes in its management staff that would pose a burden for the HA to submit its management operations certification. The waiver was granted because the HA is in the process of converting to asset management and submission of the management operations certification would impose an administrative hardship. The most recent management operations score of record would be carried over to the fiscal year being assessed.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Granite City Housing Authority, (IL005), Granite City, IL.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 29, 2010.

Reason Waived: The HA requested a waiver of the Transition Year 2 management operations certification requirements under the Management Assessment Subsystem (MASS) Indicator for fiscal year ending December 31, 2009. Compiling the information required for submission of the management operations certification would be time consuming and will result in an administrative hardship, because the HA is converting to asset management. The waiver was granted and the most recent management operations score of record would be carried over to the fiscal year being assessed.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: North Iowa Regional Housing Authority, (IA127), Mason City, IA.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 29, 2010.

Reason Waived: The HA requested a waiver of the Transition Year 2 management operations certification requirements under the Management Assessment Subsystem (MASS) Indicator for fiscal year ending September 30, 2009, because the HA would not be able to certify to the quality or accuracy of the MASS certification data due to unreasonable hardship. The waiver was granted and the most recent management operations score of record would be carried over to the fiscal year being assessed.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Housing Authority of the City of Harlingen, (TX065), Harlingen, TX.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a

waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 29, 2010.

Reason Waived: The HA requested a waiver of the Transition Year 2 management operations certification requirements under the Management Assessment Subsystem (MASS) Indicator for fiscal year ending March 31, 2009, because compiling the information required for submission of the management operations certification would be time consuming and will result in an administrative hardship, as the HA is converting to asset management. The waiver was granted and the most recent management operations score of record would be carried over to the fiscal year being assessed.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Dallas Housing Authority, (TX009), Dallas, TX.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 29, 2010.

Reason Waived: The HA requested a waiver of the Transition Year 2 management operations certification requirements under the Management Assessment Subsystem (MASS) Indicator for fiscal year ending December 31, 2009, because the HA operates approximately 4,500 public housing units and is in Transition Year 2 of converting its inventory to asset management. In modifying its reporting and business processes to accommodate asset management, the HA would encounter a significant burden in trying to replicate the information needed to certify its MASS performance resulting in an administrative hardship. The waiver was granted and the most recent management operations score of record would be carried over to the fiscal year being assessed.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Housing Authority of the City of Oxnard, (CA031), Oxnard, CA.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 29, 2010.

Reason Waived: The HA requested a waiver of the Transition Year 2 management operations certification requirements under the Management Assessment Subsystem (MASS) Indicator for fiscal year ending June 30, 2009, because the HA is in its second year of asset management. The HA is developing tracking mechanisms to support property operations and its compliance with the new reporting requirements for asset management. The HA no longer tracks management operations data PHA wide and compiling the information would be inaccurate and cause an administrative hardship. The waiver was granted and the most recent management operations score of record would be carried over to the fiscal year being assessed.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.40.

Project/Activity: Metropolitan Development and Housing Agency, (TN005), Nashville, TN.

Nature of Requirement: HUD's regulation at 24 CFR 902.40 establishes that public housing agencies are required to submit a management operations certification under Public Housing Assessment System (PHAS). Public housing agencies that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship, may request a waiver for their management operations certification within 30 days from the PHAS Asset Management Transition Year 2 Notice dated January 12, 2010.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 29, 2010.

Reason Waived: The HA requested a waiver of the Transition Year 2 management operations certification requirements under the Management Assessment Subsystem (MASS) Indicator for fiscal year ending June 30, 2009, because the HA has converted its public housing operations to asset management and also converted to a new software system for tracking and reporting its operations on a decentralized property versus centralized agency basis. Currently, the HA is monitoring and reporting on relevant indicators at the Asset Management Project (AMP) level on a monthly basis. Compiling the information using the current format, based on a centralized model, would result in an unreasonable hardship. The waiver was granted and the most recent management operations score of record would be carried over to the fiscal year being assessed.

Contact: Johnson Abraham, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8583.

• *Regulation:* 24 CFR 941.306(b) and (c).

Project/Activity: C.W. Brooks Midrise.

Nature of Requirement: HUD's regulations at 24 CFR 941.306(b) and (c) require that the construction of units is within the Total Development Costs (TDC) and limits Housing Construction Costs (HCC).

Granted By: Sandra B. Henriquez, Assistant Secretary of Public and Indian Housing.

Date Granted: March 7, 2010.

Reason Waived: The Housing Authority of the City of Hagerstown, MD received funds under the American Reinvestment and Recovery Act (ARRA) to meet the Green Communities Criteria and complete 60 public housing units. A waiver of TDC/HCC limits is allowed under the ARRA and in the Notice of Funding Availability (NOFA) for the Capital Fund Recovery Competition Grants (CFRC) for the use of ARRA funds in the redevelopment of public housing units.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC 20410–5000, telephone (202) 402–4181.

• *Regulation:* 24 CFR 941.606(n)(1)(ii).

Project/Activity: Gibson Plaza Apartments.

Nature of Requirement: HUD's regulation at 24 CFR 941.606(n)(1)(ii) requires public housing agencies to certify that they will use an open and competitive process to select its partners.

Granted By: Sandra B. Henriquez, Assistant Secretary of Public and Indian Housing.

Date Granted: May 14, 2010.

Reason Waived: HUD reviewed and acknowledged District of Columbia Housing Authority (DCHA) decision to procure First Baptist through a noncompetitive proposal. As a result, DCHA could not submit the certifications and assurances that it would use an open and competitive process to select its partners. HUD found good cause to grant the waiver for the limited purpose of selecting First Baptist as the development partner for the mixed-finance project at Gibson Apartments.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC 20410–5000, telephone (202) 402–4181.

• *Regulation:* 24 CFR 941.606(n)(1)(ii)(B).

Project/Activity: Renaissance Preserve Family Apartments, HOPE VI Grant: FL14URD041I105.

Nature of Requirement: HUD's regulation at 24 CFR 941.606(n)(1)(ii)(B) requires that if

an owner entity wants to serve as general contractor; it may self-award subject to demonstration to HUD's satisfaction that its bid is the lowest competitive offer.

Granted By: Deborah Hernandez, General Deputy Assistant Secretary of Public and Indian Housing.

Date Granted: April 1, 2010.

Reason Waived: The Housing Authority of the City of Fort Myers, FL submitted an independent cost estimate.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC 20410–5000, telephone (202) 402–4181.

• *Regulation:* 24 CFR 941.606(n)(1)(ii)(B).

Project/Activity: Parkside Senior Housing.

Nature of Requirement: HUD's regulation at 24 CFR 941.606(n)(1)(ii)(B) requires that if an owner entity wants to serve as general contractor; it may self-award subject to demonstration to HUD's satisfaction that its bid is the lowest competitive offer.

Granted By: Deborah Hernandez, General Deputy Assistant Secretary of Public and Indian Housing.

Date Granted: May 26, 2010.

Reason Waived: The Housing Authority of the Township of Franklin, NJ submitted an independent cost estimate.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC 20410–5000, telephone (202) 402–4181.

• *Regulation:* 24 CFR 941.606(n)(1)(ii)(B).

Project/Activity: Huntsville, AL CFRC Grant Number: AL0400000109F.

Nature of Requirement: HUD's regulation at 24 CFR 941.606(n)(1)(ii)(B) requires that if an owner entity wants to serve as general contractor; it may self-award subject to demonstration to HUD's satisfaction that its bid is the lowest competitive offer.

Granted By: Sandra B. Henriquez, Assistant Secretary of Public and Indian Housing.

Date Granted: June 23, 2010.

Reason Waived: The Huntsville Housing Authority, AL submitted an independent cost estimate.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC 20410–5000, telephone (202) 402–4181.

• *Regulation:* 24 CFR 982.305(c)(4).

Project/Activity: Southern Nevada Regional Housing Authority (SNRHA), Las Vegas, NV.

Nature of Requirement: HUD's regulation at 24 CFR 982.305(c)(4) provides that any housing assistance payments (HAP) contract executed after 60 calendar days from the beginning of the lease term is void and the public housing Agency (PHA) may not pay any HAP to the owner.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 22, 2010.

Reason Waived: Las Vegas and Clark County Housing Authorities merged on January 1, 2010. Pursuant to this merger, it was discovered that several HAP contracts had not been executed during the requisite time period. The regulation was waived since failure to execute those HAP contracts after the due date was not the fault of the SNRHA and to ensure continued rental assistance to families under those HAP contracts.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.503(d) and 982.505(c)(3).

Project/Activity: Municipality of San Juan Public Housing Authority (MSJPHA), San Juan, PR.

Nature of Requirement: HUD's regulation at 24 CFR 982.503(d) provides that HUD may consider and approve a PHA's establishment of a payment standard lower than the basic range, but that HUD will not approve a lower payment standard if the family share for more than 40 percent of participants in the PHA's Housing Choice Voucher program exceeds 30 percent of adjusted monthly income. The regulation at 24 CFR 982.505(c)(3) provides that if the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: May 26, 2010.

Reason Waived: These waivers were granted because these cost-saving measures would enable MSJPHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid or lessen the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Columbus Housing Authority (CHA), Columbus, GA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) provides that if the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 30, 2010.

Reason Waived: This waiver was granted because this cost-saving measure would enable CHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid or lessen the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Low Rent Housing Agency of Burlington (LRHAB), Burlington, IA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) provides that if the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: May 10, 2010.

Reason Waived: This waiver was granted because this cost-saving measure would enable LRHAB to both manage its Housing Choice Voucher program within allocated budget authority and avoid or lessen the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Portsmouth Housing Authority (PHA), Portsmouth, RI.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) provides that if the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: May 14, 2010.

Reason Waived: This waiver was granted because this cost-saving measure would enable PHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid or lessen the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC. 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Watertown Housing Authority (WHA), Watertown, SD.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) provides that if the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: May 20, 2010.

Reason Waived: This waiver was granted because this cost-saving measure would enable WHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid or lessen the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: New Ulm Economic Development Authority (NUEDA), New Ulm, MN.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) provides that if the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: May 27, 2010.

Reason Waived: This waiver was granted because this cost-saving measure would enable NUEDA to both manage its Housing Choice Voucher program within allocated budget authority and avoid or lessen the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Housing Authority of the City of Ansonia (HACA), Ansonia, CT.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) provides that if the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 8, 2010.

Reason Waived: This waiver was granted because this cost-saving measure would enable HACA to both manage its Housing Choice Voucher program within allocated budget authority and avoid or lessen the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Housing and Redevelopment Authority of Douglas County (HRADC), Douglas County, MN.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) provides that if the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: July 9, 2010.

Reason Waived: This waiver was granted because this cost-saving measure would enable HRADC to both manage its Housing Choice Voucher program within allocated budget authority and avoid or lessen the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Petersburg Redevelopment and Housing Authority (PRHA), Petersburg, VA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) provides that if the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 9, 2010.

Reason Waived: This waiver was granted because this cost-saving measure would enable PRHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid or lessen the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Ferndale Housing Commission (FHC), Ferndale, MI.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) provides that if the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 10, 2010.

Reason Waived: This waiver was granted because this cost-saving measure would enable FHC to both manage its Housing Choice Voucher program within allocated budget authority and avoid or lessen the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Housing and Redevelopment Commission of the City of Aberdeen (HRCCA), Aberdeen, SD.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) provides that if the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 17, 2010.

Reason Waived: This waiver was granted because this cost-saving measure would enable HRCCA to both manage its Housing Choice Voucher program within allocated budget authority and avoid or lessen the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Cortland Housing Authority (CHA), Cortland, NY.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) provides that if the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the

monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 17, 2010.

Reason Waived: This waiver was granted because this cost-saving measure would enable CHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid or lessen the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Dodge County Housing Authority (DCHA), Dodge County, WI.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) provides that if the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 17, 2010.

Reason Waived: This waiver was granted because this cost-saving measure would enable DCHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid or lessen the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Tennessee Housing Development Agency (THDA), Nashville, TN.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 22, 2010.

Reason Waived: The participant, who has a disabled son, needed to remain in her current neighborhood as a reasonable accommodation for her son. To provide a reasonable accommodation so the participant could be assisted in her new unit and pay no more than 40 percent of her adjusted income toward the family share, the THDA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Oklahoma Finance Agency (OFA), Oklahoma City, OK.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 10, 2010.

Reason Waived: The participant, who is disabled, needed to remain in her current unit because it accommodates her disability. To provide this reasonable accommodation so the participant could be assisted in her current unit and pay no more than 40 percent of her adjusted income toward the family share, the OFA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.51(b)(c) and (f).

Project/Activity: West Allis Community development Authority (WACDA), West Allis, WI.

Nature of Requirement: HUD's regulation at 24 CFR 983. 51(b)(c)(d) and (f) basically require competitive selection of owner proposals for project-based vouchers (PBV) unless the units were competitively selected under a similar competitive process as described in the regulation.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 1, 2010.

Reason Waived: This waiver was granted in order to maintain the affordability of a Senior Housing Complex owned by the City of West Allis and operated by the WACDA due to rising maintenance costs and the need to charge market rents.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.206(b).

Project/Activity: Malden Housing Authority (MHA), Malden MA.

Nature of Requirement: HUD's regulation at 24 CFR 983.206(b) states that at the discretion of the PHA and provided that the total number of units in a project that will receive project-based voucher (PBV) assistance or other project-based assistance will not exceed 25 percent of the number of dwelling units (assisted or unassisted) in the project or the 20 percent of authorized budget authority, a housing assistance payments (HAP) contract may be amended during the three-year period immediately following the execution date of the HAP contract to add additional PBV contract units in the same project.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: May 7, 2010.

Reason Waived: The regulation was waived to allow MHA to attach PBV assistance as enhanced vouchers turned over for up to the term of the HAP contract, 15 years, in order to maintain their affordability on a non-specified schedule.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 985.101(a).

Project/Activity: Housing Authority of New Orleans (HANO), New Orleans, LA.

Nature of Requirement: HUD's regulation at 24 CFR 985.101(a) states that a public housing agency must submit the HUD-required Section Eight Management Assessment Program (SEMAP) certification form within 60 calendar days after the end of its fiscal year.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 26, 2010.

Reason Waived: HANO is under receivership and the HUD-selected contractor assessed HANO's operation and determined a plan to bring the agency into compliance will not be in place until the third or fourth quarter of HANO's fiscal year ending September 30, 2010. SEMAP certifications will not have to be submitted by HANO until its fiscal year ending September 30, 2012.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

[FR Doc. 2010–24608 Filed 9–30–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

[FWS–R9–FHC–2010–N212; 94400–1130–0000]

Discharge of Oil From Deepwater Horizon/Macondo Well, Gulf of Mexico; Intent To Conduct Restoration Planning

ACTION: Notice of intent.

SUMMARY: Under the Oil Pollution Act (OPA), Federal and State trustees for natural resources are authorized to assess natural resource injuries resulting from an oil discharge or the substantial threat of discharge, as well as response activities, and develop and implement a plan for restoration. This notice announces the intent of Federal and State trustees to conduct restoration planning regarding the discharge of oil from the Deepwater Horizon Mobile Offshore Drilling Unit and the Subsea Macondo Well into the Gulf of Mexico, an incident that occurred on or about April 20, 2010.

FOR FURTHER INFORMATION CONTACT: Cynthia Dohner, Regional Director, Southeastern Region, U.S. Fish and Wildlife Service, (404) 679–4000.

SUPPLEMENTARY INFORMATION: On or about April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon* experienced a significant explosion, fire, and subsequent sinking in the Gulf of Mexico, resulting in discharges of oil and other substances from the rig and from the wellhead on the seabed into the Gulf of Mexico (referred to as the "*Deepwater Horizon* Incident or Incidents"). These discharges are estimated to have been in excess of thousands of barrels of oil per day and continue, along with associated removal activities, to adversely affect and threaten natural resources within the jurisdictions of the United States and the States of Louisiana, Mississippi, Alabama, Florida, and Texas.

Pursuant to section 1006 of the Oil Pollution Act ("OPA"), 33 U.S.C. 2701 *et seq.,* Federal and State trustees for natural resources are authorized to (1) assess natural resource injuries resulting from a discharge of oil or the substantial threat of a discharge and response activities, and (2) develop and implement a plan for restoration of such injured resources. The Federal trustees are designated pursuant to the National Contingency Plan, 40 CFR 300.600 and Executive Order 12777. State trustees are designated by the Governors of each State pursuant to the National Contingency Plan, 40 CFR 300.605.

The following agencies are designated natural resources trustees under OPA and are currently acting as trustees for this Incident(s): The U.S. Department of the Interior ("DOI"), as represented by the National Park Service, U.S. Fish and Wildlife Service, Bureau of Indian Affairs, and Bureau of Land Management; the National Oceanic and Atmospheric Administration ("NOAA"), on behalf of the U.S. Department of Commerce; the U.S. Department of Defense ("DOD"); the State of Louisiana's Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries and Department of Natural Resources; the State of Mississippi's Department of Environmental Quality; the State of Alabama's Department of Conservation and Natural Resources and Geological Survey of Alabama; the State of Florida's Department of Environmental Protection; and the State of Texas' Parks and Wildlife Department, General Land Office and Commission on Environmental Quality (collectively, the "Trustees"). In addition to acting as trustees for this Incident(s) under OPA, the States of Louisiana, Mississippi, Alabama, Florida, and Texas are also acting pursuant to their applicable State laws and authorities, including the Louisiana Oil Spill Prevention and Response Act of 1991, La. R.S. 30:2451 *et seq.,* and accompanying regulations, La. Admin. Code 43:101 *et seq.;* the Texas Oil Spill Prevention and Response Act, Tex. Nat. Res. Code, Chapter 40, Section 376.011 *et seq.,* Fla. Statutes, and Section 403.161, Fla. Statutes; the Mississippi Air and Water Pollution Control Law, Miss. Code Ann. §§ 49–17–1 through 49–17–43; and Alabama Code §§ 9–2–1 *et seq.* and 9–4–1 *et seq.*

The Responsible Parties ("RPs") identified for this Incident(s) thus far are BP Exploration and Production, Inc. ("BP"); Transocean Holdings Inc. ("Transocean"); Triton Asset Leasing GmbH ("Triton"); Transocean Offshore Deepwater Drilling Inc. ("Transocean Offshore"); Transocean Deepwater Inc. ("Transocean Deepwater"); Anadarko Petroleum ("Anadarko"); Anadarko E&P Company LP ("Anadarko E&P"); and MOEX Offshore 2007 LLC ("MOEX").

Pursuant to 15 CFR 990.14(c), concurrent with the publication of this notice, the Trustees are inviting the RPs identified above to participate in a Natural Resource Damage Assessment ("NRDA"). The Trustees have coordinated with BP representatives on activities undertaken to date as part of the NRDA process.

The Trustees began the Preassessment Phase of the NRDA in accordance with 15 CFR 990.40, to determine if they had jurisdiction to pursue restoration under OPA, and, if so, whether it was appropriate to do so. During the Preassessment Phase, the Trustees collected and analyzed and are continuing to collect and analyze the following: (1) Data reasonably expected to be necessary to make a determination of jurisdiction or a determination to conduct restoration planning, (2) ephemeral data, and (3) information needed to design or implement anticipated emergency restoration and assessment activities as part of the Restoration Planning Phase.

Under the NRDA regulations applicable to OPA, 15 CFR part 990 ("NRDA regulations"), the Trustees prepare and issue a Notice of Intent to Conduct Restoration Planning ("Notice") if they determine conditions that confirm the jurisdiction of the Trustees and the appropriateness of pursuing restoration of natural resources have been met.

Pursuant to 15 CFR 990.44, this Notice announces that the Trustees have determined to proceed with restoration planning to fully evaluate, assess, quantify, and develop plans for restoring, replacing, or acquiring the equivalent of natural resources injured and losses resulting from the *Deepwater Horizon* Incident or Incidents. The restoration planning process will include collection of information that the Trustees determine is appropriate for identifying and quantifying the injuries and losses of natural resources, including resource services, and to determine the need for, and type and scale of, restoration actions.

Determination of Jurisdiction

The Trustees have made the following findings pursuant to 15 CFR 990.41:

1. The explosion on the mobile offshore drilling unit Deepwater Horizon on April 20, 2010, and other associated occurrences resulted in discharges of oil into and upon navigable waters of the United States, including the Gulf of Mexico, as well as adjoining shorelines, all of which constitute an "Incident" or "Incidents" within the meaning of 15 CFR 990.30.

2. The discharges are not permitted pursuant to Federal, State, or local law; are not from a public vessel; and are not from an onshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. 1651 *et seq.*

3. Natural resources under the trusteeship of the Trustees have been and continue to be injured and/or threatened as a result of discharged oil and associated removal efforts. The discharged oil is harmful to natural resources exposed to the oil, including aquatic organisms, birds, wildlife, vegetation, and habitats. Discharged oil and the response activities to address the discharges of oil have resulted in adverse effects on natural resources in and around the Gulf of Mexico and along its adjoining shorelines, and impaired services that those resources provide. The full extent of potential injuries is currently unknown, and may

not be known for many years; however, current natural resources and resource services that have been impacted due to the discharged oil include but are not limited to the following (as of August 19, 2010):

- Over 950 miles of shoreline habitats, including salt marshes, sandy beaches, and mangroves.
- A variety of wildlife, including birds, sea turtles, and marine mammals. As of June 29, 2010:
  - Over 1,900 oiled birds captured and over 1,850 visibly oiled dead birds collected.
  - Over 400 oiled sea turtles captured and 17 visibly oiled dead sea turtles collected.
  - 5 visibly oiled dead marine mammals collected.
- Lost human use opportunities associated with various natural resources in the Gulf region, including fishing, swimming, beach-going and viewing of birds and wildlife.
- Waters of the Gulf of Mexico and adjoining coastal States.
- Various other biota, including benthic communities and fish.
- Water column habitat.

Accordingly, the Trustees have determined they have jurisdiction to pursue restoration under the OPA.

Determination To Conduct Restoration Planning

Pursuant to 15 CFR 990.42(a), the Trustees determined that:

1. Observations and data collected pursuant to 15 CFR 990.43 demonstrate that injuries to natural resources and the services they provide have resulted from the Incident or Incidents; however, the nature and extent of such injuries have not been fully determined at this time. The Trustees have identified numerous categories of impacted and potentially impacted resources, including fish, shellfish, marine mammals, turtles, birds, and other sensitive resources, as well as their habitats, such as wetlands, marshes, beaches, mudflats, bottom sediments, corals, and the water column, as well as effects to human use resulting from the impacts on the resources. The Trustees have been conducting, and continue to conduct, activities to evaluate injuries and potential injuries within these categories. More information on these resource categories will be available in the Administrative Record ("AR," as defined below), including assessment work plans developed jointly by the Trustees and BP and information gathered during the preassessment. The full nature and extent of injuries will be determined during the injury assessment phase of restoration planning.

2. Response actions employed for this spill include in situ burning, dispersant applications, containment and skimming of oil, and removal operations. These response actions have not addressed and are not expected to address all injuries resulting from the discharges of oil. Although response actions were initiated soon after the explosion and continue to date, they have been unable to prevent injuries to many natural resources, and the size, nature, and location of the discharges have prevented recovery of most of the oil. In addition, some of these response actions have caused or are likely to cause injuries to natural resources and the services they provide, including destruction of sensitive marshes, beaches, and other habitats, and impacts to human uses of resources. While injured natural resources may eventually recover naturally to the condition they would have been in had the discharges not occurred, interim losses have occurred, or are likely to occur in the future, and these will continue until baseline conditions are achieved. In addition, there have been and will continue to be losses of and diminution of human uses of the resources resulting from the impacts to the natural resources and from the response actions themselves.

3. Feasible restoration actions exist to address the natural resource injuries and losses, including lost human uses, resulting from the discharges of oil. Assessment procedures are available to scale the appropriate amount of restoration required to offset these ecological and human use service losses. During the restoration planning phase, the Trustees will evaluate potential projects, determine the scale of restoration actions needed to make the environment and the public whole, and release a draft Restoration Plan for public review and comment.

Based upon these determinations, the Trustees intend to proceed with restoration planning for the Incident or Incidents.

Administrative Record

The U.S. Department of the Interior, acting on behalf of the Trustees, is in the process of establishing and opening an Administrative Record ("AR") in compliance with 15 CFR 990.45 and applicable State authorities. The AR will be publicly accessible and include documents considered by the Trustees during the preassessment, assessment, and restoration planning phases of the NRDA performed in connection with the Incident or Incidents. The AR will be augmented with additional information over the course of the NRDA process. The availability of the AR will be addressed in one or more future notices and announcements. State-specific ARs may also be kept and will be made available by State trustees in their normal course of business.

Opportunity To Comment

The Trustees invite the public to participate in restoration planning for this Incident or Incidents in accordance with 15 CFR 990.14(d) and State authorities. The Trustees will be providing substantial opportunities for public involvement in the restoration planning for this Incident or Incidents. The opportunities for public involvement will be addressed in future notices and announcements.

Dated: September 2, 2010.

Cindy Dohner,

DOI Authorized Official, U.S. Department of the Interior.

[FR Doc. 2010–24706 Filed 9–29–10; 11:15 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2010–N185; 10120–1112–0000–F2]

Availability of a Draft Environmental Assessment and Habitat Conservation Plan, and Receipt of Application for an Incidental Take Permit From Benton County, OR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of application and availability of documents for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), advise the public that Benton County, Oregon, has submitted an application to the Service for an incidental take permit (permit) under the Endangered Species Act of 1973, as amended (ESA). Included with the application is a habitat conservation plan (HCP) and a proposed implementing agreement (IA). We also announce the availability of a draft environmental assessment (EA) under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4371 *et seq.*).

DATES: We must receive any written comments on the draft EA, HCP, and IA from interested parties no later than November 1, 2010.

ADDRESSES: *Documents:* The draft EA, HCP, and IA are available electronically

on the World Wide Web at *http://www.fws.gov/oregonfwo/ToolsForLandowners/HabitatConservationPlans/.* Alternatively, you may request documents and information by writing to Mikki Collins, U.S. Fish and Wildlife Service, 2600 SE. 98th Avenue, Suite 100, Portland, OR 97266; or by faxing her at (503) 231–6195.

Comments: Submit comments by e-mail to *OFWOcomment@fws.gov;* in the subject line, include the identifier "Benton County HCP." Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mikki Collins, at the address or phone listed above.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a)(2)(A) of the ESA (U.S.C. 1531 *et seq.*), Benton County has prepared an HCP designed to minimize and mitigate take of the proposed covered species. The permit application is related to county construction activities, road maintenance, utilities construction, water system management, and prairie habitat management activities in Benton County, Oregon.

We furnish this notice to allow other agencies and the public an opportunity to review and comment on these documents. All comments we receive will become part of the public record and will be available for review pursuant to section 10(c) of the ESA.

Section 9 of the ESA and Federal regulations prohibit the "taking" of a species listed as endangered or threatened. The term "take" is defined under the ESA to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. "Harm" is defined to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering.

We may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. Our regulations governing permits for endangered species are promulgated in 50 CFR 17.22, and regulations governing permits for threatened species are promulgated in 50 CFR 17.32.

The area proposed to be covered by the permit consists of private and non-Federal public lands in Benton County, and encompasses approximately 7,651 ha (18,906 ac). Other entities that are considered cooperators in the HCP due to their land ownership and management activities include the City of Corvallis, Oregon Department of Transportation, Oregon State University, and the Greenbelt Land Trust. Approval of the HCP would allow us to issue a permit to Benton County that would authorize incidental take coverage and/or regulatory assurances for potential impacts on five federally listed species: Fender's blue butterfly (*Icaricia icarioides fenderi*) (endangered), Kincaid's lupine (*Lupinus sulphureus* ssp. *Kincaidii*) (threatened), Willamette daisy (*Erigeron decumbens* var. *decumbens*) (endangered), Bradshaw's lomatium (*Lomatium bradshawii*) (endangered), and the Nelson's checkermallow (*Sidalcea nelsoniana*) (threatened). The permit would also cover one candidate species for listing—Taylor's checkerspot butterfly (*Euphydryas editha taylorii*)—and one species of concern—the peacock larkspur (*Delphinium pavonaceum*). Although take of plant species is not prohibited under the ESA and therefore cannot be authorized under an incidental take permit, plant species are proposed to be included on the permit in recognition of the conservation benefits provided to them under the HCP.

All seven species identified above will be covered under the permit on county-owned lands. The Fender's blue butterfly and the five plant species will be covered on land owned or managed by the City of Corvallis, Oregon State University, and the Oregon Department of Transportation. The Taylor's checkerspot is not known to occur on these properties. The Fender's blue butterfly will be the only covered species under the permit on the remaining private lands. The permittee would receive assurances under the Service's "No Surprises" regulation (50 CFR 17.22(b)(5) and 17.32(b)(5)) for all species included on the incidental take permit. For any currently unlisted covered animal species, take authorization would become effective concurrent with their listing, should the species be listed under the ESA during the permit term. Benton County has requested a permit term of 50 years.

Potential impacts are anticipated to result from (1) home, farm, and forest-related construction and utility construction/maintenance on private lands; (2) public service facility construction; (3) transportation and work within road rights of way; (4) water and wastewater management; (5) habitat restoration, enhancement, and management (including monitoring and plant material collection) activities (both as a HCP mitigation measure and as a conservation activity at parks, natural areas, and open spaces); (6) agricultural activities; and (7) emergency response activities on non-Federal public lands and lands owned or held under conservation easement by specific conservation organizations. Under the permit, Benton County would have authorization to issue certificates of inclusion under the ESA permit to non-Federal landowners needing a County permit or agricultural building authorization.

The HCP includes estimates of permanent impacts over the 50-year permit term to include: the loss of 2.1 hectares (5.2 acres) of Fender's blue butterfly nectar habitat; 57 square meters (.01 acres) of Taylor's checkerspot habitat; 410 square meters (4,410 square feet) of Kincaid's lupine foliar cover; 222 Nelson's checkermallow plants; 2 Bradshaw's lomatium plants; 1 Willamette daisy plant; and 56 Peacock larkspur plants. A primary conservation measure of the HCP is the designation of over 200 hectares (500 acres) of Prairie Conservation Areas where habitat restoration and enhancement activities for the covered species will occur. The HCP also includes measures to avoid and minimize incidental take of the covered species.

We prepared a draft EA that analyzed the potential effects of implementing two alternatives on the human environment: A no-action alternative and a proposed action. Five additional alternatives were explored but omitted from further analysis.

We invite the public to comment on the HCP, draft EA, and draft IA during the 30-day public comment period (*see* **DATES**). Please direct comments to the contact listed in the **ADDRESSES** section, and any questions to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

We provide this notice under ESA and NEPA regulations. We will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the ESA and NEPA.

Dated: September 1, 2010.

Theresa E. Rabot,

Deputy Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 2010–24730 Filed 9–30–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOPRP0600 L51010000.ER0000 LVRWH09H0600; HAG 10–0338]

Notice of Availability of the Final Environmental Impact Statement for the West Butte Wind Power Right-of-Way, Crook and Deschutes Counties, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), the Bureau of Land Management (BLM) Deschutes Resource Area, Prineville, Oregon, has prepared a Final Environmental Impact Statement (EIS) for the West Butte Wind Power Right-of-Way and by this Notice is announcing its availability.

DATES: A Record of Decision (ROD) may be signed no sooner than 30 days after the Environmental Protection Agency publishes its Notice of Availability of the Final EIS in the **Federal Register**. The availability of the ROD will be announced through a subsequent **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Steve Storo, BLM West Butte Wind Power Right of Way Project Lead: telephone (541) 416–6885; address 3050 NE. 3rd Street, Prineville, Oregon 97754; e-mail: *or_west_butte_eis@blm.gov.*

SUPPLEMENTARY INFORMATION: The applicant, West Butte Wind Power, LLC, has requested a right-of-way (ROW) authorization to construct 3.9 miles of road and an adjacent power transmission line on public land to support the construction of up to 52 wind turbines and ancillary facilities on adjacent private land. The portion of the project on public lands is the "Proposed Action." Actions occurring on private land are called "connected actions." The project is 25 air miles southeast of Bend, Oregon, located on the north side of US Highway 20. The Draft EIS analyzing impacts of the project was released for public comment on April 2, 2010 [75 FR 16828]. Approximately 36 comments were received on the Draft EIS. The comments were incorporated, where appropriate, to clarify the analysis presented in the Final EIS. The Final EIS analyzes a No Action Alternative, the Proposed Action, and one other alternative. These alternatives were shaped in part by comments received from the public and internal BLM review.

Alternative 1—Proposed Action. This alternative includes the granting of a ROW for construction and operation of an access road and transmission line across lands administered by the BLM. Consideration of this alternative includes an analysis of the connected action of West Butte Wind Power constructing and operating a wind farm and associated facilities (*e.g.,* access road, transmission line, substation, and an operations and maintenance building) on privately held lands.

Alternative 2—Northern Access Road Alternative. This alternative includes an analysis of an alternate main access road through the Juniper Acres Development, the facilities related to the connected action as described in Alternative 1, and a ROW through BLM-administered public land for a 3.9-mile transmission line.

Alternative 3—No Action Alternative. This alternative includes denying a ROW for construction and operation of an access road and transmission line across lands administered by the BLM.

The preferred alternative is Alternative 1, the Proposed Action.

Coordination with the U.S. Fish and Wildlife Service is occurring to ensure that an Avian Protection Plan is prepared that will sufficiently address overall project impacts to golden eagles.

Deborah J. Henderson-Norton,

BLM Prineville District Manager.

Authority: 40 CFR 1506.6 and 1506.10

[FR Doc. 2010–24557 Filed 9–30–10; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Nimbus Hatchery Fish Passage Project, Lower American River, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) and notice of public meetings.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the Bureau of Reclamation, the lead Federal agency, and the California Department of Fish and Game (CDFG), acting as the lead State agency, have made available for public review and comment a Draft EIS/EIR for the Nimbus Hatchery Fish Passage Project (Project). The purpose of the Project is to create and maintain a reliable system for collecting adult fish at the Nimbus Fish Hatchery (Hatchery). Reclamation maintains the Hatchery to meet mitigation obligations for spawning areas blocked by construction of Nimbus Dam. CDFG operates the Hatchery under a contract with Reclamation and is responsible for the management of the fishery resources within the adjacent lower American River. The Hatchery was constructed in 1955 under the American River Basin Development Act (October 14, 1949, 63 Stat. 852) along with Nimbus and Folsom Dams. The Draft EIS/EIR describes and presents the environmental effects of three action alternatives and the No-Action Alternative. Written comments will be accepted from agencies, organizations and individuals on the Draft EIS/EIR.

DATES: Submit written comments on the Draft EIS/EIR by November 30, 2010.

Public meetings will be held to receive comments on the Draft EIS/EIR and provide further clarification regarding the Project on Thursday, November 4, 2010 from 2 to 3:30 p.m. and from 6:30 to 8 p.m.

ADDRESSES: Send written comments on the Draft EIS/EIR to Mr. David Robinson, Central California Area Office, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, CA 95630–1799; or e-mail at *IBRFOODHatchPass@usbr.gov.*

Public meetings will be held at the California State University Sacramento Aquatic Center, 1901 Hazel Avenue, Gold River, CA 95670.

Copies of the Draft EIS/EIR may be requested from Ms. Janet Sierzputowski at 916–978–5112, TTY 916–978–5608, or e-mail at *jsierzputowski@usbr.gov.* The Draft EIS/EIR is also accessible from the following Web sites: *http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=5216* or *http://www.usbr.gov/mp/ccao/hatchery/index.html.*

See the **SUPPLEMENTARY INFORMATION** section for locations where copies of the Draft EIS/EIR are available for public review.

FOR FURTHER INFORMATION CONTACT: Mr. David Robinson at the CCAO general telephone number 916–988–1707, TTY 916–989–7285, or e-mail at *IBR2FOODHatchPass@usbr.gov.*

SUPPLEMENTARY INFORMATION: The Draft EIS/EIR documents the direct, indirect and cumulative effects to the physical, biological, and socioeconomic environment that may result from construction of the Project.

The purpose of the Project is to create and maintain a reliable system for collecting adult fish to assist Reclamation in meeting mitigation obligations for spawning areas blocked by the construction of Nimbus Dam. Other objectives are to (1) minimize annual operations and maintenance costs, (2) eliminate the need to reduce river flows for weir superstructure repairs, maintenance, and annual installation, which in turn increases operational flexibility, and (3) improve public and worker safety.

The Draft EIS/EIR evaluates three action alternatives and the No-Action alternative. Alternative 1 consists of the construction of a new fish passageway from the Hatchery to an area near the south end of the Nimbus Dam stilling basin, removal of the existing fish diversion weir, and potential modification of fishing regulations. The removal of the existing weir would allow the fish to access the stilling basin area. Because of the potential for fishing to significantly impact fishery resources, two regulatory options, Alternatives 1A and 1C, are being considered. CDFG is evaluating potential changes in fishing regulations to help protect spawning salmon and steelhead and to maintain fish passage to the hatchery. Reclamation is evaluating potential changes in public access to the stilling basin that best meet project purposes.

Alternative 2 involves replacing the existing fish diversion weir with a new weir immediately upstream of its current location. The existing permanent and seasonal fishing closures would remain in effect, unchanged. However, a new weir would be much more effective in preventing fish from entering the river and stilling basin upstream from the Hatchery.

The No-Action Alternative would be the continuation of the existing regulatory conditions. The existing weir would not be replaced. The existing permanent and seasonal fishing closures would remain in effect, unchanged.

Copies of the Draft EIS/EIR are available for public review at the following locations:

- Bureau of Reclamation, Mid-Pacific Region, Regional Library, 2800 Cottage Way, Sacramento, CA 95825.
- Central California Area Office, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, CA 95630.
- Nimbus Fish Hatchery, 2001 Nimbus Road, Gold River, CA 95670.

Special Assistance for Public Meetings

If special assistance is required to participate in the public meetings, please contact Ms. Janet Sierzputowski at 916–978–5112, TTY 916–978–5608, or e-mail *jsierzputowski@usbr.gov*. Please notify Ms. Sierzputowski as far in advance as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified.

Public Disclosure

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 11, 2010.

Pablo R. Arroyave,

Deputy Regional Director, Mid-Pacific Region.

Editorial Note: This document was received in the Office of the Federal Register on September 27, 2010.

[FR Doc. 2010–24609 Filed 9–30–10; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUTG01100–09–L13100000–EJ0000]

Notice of Availability of a Draft Environmental Impact Statement for the Gasco Uinta Basin Natural Gas Development Project, Duchesne and Uintah Counties, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Under the National Environmental Policy Act of 1969 (NEPA), the Federal Land Policy and Management Act of 1976 (FLPMA) and associated regulations, the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (EIS) that evaluates, analyzes, and discloses to the public direct, indirect, and cumulative environmental impacts of a proposal to develop natural gas in Uintah and Duchesne Counties, Utah. This notice announces a 45-day public comment period to meet the requirements of the NEPA and Section 106 of the National Historic Preservation Act.

DATES: The Draft EIS will be available for public review for 45 calendar days following the date that the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM can best use comments and resource information submitted within the 45-day review period. Public meetings will be held during the 45-day public comment period in Vernal, Duchesne, and Price, Utah. The dates, times, and places will be announced through local news media and the BLM Web site: *http://www.blm.gov/ut/st/en/info/newsroom.2.html* at least 15 days prior to the meeting dates.

ADDRESSES: Comments on the Draft EIS may be submitted by any of the following methods:

- *Mail:* Bureau of Land Management, Attn: Stephanie Howard, Vernal Field Office, 170 South 500 East, Vernal, Utah 84078.
- *E-mail:* *UT_Vernal_Comments@blm.gov.*
- *Fax:* (435) 781–4410.

Please reference the Gasco EIS when submitting your comments. Comments and information submitted on the Draft EIS for the Gasco project, including names, e-mail addresses, and street addresses of respondents, will be available for public review at the Vernal Field Office.

FOR FURTHER INFORMATION CONTACT: Stephanie Howard, Project Manager, BLM Vernal Field Office 170 South 500 East, Vernal, Utah 84078; or by phone at (435) 781–4400.

SUPPLEMENTARY INFORMATION: The Draft EIS is available on the following Web site: *http://www.blm.gov/ut/st/en/fo/vernal/planning.html.* In response to a proposal submitted by Gasco Energy, Inc., (Gasco), the BLM published in the February 10, 2006, **Federal Register** a Notice of Intent to prepare an EIS. The Gasco EIS Project Area encompasses approximately 206,826 acres located about 20 miles south of Roosevelt, Utah. The Draft EIS analyzes a proposal by Gasco to develop Federal natural gas resources on their leases. Gasco's proposal includes drilling a total of up to 1,491 new wells and constructing associated ancillary transportation, transmission, and water disposal facilities within the project area. Of the 206,826 acres within the project area, about 86 percent is Federal lands administered by the BLM; 12 percent is owned by the State of Utah and administered by the Utah State School and Institutional Trust Lands Administration; and 2 percent is privately owned. The proposed life of the project is 45 years, with most

drilling and development activities to occur within the first 15 years following approval of the BLM's Record of Decision.

The new gas wells would be drilled to the Wasatch, Mesaverde, Blackhawk, Mancos, Dakota, and Green River formations at depths of 5,000 to 20,000 feet. Gasco's proposal is based on a maximum surface density of one well pad per 40 acres, but the exact surface density would be defined during on-site review and permitting. The Proposed Action and alternatives incorporate best management practices for oil and gas development and other measures necessary to adequately address impacts to transportation, public safety, cultural resources, recreational opportunities, wildlife, threatened and endangered species, visual resources, wilderness characteristics, air quality, and other relevant issues.

The Draft EIS describes and analyzes the impacts of Gasco's Proposed Action and four alternatives, including the No Action Alternative. Three additional alternatives were considered but eliminated from detailed analysis. The following is a summary of the alternatives:

1. *Proposed Action:* Up to 1,491 new gas wells would be drilled and about 325 miles of new roads and 431 miles of pipelines would be constructed to support this proposed development. An evaporative facility of approximately 214 acres would be constructed to dispose of produced waters. In all, approximately 7,584 acres, or 4 percent of the total project area, would be disturbed under this alternative. No roads, pipelines, or well pads would be developed below the upper rim of Nine Mile Canyon. This is the agency preferred alternative in the Draft EIS.

2. *Reduced Development:* Up to 1,114 new gas wells would be drilled and about 274 miles of new roads and 393 miles of pipelines would be constructed to support development. An evaporative facility of approximately 157 acres would be constructed to dispose of produced waters. This alternative would avoid or minimize development in several sensitive areas, including Areas of Critical Environmental Concern (ACEC), non-Wilderness-Study-Area lands with wilderness characteristics, and lands near raptor nests and sage grouse leks. In all, approximately 5,685 acres, or 3 percent of the total project area, would be disturbed under this alternative. No well pads would be located below the upper rim of Nine Mile Canyon, although approximately 17 acres of surface disturbance would be expected due to roads or pipelines below the upper rim. This disturbance would include 2 miles of new roads.

3. *Full Development:* Under this alternative, all leases would be developed at 40–160 acre spacing, with up to 1,887 new gas wells drilled and about 526 miles of new roads and 861 miles of pipelines constructed to support development. An evaporative facility of approximately 271 acres would be constructed to dispose of produced waters. In all, approximately 9,982 acres, or 5 percent of the total project area, would be disturbed under this alternative. A total of 95 well pads would be located below the upper rim of Nine Mile Canyon, resulting in approximately 562 acres of surface disturbance. This disturbance would include 37 miles of new roads.

4. *No Action Alternative:* The proposed natural gas development on the BLM lands as described in the Proposed Action or other action alternatives would not be implemented. However, under this alternative, natural gas exploration and development is assumed to continue on Federal, State, and private lands, albeit at a much smaller scale. In all, approximately 2,055 acres, or 1 percent of the total project area, would be disturbed under this alternative. No roads, pipelines, or well pads would be developed below the upper rim of Nine Mile Canyon.

5. *Directional Drilling:* Up to 1,114 new gas wells would be drilled from 328 pads, and about 106 miles of new roads and 216 miles of pipelines would be constructed to support development. An evaporative facility of approximately 157 acres would be constructed to dispose of produced waters. This alternative would avoid or minimize development in several sensitive areas, including ACECs, lands with wilderness characteristics, and near raptor nests and sage grouse leks. In all, approximately 2,174 acres, or 1 percent of the total project area, would be disturbed under this alternative. No well pads would be located below the upper rim of Nine Mile Canyon, although approximately 9 acres of surface disturbance would be expected due to roads or pipelines below the upper rim. This disturbance would include 1 mile of new road.

6. *Alternatives Considered, but Eliminated from Further Analysis:* Three alternatives were considered but eliminated from further analysis. These include:

a. *Total Avoidance of Development in Sensitive Areas:* This alternative would preclude all development on sensitive lands within the project area, including BLM-administered lands near or within view of the Green River, areas proposed for special designations, and ACECs. This alternative was not carried forward because it would not meet the purpose and need of the project, which is for the BLM to allow development in an environmentally sound manner of lease rights held by Gasco and other operators. In addition, this alternative was not carried forward because it is not feasible and would not serve to reduce the impacts of the development from those of the proposed action or resource protection alternatives, which must comply with laws protecting endangered species, archaeological resources, and the like. These parcels are interspersed with private and State lands where development is proposed to occur, regardless of the Federal decision resulting from this Draft EIS. Avoiding development on Federal lands will not serve to prevent, for example, habitat fragmentation, where roads and pipelines will nevertheless be built to serve the development of the private and State minerals. While the BLM may require lessees to relocate proposed wells, the lessees have a reasonable contractual expectation that they can engage in development somewhere on their lease. Given the high proportion of the area that is already leased, it is unrealistic to expect to be able to implement this alternative on an adequate amount of acreage to achieve a reduction in impacts greater than will be achieved by compliance with the Endangered Species Act and other applicable laws, the Vernal Resource Management Plan, and two of the alternatives in the Draft EIS carried forward for detailed analysis.

b. *Wells for Subsurface Water Disposal:* This alternative was not carried forward because no suitable geologic formations for disposal wells have been discovered within the project area to date. Exploration and production wells in the project area have not indicated the presence of a suitably extensive and permeable formation for disposal.

c. *Complete Reliance on Buried Pipelines and Centralized Tank Batteries:* This alternative was not carried forward because of site-specific variables including shallow soils and highly variable topography. Due to shallow soils and surface bedrock, the surface disturbance from burying pipelines would be greater in severity or extent, or would persist longer, than those impacts resulting from the surface placement of pipelines. Where pipeline burial increases the percentage of coarse fragments in the soil, the reclamation potential of the disturbed area would be reduced due to a limited water-holding capacity. Similarly, collection pipelines

from the wellhead to central tank batteries carry high levels of water and condensate and must be buried to prevent plugging and freezing at wellhead spacing greater than 20 acres. Therefore, centralization of these facilities would require a great deal of buried pipelines to be constructed, resulting in the same environmental impacts described above for buried pipelines. However, burying pipelines and centralizing tank batteries, as a means of reducing overall environmental impact, will be considered on a site-specific basis as appropriate.

The public is encouraged to comment on any of these alternatives. The BLM asks that those submitting comments make them as specific as possible with reference to chapters, page numbers, and paragraphs in the Draft EIS document. Comments that contain only opinions or preferences will not receive a formal response; however, they will be considered, and included, as part of the BLM decision-making process. The most useful comments will contain new technical or scientific information, identify data gaps in the impact analysis, or will provide technical or scientific rationale for opinions or preferences.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information-may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Juan Palma,

State Director.

[FR Doc. 2010–24582 Filed 9–30–10; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR932000–L16100000–DF0000–LXSS062H0000; HAG 10–0283]

Notice of Availability of the Record of Decision for Vegetation Treatments Using Herbicides on Bureau of Land Management Lands in Oregon Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), the Bureau of Land Management (BLM) has prepared a Record of Decision (ROD) for Vegetation Treatments Using Herbicides on Bureau of Land Management Lands in Oregon and by this notice is announcing its availability. The ROD selects a slightly modified version of Alternative 4 as described in the Final Environmental Impact Statement (EIS) for Vegetation Treatments Using Herbicides on Bureau of Land Management Lands in Oregon, notice of which was published in the **Federal Register** on July 30, 2010 (75 FR 44981). The selected alternative increases the number of herbicides available for use on BLM-managed lands in Oregon and increases the number of objectives for which they can be used. The herbicides and uses permitted by the selected alternative fall entirely within those approved for use in 17 western states by the BLM in its September 2007 ROD for the Final Programmatic EIS for Vegetation Treatments Using Herbicides on BLM lands in 17 Western States. The Oregon decision incorporates the standard operating procedures and mitigation measures adopted by the BLM's 2007 17 western states decision and adds additional mitigation and monitoring requirements specific to Oregon.

DATES: There is a 30-day appeal period before the decision can take effect (*see* ADMINISTRATIVE APPEALS below). Appeals must be postmarked within 30 days of the date of publication of this notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Todd Thompson, EIS Project Manager, by telephone at (503) 808–6326, by mail at Bureau of Land Management—OR932, P.O. Box 2965, Portland, Oregon 97208; or by e-mail at *orvegtreatments@blm.gov.*

Copies of the ROD and the Vegetation Treatments Final EIS upon which it is based are available on the Internet at: *http://www.blm.gov/or/plans/vegtreatmentseis/.* Printed copies have been sent to libraries and BLM district offices throughout Oregon. Compact Disc (CD) copies have also been sent to affected Federal, State, tribal, and local government agencies; to persons who have asked to be on the project mailing list; and to everyone who submitted comments on the Draft EIS, unless they requested the ROD in a different format or opted off of the distribution list. Requests to receive printed or CD copies of the ROD should be sent to one of the addresses listed above.

SUPPLEMENTARY INFORMATION: The Final EIS for Vegetation Treatments Using Herbicides on BLM Lands in Oregon provides a comprehensive analysis of a proposal to make an additional 13 herbicides available (above the current 4) to BLM districts in Oregon and to expand on the management objectives for which they may be used (beyond just noxious weed control). The selected alternative, a slightly modified Alternative 4, would allow for the use of 17 herbicides east of the Cascades and 14 herbicides west of the Cascades to control noxious and invasive weeds; treat vegetation along roads, rights-of-way, and BLM improvements; and conduct habitat improvement projects for special status species. The Oregon BLM currently uses four herbicides only for the treatment of noxious weeds. A noxious weed is any plant designated by a Federal, State or county government as injurious to public health, agriculture, recreation, wildlife, or property. The list of invasive weeds includes not only noxious weeds but also other non-native, aggressive plants that have the potential to cause significant damage to native ecosystems and/or cause significant economic losses.

In 1984, the BLM was prohibited from using herbicides in Oregon by a U.S. District Court injunction issued in *Northwest Coalition for Alternatives to Pesticides, et al.* v. *Block, et al.,* (Civ. No. 82–6273–E). Following completion of an EIS examining the use of four herbicides for the treatment of noxious weeds only, the injunction was modified by the court in November 1987, (Civ. No. 82–6272–BU). For the subsequent 23 years, the BLM in Oregon has limited its herbicide use to the four herbicides analyzed and limited the use of those four herbicides to the control and eradication of Federal-, State-, or county-listed noxious weeds. In that time, new herbicides have become available that can be used in smaller doses, are more target-specific, and are lower risk to people and other non-target organisms. In 2007, the BLM Washington Office Rangeland Resources Division completed the Vegetation Treatments Using Herbicides on Bureau of Land Management lands in 17 Western States Programmatic EIS and related Record of Decision (Programmatic EIS), making 18 herbicides available for a full range of vegetation treatments in 17 western states including Oregon. Oregon cannot fully implement that decision, however, until and unless the 1984 District Court injunction is lifted. The Vegetation Treatments Using Herbicides on BLM Lands in Oregon Final EIS, upon which today's decision is based, tiers to the 17 Western States Programmatic EIS, incorporates its standard operating

procedures and adopted mitigation measures for the use of herbicides, provides additional detailed analysis regarding the potential for human and environmental risks generated in support of the Programmatic EIS, and addresses the concerns raised by the District Court in its 1984 Order.

A June 2009 stipulated agreement says the 1984 injunction, as modified in 1987, shall cease to be in force and effect regarding BLM applying herbicides to treat invasive species upon the completion of the protest and appeals period following issuance of this ROD. Preparation of the Oregon EIS began with a Notice of Intent to Prepare an Environmental Impact Statement in the **Federal Register** on June 23, 2008 (73 FR 35408). The scoping period included the mailing of 17,000 postcards to potentially interested persons or groups, statewide radio and newspaper news releases, and 12 public scoping meetings held throughout Oregon. A Draft EIS was released on October 2, 2009 (74 FR 50986). Over 1,000 comment letters received through January 6, 2010, on the Draft EIS and the ideas presented in those comments were used to improve the analysis presented in the Final EIS. Comment responses and resultant changes are documented in the Final EIS, Appendix 10.

The Final EIS addressed all 15.7 million acres of BLM lands in Oregon and all 18 herbicides approved for use by the 2007 ROD for the Programmatic EIS, which are being used in the other 16 western states. The Final EIS analyzed a "no action" and three action alternatives, which were shaped in part by the comments received during 12 public scoping meetings held throughout Oregon in July 2008. A "no herbicides" reference analysis was also included. The alternatives addressed eight "purposes" or issues also identified during scoping.

The Final EIS analysis indicated that by using standard operating procedures identified in applicable BLM manuals and policy direction, along with Programmatic EIS-adopted mitigation measures, human and environmental risk from the use of herbicides is both minimized and reduced from current levels. The analysis indicates the selected alternative will also slow the spread of noxious weeds on BLM lands by approximately 50 percent and result in an estimated 2.2 million fewer infested acres in 15 years than under current program capabilities, will reduce rights-of-way maintenance costs by about $1 million per year, and will make possible an additional 3,700 acres of habitat improvement for federally listed and other special status species each year. The ROD does not authorize any specific herbicide treatment projects. No site-specific projects (i.e. application of herbicides beyond current authorized uses) will proceed until completion of additional, site-specific NEPA analysis and decision-making.

Consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service was conducted to ensure continued applicability of informal consultation and the Biological Opinion issued on the Programmatic EIS by those two agencies respectively. The signing official for the ROD is the BLM Oregon and Washington State Director.

Administrative Appeals: The decision may be appealed to the Interior Board of Land Appeals (IBLA), Office of the Secretary, in accordance with regulations contained in 43 CFR part 4 and Form 1842–1. If you file an appeal, your notice of appeal must be mailed to the Oregon/Washington BLM State Director, P.O. Box 2965, Portland, Oregon 97208–2965, and be postmarked by November 1, 2010. The appellant has the burden of showing the decision appealed is in error.

A copy of the appeal, statement of reasons, and all other supporting documents must also be sent to the Regional Solicitor, Pacific Northwest Region, U.S. Department of the Interior, 805 SW. Broadway #600, Portland, Oregon 97205–3346. If the notice of appeal does not include a statement of reasons for the appeal, it must be sent to the Interior Board of Land Appeals, Office of Hearings and Appeals, 801 North Quincy Street, Arlington, Virginia 22203 within 30 days of filing the notice of appeal (43 CFR 4.412). It is suggested that appeals be sent certified mail, return receipt requested.

Requests for Stay: Should you wish to file a motion for stay pending the outcome of an appeal of this decision, you must show sufficient justification based on the following standards under 43 CFR 4.21:

- The relative harm to the parties if the stay is granted or denied;
- The likelihood of the appellant's success on the merits;
- The likelihood of immediate and irreparable harm if the stay is not granted; and
- Whether or not the public interest favors granting the stay.

As noted above, the motion for stay must be filed in the office of the authorized officer and the Regional Solicitor.

Edward W. Shepard,

State Director, Oregon/Washington.

[FR Doc. 2010–24641 Filed 9–30–10; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2010–N134; 40136–1265–0000–S3]

Carolina Sandhills National Wildlife Refuge, Chesterfield County, SC

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: Final comprehensive conservation plan and finding of no significant impact.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of our final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for the environmental assessment for Carolina Sandhills National Wildlife Refuge (NWR). In the final CCP, we describe how we will manage this refuge for the next 15 years.

ADDRESSES: You may obtain a copy of the CCP by writing to: Ms. Allyne Askins, Refuge Manager, Carolina Sandhills NWR, 23734 U.S. Highway 1, McBee, SC 29101. The CCP may also be accessed and downloaded from the Service's Web site: *http://southeast.fws.gov/planning/* under "Final Documents."

FOR FURTHER INFORMATION CONTACT: Ms. Allyne Askins; telephone: 843–335–8350; fax: 843–335–8406; e-mail: *allyne_askins@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for Carolina Sandhills NWR. We started this process through a notice in the **Federal Register** on August 22, 2007 (72 FR 47062).

Carolina Sandhills NWR was established by Executive Order 8067, dated March 17, 1939. This Executive Order authorized the Federal Government to purchase lands from willing sellers to restore habitats and wildlife species. Today, the 45,348-acre refuge is managed to restore the longleaf pine/wiregrass ecosystem for the benefit of the red-cockaded woodpecker (RCW) and other endangered species; to provide habitat for migratory and upland game birds; to provide opportunities for environmental

education, interpretation and wildlife-dependent recreational opportunities; and to demonstrate sound land management practices that enhance natural resource conservation. The refuge is a land management demonstration refuge for the longleaf pine/wiregrass ecosystem. The refuge supports an estimated 150 active clusters of the endangered RCW, the largest population in the National Wildlife Refuge System. The refuge's primary public use is hunting; although wildlife observation, hiking, and fishing also are popular.

We announce our decision and the availability of the final CCP and FONSI for Carolina Sandhills NWR in accordance with the National Environmental Policy Act (NEPA) [40 CFR 1506.6(b)] requirements. We completed a thorough analysis of impacts on the human environment, which we included in the Draft Comprehensive Conservation Plan and Environmental Assessment (Draft CCP/EA). The CCP will guide us in managing and administering Carolina Sandhills NWR for the next 15 years. Alternative C is the foundation for the CCP.

The compatibility determinations for hunting, fishing, wildlife observation and photography, environmental education and interpretation, cooperative farming, commercial timber harvest, boating, public safety and military training, natural resource collection for personal use, cemetery upkeep, scientific research and collections, off-road vehicle use for mobility-impaired persons, outdoor recreation (*e.g.,* bicycling, hiking, jogging, walking, mountain biking, and picnicking), camping, and horseback riding are available in the CCP.

Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Comments

We made copies of the Draft CCP/EA available for a 30-day public review and comment period via a **Federal Register** notice on January 21, 2010 (75 FR 3484). We received five comments on the Draft CCP/EA.

Selected Alternative

The Draft CCP/EA identified and evaluated three alternatives for managing the refuge. After considering the comments we received and based on the professional judgment of the planning team, we selected Alternative C for implementation.

Under Alternative C, we will optimize management of native wildlife and habitat diversity (*e.g.,* floristic communities, longleaf-wiregrass, and native grasslands) and appropriate wildlife-dependent public uses and visitor services. We will continue our focus on RCW monitoring and recovery, while managing for a suite of species. We will enhance habitat required for RCWs by (1) accelerating the transition to multi-aged management; (2) improving forest structure and composition, focusing on diversifying plantation structure to create multiple-aged classes and densities of overstory pines, while improving ground layer structure and composition; (3) using all available tools to control midstory (*e.g.,* chemical, mechanical, and pre-commercial); (4) increasing growing season burning; and (5) considering use of fall burning for hazardous fuel reduction and seed bed preparation.

We will increase partnership activities with the South Carolina Department of Natural Resources, Cheraw State Park, and Sandhills State Forest to manage RCWs as one recovery population. We will enhance our management of the unique floristic communities on the refuge, including seepage bogs, Atlantic white cedar and cane bottoms, and old field species at Oxpen Farm. We will develop and implement habitat management response surveys to identify species response to treatments in longleaf pine and restoration in pocosin habitat sites.

We will manage 1,200 acres of grasslands for birds of conservation concern, conduct baseline population surveys of grassland birds, and survey to assess effects of habitat management. As part of grassland management and restoration, we will restore longleaf-wiregrass and native grasslands, establish native warm season grass demonstration areas, and eradicate non-native plants (*e.g.,* fescue, love grass, and bamboo). We will also establish a seed nursery/orchard for native warm season grass and native ground cover and engage in native plant botanical research.

We will balance habitat restoration and fish and wildlife population management with enhanced visitor services. We will improve our wayside exhibits and update our Web site, encouraging families to use the refuge to pursue outdoor recreational opportunities. We will host an annual public lands and private landowner demonstration day to showcase restoration and management practices. We will work with our volunteers, partners, and friends group, to further information and technology exchange. We will target land acquisitions that will maximize ecosystem management objectives and opportunities for public use and environmental education. We will identify and evaluate important gaps and corridors to ensure landscape-level conservation and connectivity. We will search for opportunities to enter into cooperative wildlife management agreements with private landowners in the Partners for Fish and Wildlife Program focus areas. We will increase protection of visitors to the refuge.

Alternative C directs the development of programs to best achieve the refuge purpose and goals; emphasizes adaptive management; collects habitat and wildlife data; and ensures long-term achievement of refuge and Service objectives. At the same time, these management actions provide balanced levels of compatible public use opportunities consistent with existing laws, Service policies, and sound biological principles. It provides the best mix of program elements to achieve desired long-term conditions. Under this alternative, all lands under our management and direction will be protected, maintained, and enhanced to best achieve national, ecosystem, and refuge specific goals and objectives within anticipated funding and staffing levels. In addition, the action positively addresses significant issues and concerns expressed by the public.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: August 5, 2010.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2010–24668 Filed 9–30–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the current list of 564 tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes. The list is updated from the notice published on August 11, 2009 (74 FR 40218).

FOR FURTHER INFORMATION CONTACT: Elizabeth Colliflower, Bureau of Indian Affairs, Division of Tribal Government Services, Mail Stop 4513–MIB, 1849 C Street, NW., Washington, DC 20240. Telephone number: (202) 513–7641.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103–454; 108 Stat. 4791, 4792), and in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Published below is a list of federally acknowledged tribes in the contiguous 48 states and in Alaska.

Amendments to the list include name changes and name corrections. To aid in identifying tribal name changes, the tribe's former name is included with the new tribal name. To aid in identifying corrections, the tribe's previously listed name is included with the tribal name. We will continue to list the tribe's former or previously listed name for several years before dropping the former or previously listed name from the list.

The listed entities are acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes. We have continued the practice of listing the Alaska Native entities separately solely for the purpose of facilitating identification of them and reference to them given the large number of complex Native names.

Dated: September 22, 2010.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

Indian Tribal Entities Within the Contiguous 48 States Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Absentee-Shawnee Tribe of Indians of Oklahoma
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona
Alabama-Coushatta Tribes of Texas
Alabama-Quassarte Tribal Town, Oklahoma
Alturas Indian Rancheria, California
Apache Tribe of Oklahoma
Arapahoe Tribe of the Wind River Reservation, Wyoming
Aroostook Band of Micmac Indians of Maine
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
Augustine Band of Cahuilla Indians, California (formerly the Augustine Band of Cahuilla Mission Indians of the Augustine Reservation)
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
Bay Mills Indian Community, Michigan
Bear River Band of the Rohnerville Rancheria, California
Berry Creek Rancheria of Maidu Indians of California
Big Lagoon Rancheria, California
Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California
Big Sandy Rancheria of Mono Indians of California
Big Valley Band of Pomo Indians of the Big Valley Rancheria, California
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Blue Lake Rancheria, California
Bridgeport Paiute Indian Colony of California
Buena Vista Rancheria of Me-Wuk Indians of California
Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon
Cabazon Band of Mission Indians, California
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
Caddo Nation of Oklahoma
Cahuilla Band of Mission Indians of the Cahuilla Reservation, California
Cahto Indian Tribe of the Laytonville Rancheria, California
California Valley Miwok Tribe, California
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
Capitan Grande Band of Diegueno Mission Indians of California:
Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California
Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California
Catawba Indian Nation (aka Catawba Tribe of South Carolina)
Cayuga Nation of New York
Cedarville Rancheria, California
Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
Cherokee Nation, Oklahoma
Cheyenne and Arapaho Tribes, Oklahoma (formerly the Cheyenne-Arapaho Tribes of Oklahoma)
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Chickasaw Nation, Oklahoma
Chicken Ranch Rancheria of Me-Wuk Indians of California
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
Chitimacha Tribe of Louisiana
Choctaw Nation of Oklahoma
Citizen Potawatomi Nation, Oklahoma
Cloverdale Rancheria of Pomo Indians of California
Cocopah Tribe of Arizona
Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho
Cold Springs Rancheria of Mono Indians of California
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Comanche Nation, Oklahoma
Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana
Confederated Tribes of the Chehalis Reservation, Washington
Confederated Tribes of the Colville Reservation, Washington
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon
Confederated Tribes of the Goshute Reservation, Nevada and Utah
Confederated Tribes of the Grand Ronde Community of Oregon
Confederated Tribes of Siletz Indians of Oregon (previously listed as the Confederated Tribes of the Siletz Reservation)
Confederated Tribes of the Umatilla Reservation, Oregon
Confederated Tribes of the Warm Springs Reservation of Oregon
Confederated Tribes and Bands of the Yakama Nation, Washington
Coquille Tribe of Oregon
Cortina Indian Rancheria of Wintun Indians of California
Coushatta Tribe of Louisiana

Cow Creek Band of Umpqua Indians of Oregon
Cowlitz Indian Tribe, Washington
Coyote Valley Band of Pomo Indians of California
Crow Tribe of Montana
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
Death Valley Timbi-Sha Shoshone Band of California
Delaware Nation, Oklahoma
Delaware Tribe of Indians, Oklahoma
Dry Creek Rancheria of Pomo Indians of California
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Eastern Band of Cherokee Indians of North Carolina
Eastern Shawnee Tribe of Oklahoma
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
Elk Valley Rancheria, California
Ely Shoshone Tribe of Nevada
Enterprise Rancheria of Maidu Indians of California
Ewiiaapaayp Band of Kumeyaay Indians, California
Federated Indians of Graton Rancheria, California
Flandreau Santee Sioux Tribe of South Dakota
Forest County Potawatomi Community, Wisconsin
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Fort Bidwell Indian Community of the Fort Bidwell Reservation of California
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon
Fort McDowell Yavapai Nation, Arizona
Fort Mojave Indian Tribe of Arizona, California & Nevada
Fort Sill Apache Tribe of Oklahoma
Gila River Indian Community of the Gila River Indian Reservation, Arizona
Grand Traverse Band of Ottawa and Chippewa Indians, Michigan
Greenville Rancheria of Maidu Indians of California
Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
Guidiville Rancheria of California
Habematolel Pomo of Upper Lake, California
Hannahville Indian Community, Michigan
Havasupai Tribe of the Havasupai Reservation, Arizona
Ho-Chunk Nation of Wisconsin
Hoh Indian Tribe of the Hoh Indian Reservation, Washington
Hoopa Valley Tribe, California
Hopi Tribe of Arizona
Hopland Band of Pomo Indians of the Hopland Rancheria, California
Houlton Band of Maliseet Indians of Maine
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona
Iipay Nation of Santa Ysabel, California (formerly the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation)
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
Ione Band of Miwok Indians of California
Iowa Tribe of Kansas and Nebraska
Iowa Tribe of Oklahoma
Jackson Rancheria of Me-Wuk Indians of California
Jamestown S'Klallam Tribe of Washington
Jamul Indian Village of California
Jena Band of Choctaw Indians, Louisiana
Jicarilla Apache Nation, New Mexico
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
Kalispel Indian Community of the Kalispel Reservation, Washington
Karuk Tribe (formerly the Karuk Tribe of California)
Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
Kaw Nation, Oklahoma
Kewa Pueblo, New Mexico (formerly the Pueblo of Santo Domingo)
Keweenaw Bay Indian Community, Michigan
Kialegee Tribal Town, Oklahoma
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
Kickapoo Tribe of Oklahoma
Kickapoo Traditional Tribe of Texas
Kiowa Indian Tribe of Oklahoma
Klamath Tribes, Oregon
Kootenai Tribe of Idaho
La Jolla Band of Luiseno Indians, California (formerly the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation)
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
Little River Band of Ottawa Indians, Michigan
Little Traverse Bay Bands of Odawa Indians, Michigan
Lower Lake Rancheria, California
Los Coyotes Band of Cahuilla and Cupeno Indians, California (formerly the Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation)
Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington
Lower Sioux Indian Community in the State of Minnesota
Lummi Tribe of the Lummi Reservation, Washington
Lytton Rancheria of California
Makah Indian Tribe of the Makah Indian Reservation, Washington
Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
Mashantucket Pequot Tribe of Connecticut
Mashpee Wampanoag Tribe, Massachusetts
Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan
Mechoopda Indian Tribe of Chico Rancheria, California
Menominee Indian Tribe of Wisconsin
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Miami Tribe of Oklahoma
Miccosukee Tribe of Indians of Florida
Middletown Rancheria of Pomo Indians of California
Minnesota Chippewa Tribe, Minnesota (Six component reservations:
Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)
Mississippi Band of Choctaw Indians, Mississippi
Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
Modoc Tribe of Oklahoma
Mohegan Indian Tribe of Connecticut
Mooretown Rancheria of Maidu Indians of California
Morongo Band of Mission Indians, California (formerly the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation)
Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington
Muscogee (Creek) Nation, Oklahoma
Narragansett Indian Tribe of Rhode Island

Navajo Nation, Arizona, New Mexico & Utah
Nez Perce Tribe, Idaho (previously listed as Nez Perce Tribe of Idaho)
Nisqually Indian Tribe of the Nisqually Reservation, Washington
Nooksack Indian Tribe of Washington
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Northfork Rancheria of Mono Indians of California
Northwestern Band of Shoshoni Nation of Utah (Washakie)
Nottawaseppi Huron Band of the Potawatomi, Michigan (formerly the Huron Potawatomi, Inc.)
Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan)
Omaha Tribe of Nebraska
Oneida Nation of New York
Oneida Tribe of Indians of Wisconsin
Onondaga Nation of New York
Osage Nation, Oklahoma (formerly the Osage Tribe)
Ottawa Tribe of Oklahoma
Otoe-Missouria Tribe of Indians, Oklahoma
Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes) (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes))
Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California
Pala Band of Luiseno Mission Indians of the Pala Reservation, California
Pascua Yaqui Tribe of Arizona
Paskenta Band of Nomlaki Indians of California
Passamaquoddy Tribe of Maine
Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California
Pawnee Nation of Oklahoma
Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California
Penobscot Tribe of Maine
Peoria Tribe of Indians of Oklahoma
Picayune Rancheria of Chukchansi Indians of California
Pinoleville Pomo Nation, California (formerly the Pinoleville Rancheria of Pomo Indians of California)
Pit River Tribe, California (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherias)
Poarch Band of Creek Indians of Alabama
Pokagon Band of Potawatomi Indians, Michigan and Indiana
Ponca Tribe of Indians of Oklahoma
Ponca Tribe of Nebraska
Port Gamble Indian Community of the Port Gamble Reservation, Washington
Potter Valley Tribe, California
Prairie Band of Potawatomi Nation, Kansas
Prairie Island Indian Community in the State of Minnesota
Pueblo of Acoma, New Mexico
Pueblo of Cochiti, New Mexico
Pueblo of Jemez, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Laguna, New Mexico
Pueblo of Nambe, New Mexico
Pueblo of Picuris, New Mexico
Pueblo of Pojoaque, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Ildefonso, New Mexico
Pueblo of Sandia, New Mexico
Pueblo of Santa Ana, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Tesuque, New Mexico
Pueblo of Zia, New Mexico
Puyallup Tribe of the Puyallup Reservation, Washington
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
Quapaw Tribe of Indians, Oklahoma
Quartz Valley Indian Community of the Quartz Valley Reservation of California
Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona
Quileute Tribe of the Quileute Reservation, Washington
Quinault Tribe of the Quinault Reservation, Washington
Ramona Band of Cahuilla, California (formerly the Ramona Band or Village of Cahuilla Mission Indians of California)
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
Red Lake Band of Chippewa Indians, Minnesota
Redding Rancheria, California
Redwood Valley Rancheria of Pomo Indians of California
Reno-Sparks Indian Colony, Nevada
Resighini Rancheria, California
Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California
Robinson Rancheria of Pomo Indians of California
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Round Valley Indian Tribes of the Round Valley Reservation, California
Sac & Fox Tribe of the Mississippi in Iowa
Sac & Fox Nation of Missouri in Kansas and Nebraska
Sac & Fox Nation, Oklahoma
Saginaw Chippewa Indian Tribe of Michigan
St. Croix Chippewa Indians of Wisconsin
Saint Regis Mohawk Tribe, New York (formerly the St. Regis Band of Mohawk Indians of New York)
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
Samish Indian Tribe, Washington
San Carlos Apache Tribe of the San Carlos Reservation, Arizona
San Juan Southern Paiute Tribe of Arizona
San Manuel Band of Mission Indians, California (previously listed as the San Manual Band of Serrano Mission Indians of the San Manual Reservation)
San Pasqual Band of Diegueno Mission Indians of California
Santa Rosa Indian Community of the Santa Rosa Rancheria, California
Santa Rosa Band of Cahuilla Indians, California (formerly the Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation)
Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California
Santee Sioux Nation, Nebraska
Sauk-Suiattle Indian Tribe of Washington
Sault Ste. Marie Tribe of Chippewa Indians of Michigan
Scotts Valley Band of Pomo Indians of California
Seminole Nation of Oklahoma
Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)
Seneca Nation of New York
Seneca-Cayuga Tribe of Oklahoma
Shakopee Mdewakanton Sioux Community of Minnesota
Shawnee Tribe, Oklahoma
Sherwood Valley Rancheria of Pomo Indians of California
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington
Shoshone Tribe of the Wind River Reservation, Wyoming
Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota
Skokomish Indian Tribe of the Skokomish Reservation, Washington

Skull Valley Band of Goshute Indians of Utah
Smith River Rancheria, California
Snoqualmie Tribe, Washington
Soboba Band of Luiseno Indians, California
Sokaogon Chippewa Community, Wisconsin
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
Spirit Lake Tribe, North Dakota
Spokane Tribe of the Spokane Reservation, Washington
Squaxin Island Tribe of the Squaxin Island Reservation, Washington
Standing Rock Sioux Tribe of North & South Dakota
Stockbridge Munsee Community, Wisconsin
Stillaguamish Tribe of Washington
Summit Lake Paiute Tribe of Nevada
Suquamish Indian Tribe of the Port Madison Reservation, Washington
Susanville Indian Rancheria, California
Swinomish Indians of the Swinomish Reservation, Washington
Sycuan Band of the Kumeyaay Nation
Table Mountain Rancheria of California
Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band)
Thlopthlocco Tribal Town, Oklahoma
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Tohono O'odham Nation of Arizona
Tonawanda Band of Seneca Indians of New York
Tonkawa Tribe of Indians of Oklahoma
Tonto Apache Tribe of Arizona
Torres Martinez Desert Cahuilla Indians, California (formerly the Torres-Martinez Band of Cahuilla Mission Indians of California)
Tule River Indian Tribe of the Tule River Reservation, California
Tulalip Tribes of the Tulalip Reservation, Washington
Tunica-Biloxi Indian Tribe of Louisiana
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
Turtle Mountain Band of Chippewa Indians of North Dakota
Tuscarora Nation of New York
Twenty-Nine Palms Band of Mission Indians of California
United Auburn Indian Community of the Auburn Rancheria of California
United Keetoowah Band of Cherokee Indians in Oklahoma
Upper Sioux Community, Minnesota
Upper Skagit Indian Tribe of Washington
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah
Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California
Walker River Paiute Tribe of the Walker River Reservation, Nevada
Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts
Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches)
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona
Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma
Wilton Rancheria, California
Winnebago Tribe of Nebraska
Winnemucca Indian Colony of Nevada
Wiyot Tribe, California (formerly the Table Bluff Reservation—Wiyot Tribe)
Wyandotte Nation, Oklahoma
Yankton Sioux Tribe of South Dakota
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona
Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona
Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada
Yocha Dehe Wintun Nation, California (formerly the Rumsey Indian Rancheria of Wintun Indians of California)
Yomba Shoshone Tribe of the Yomba Reservation, Nevada
Ysleta Del Sur Pueblo of Texas
Yurok Tribe of the Yurok Reservation, California
Zuni Tribe of the Zuni Reservation, New Mexico

Native Entities Within the State of Alaska Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Native Village of Afognak
Agdaagux Tribe of King Cove
Native Village of Akhiok
Akiachak Native Community
Akiak Native Community
Native Village of Akutan
Village of Alakanuk
Alatna Village
Native Village of Aleknagik
Algaaciq Native Village (St. Mary's)
Allakaket Village
Native Village of Ambler
Village of Anaktuvuk Pass
Yupiit of Andreafski
Angoon Community Association
Village of Aniak
Anvik Village
Arctic Village (See Native Village of Venetie Tribal Government)
Asa'carsarmiut Tribe
Native Village of Atka
Village of Atmautluak
Atqasuk Village (Atkasook)
Native Village of Barrow Inupiat Traditional Government
Beaver Village
Native Village of Belkofski
Village of Bill Moore's Slough
Birch Creek Tribe
Native Village of Brevig Mission
Native Village of Buckland
Native Village of Cantwell
Native Village of Chenega (aka Chanega)
Chalkyitsik Village
Cheesh-Na Tribe (formerly the Native Village of Chistochina)
Village of Chefornak
Chevak Native Village
Chickaloon Native Village
Chignik Bay Tribal Council (formerly the Native Village of Chignik)
Native Village of Chignik Lagoon
Chignik Lake Village
Chilkat Indian Village (Klukwan)
Chilkoot Indian Association (Haines)
Chinik Eskimo Community (Golovin)
Native Village of Chitina
Native Village of Chuathbaluk (Russian Mission, Kuskokwim)
Chuloonawick Native Village
Circle Native Community
Village of Clarks Point
Native Village of Council
Craig Community Association
Village of Crooked Creek
Curyung Tribal Council
Native Village of Deering
Native Village of Diomede (aka Inalik)
Village of Dot Lake
Douglas Indian Association
Native Village of Eagle
Native Village of Eek
Egegik Village
Eklutna Native Village
Native Village of Ekuk
Ekwok Village
Native Village of Elim
Emmonak Village
Evansville Village (aka Bettles Field)
Native Village of Eyak (Cordova)
Native Village of False Pass
Native Village of Fort Yukon
Native Village of Gakona
Galena Village (aka Louden Village)
Native Village of Gambell
Native Village of Georgetown
Native Village of Goodnews Bay
Organized Village of Grayling (aka Holikachuk)
Gulkana Village
Native Village of Hamilton
Healy Lake Village
Holy Cross Village
Hoonah Indian Association
Native Village of Hooper Bay
Hughes Village
Huslia Village
Hydaburg Cooperative Association
Igiugig Village
Village of Iliamna
Inupiat Community of the Arctic Slope

Iqurmuit Traditional Council
Ivanoff Bay Village
Kaguyak Village
Organized Village of Kake
Kaktovik Village (aka Barter Island)
Village of Kalskag
Village of Kaltag
Native Village of Kanatak
Native Village of Karluk
Organized Village of Kasaan
Kasigluk Traditional Elders Council
Kenaitze Indian Tribe
Ketchikan Indian Corporation
Native Village of Kiana
King Island Native Community
King Salmon Tribe
Native Village of Kipnuk
Native Village of Kivalina
Klawock Cooperative Association
Native Village of Kluti Kaah (aka Copper Center)
Knik Tribe
Native Village of Kobuk
Kokhanok Village
Native Village of Kongiganak
Village of Kotlik
Native Village of Kotzebue
Native Village of Koyuk
Koyukuk Native Village
Organized Village of Kwethluk
Native Village of Kwigillingok
Native Village of Kwinhagak (aka Quinhagak)
Native Village of Larsen Bay
Levelock Village
Lime Village
Village of Lower Kalskag
Manley Hot Springs Village
Manokotak Village
Native Village of Marshall (aka Fortuna Ledge)
Native Village of Mary's Igloo
McGrath Native Village
Native Village of Mekoryuk
Mentasta Traditional Council
Metlakatla Indian Community, Annette Island Reserve
Native Village of Minto
Naknek Native Village
Native Village of Nanwalek (aka English Bay)
Native Village of Napaimute
Native Village of Napakiak
Native Village of Napaskiak
Native Village of Nelson Lagoon
Nenana Native Association
New Koliganek Village Council
New Stuyahok Village
Newhalen Village
Newtok Village
Native Village of Nightmute
Nikolai Village
Native Village of Nikolski
Ninilchik Village
Native Village of Noatak
Nome Eskimo Community
Nondalton Village
Noorvik Native Community
Northway Village
Native Village of Nuiqsut (aka Nooiksut)
Nulato Village
Nunakauyarmiut Tribe
Native Village of Nunam Iqua (formerly the Native Village of Sheldon's Point)
Native Village of Nunapitchuk
Village of Ohogamiut
Village of Old Harbor
Orutsararmuit Native Village (aka Bethel)
Oscarville Traditional Village
Native Village of Ouzinkie
Native Village of Paimiut
Pauloff Harbor Village
Pedro Bay Village
Native Village of Perryville
Petersburg Indian Association
Native Village of Pilot Point
Pilot Station Traditional Village
Native Village of Pitka's Point
Platinum Traditional Village
Native Village of Point Hope
Native Village of Point Lay
Native Village of Port Graham
Native Village of Port Heiden
Native Village of Port Lions
Portage Creek Village (aka Ohgsenakale)
Pribilof Islands Aleut Communities of St. Paul & St. George Islands
Qagan Tayagungin Tribe of Sand Point Village
Qawalangin Tribe of Unalaska
Rampart Village
Village of Red Devil
Native Village of Ruby
Saint George Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Native Village of Saint Michael
Saint Paul Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Village of Salamatoff
Native Village of Savoonga
Organized Village of Saxman
Native Village of Scammon Bay
Native Village of Selawik
Seldovia Village Tribe
Shageluk Native Village
Native Village of Shaktoolik
Native Village of Shishmaref
Native Village of Shungnak
Sitka Tribe of Alaska
Skagway Village
Village of Sleetmute
Village of Solomon
South Naknek Village
Stebbins Community Association
Native Village of Stevens
Village of Stony River
Sun'aq Tribe of Kodiak (formerly the Shoonaq' Tribe of Kodiak)
Takotna Village
Native Village of Tanacross
Native Village of Tanana
Tangirnaq Native Village (formerly Lesnoi Village (aka Woody Island))
Native Village of Tatitlek
Native Village of Tazlina
Telida Village
Native Village of Teller
Native Village of Tetlin
Central Council of the Tlingit & Haida Indian Tribes
Traditional Village of Togiak
Tuluksak Native Community
Native Village of Tuntutuliak
Native Village of Tununak
Twin Hills Village
Native Village of Tyonek
Ugashik Village
Umkumiut Native Village (previously listed as Umkumiute Native Village)
Native Village of Unalakleet
Native Village of Unga
Village of Venetie (See Native Village of Venetie Tribal Government)
Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)
Village of Wainwright
Native Village of Wales
Native Village of White Mountain
Wrangell Cooperative Association
Yakutat Tlingit Tribe

[FR Doc. 2010–24640 Filed 9–30–10; 8:45 am]

BILLING CODE 4310–4J–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–308–310, 520, and 521 (Third Review)]

Carbon Steel Butt-Weld Pipe Fittings From Brazil, China, Japan, Taiwan, and Thailand

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 11–5–224, expiration date June 30, 2011. Public reporting

consideration, the deadline for responses is November 1, 2010. Comments on the adequacy of responses may be filed with the Commission by December 14, 2010. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On the dates listed below, the Department of Commerce (Commerce) issued antidumping duty orders on the subject imports:

Order date	Product/country	Investigation No.	F.R. cite
12/17/86	Carbon steel butt-weld pipe fittings/Brazil	731–TA–308	51 FR 45152.
12/17/86	Carbon steel butt-weld pipe fittings/Taiwan	731–TA–310	51 FR 45152.
2/10/87	Carbon steel butt-weld pipe fittings/Japan	731–TA–309	52 FR 4167.
7/6/92	Carbon steel butt-weld pipe fittings/China	731–TA–520	57 FR 29702.
7/6/92	Carbon steel butt-weld pipe fittings/Thailand	731–TA–521	57 FR 29702.

Following first five-year reviews by Commerce and the Commission, effective January 6, 2000, Commerce issued a notice of the continuation of the antidumping duty orders on imports of carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand (65 FR 753). Following second five-year reviews by Commerce and the Commission, effective November 21, 2005, Commerce issued a notice of the continuation of the antidumping duty orders on imports of carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand (70 FR 70059). The Commission is now conducting third reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are Brazil, China, Japan, Taiwan, and Thailand.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations, its expedited first five-year review determinations, and its full second five-year review determinations, the Commission defined the *Domestic Like Product* as carbon steel butt-weld pipe fittings having an inside diameter of less than 14 inches, whether finished or unfinished, as coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, its expedited first five-year review determinations, and its full second five-year review determinations, the Commission defined a single *Domestic Industry:* Producers of finished and unfinished carbon steel butt-weld pipe fittings having an inside diameter of less than 14 inches, including integrated producers, converters, and combination producers which perform both integrated production and conversion. One Commissioner defined the *Domestic Industry* differently in the original determinations concerning Brazil, Japan, and Taiwan. In the original determinations concerning China and Thailand, the Commission excluded two domestic producers, Tube Line and Weldbend, from the *Domestic Industry* under the related parties provision. In its expedited first five-year review determinations, the Commission once again excluded Tube Line from the *Domestic Industry* under the related parties provision but found that Weldbend was no longer a related party eligible for exclusion. Certain Commissioners did not exclude Tube Line from the *Domestic Industry* in the expedited first five-year reviews. In the full second five-year review determinations, the Commission determined that appropriate circumstances did not exist for excluding any domestic producer from the *Domestic Industry* as a related party.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they

burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is November 1, 2010. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is December 14, 2010. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to be Provided in Response to this Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2004.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2009, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant).

If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2009 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country(ies)* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country(ies);* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country(ies).*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2009 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country(ies)* accounted for by your firm's(s') production; and

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country(ies)* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country(ies)* after 2004, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country(ies),* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: September 21, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–24066 Filed 9–30–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–841 (Second Review)]

Non-Frozen Concentrated Apple Juice From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on non-frozen concentrated apple juice from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on non-frozen concentrated apple juice from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is November 1, 2010. Comments on the adequacy of responses may be filed with the Commission by December 14, 2010. For further

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 11–5–226, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On June 5, 2000, the Department of Commerce (Commerce) issued an antidumping duty order on imports of non-frozen concentrated apple juice from China (65 FR 35606). Following five-year reviews by Commerce and the Commission, effective November 2, 2005, Commerce issued a continuation of the antidumping duty order on imports of non-frozen concentrated apple juice from China (70 FR 66349). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products, which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its expedited five-year review determination, the Commission defined the *Domestic Like Product* as non-frozen concentrated apple juice, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited five-year review determination, the Commission defined the *Domestic Industry* as all domestic producers of non-frozen concentrated apple juice. The Commission did not include apple growers in the *Domestic Industry.*

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is November 1, 2010. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is December 14, 2010. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The

Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to Be Provided in Response to This Notice of Institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2004.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2009, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2009 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2009 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal

operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2004, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product and Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: September 21, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–24065 Filed 9–30–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Adobe Systems, Inc., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Adobe Systems, Inc., et al.,* Civil Case No. 1:10–CV–01629. On September 24, 2010, the United States filed a Complaint alleging that Adobe Systems, Inc., Apple Inc., Google Inc., Intel Corp., Intuit, Inc., and Pixar entered into various bilateral agreements in which they agreed not to actively solicit each other's highly skilled technical employees, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment, filed the same time as the Complaint, requires Defendants to refrain from entering into similar agreements in the future.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.justice.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to James J. Tierney, Chief, Networks and Technology Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530 (telephone: 202–307–6200).

J. Robert Kramer II,

Director of Operations and Civil Enforcement.

United States District Court for the District of Columbia

United States of America, U.S. Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530, Plaintiff, v. *Adobe Systems, Inc., 345 Park Avenue, San Jose, CA 95110; Apple Inc., 1 Infinite Loop, Cupertino, CA 95014; Google Inc., 1600 Amphitheater Parkway, Mountain View, CA 94043; Intel Corporation, 2200 Mission College Boulevard, Santa Clara, CA 95054; Intuit, Inc., 2632 Marine Way, Mountain View, CA 94043; and Pixar, 1200 Park Avenue, Emeryville, CA 94608, Defendants.*

Case: 1:10–cv–01629.
Assigned to: Kollar-Kotelly, Colleen.
Assign. Date: 9/24/2010.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain equitable relief against Defendants Adobe Systems, Inc. ("Adobe"), Apple Inc. ("Apple"), Google Inc. ("Google"), Intel Corporation ("Intel"), Intuit, Inc. ("Intuit"), and Pixar, alleging as follows:

Nature of the Action

1. This action challenges under Section 1 of the Sherman Act five bilateral no cold call agreements among Adobe, Apple, Google, Intel, Intuit, and Pixar.

2. Defendants compete for highly skilled technical employees ("high tech employees") and solicit employees at other high tech companies to fill employment openings. Defendants' concerted behavior both reduced their ability to compete for employees and disrupted the normal price-setting mechanisms that apply in the labor setting. These no cold call agreements are facially anticompetitive because they eliminated a significant form of competition to attract high tech employees, and, overall, substantially diminished competition to the detriment of the affected employees who were likely deprived of competitively important information and access to better job opportunities.

3. Defendants' agreements are restraints of trade that are per se unlawful under Section 1 of the Sherman Act, 15 U.S.C. 1. The United States seeks an order prohibiting such agreements.

Jurisdiction and Venue

4. Each Defendant hires specialized computer engineers and scientists throughout the United States, and each sells high technology products throughout the United States. Such activities, including the recruitment and hiring activities at issue in this Complaint, are in the flow of and substantially affect interstate commerce. The Court has subject matter jurisdiction under Section 4 of the Sherman Act, 15 U.S.C. 4, and under 28 U.S.C. 1331 and 1337 to prevent and restrain the Defendants from violating

Section 1 of the Sherman Act, 15 U.S.C. 1.

5. Venue is proper in this judicial district under Section 12 of the Clayton Act, 15 U.S.C. 22, and under 28 U.S.C. 1391(b)(2), (c). Defendants transact or have transacted substantial business here.

Defendants

6. Defendant Adobe is a Delaware corporation with its principal place of business in San Jose, California.

7. Defendant Apple is a California corporation with its principal place of business in Cupertino, California.

8. Defendant Google is a Delaware corporation with its principal place of business in Mountain View, California.

9. Defendant Intel is a Delaware corporation with its principal place of business in Santa Clara, California.

10. Defendant Intuit is a Delaware corporation with its principal place of business in Mountain View, California.

11. Defendant Pixar is a California corporation with its principal place of business in Emeryville, California.

Trade and Commerce

12. High tech labor is characterized by expertise and specialization. Defendants compete for high tech employees, and in particular specialized computer science and engineering talent on the basis of salaries, benefits, and career opportunities. In recent years, talented computer engineers and computer scientists have been in high demand.

13. Although Defendants employ a variety of recruiting techniques, cold calling another firm's employees is a particularly effective method of competing for computer engineers and computer scientists. Cold calling involves communicating directly in any manner (including orally, in writing, telephonically, or electronically) with another firm's employee who has not otherwise applied for a job opening. Defendants frequently recruit employees by cold calling because other firms' employees have the specialized skills necessary for the vacant position and may be unresponsive to other methods of recruiting. For example, several Defendants at times have received an extraordinary number of job applications per year. Yet these companies still cold called engineers and scientists at other high tech companies to fill certain positions.

14. In a well-functioning labor market, employers compete to attract the most valuable talent for their needs. Defendants' concerted behavior both reduced their ability to compete for employees and disrupted the normal price-setting mechanisms that apply in the labor setting. These no cold call agreements are facially anticompetitive because they eliminated a significant form of competition to attract high tech employees, and, overall, substantially diminished competition to the detriment of the affected employees who were likely deprived of competitively important information and access to better job opportunities.

The Unlawful Agreements

15. The six Defendants entered into five substantially similar agreements not to cold call employees. The agreements were between (i) Apple and Google, (ii) Apple and Adobe, (iii) Apple and Pixar, (iv) Google and Intel, and (v) Google and Intuit. As detailed below, these agreements were created and enforced by senior executives of these companies.

16. These no cold call agreements were not ancillary to any legitimate collaboration between Defendants. None of the agreements was limited by geography, job function, product group, or time period. Thus, they were much broader than reasonably necessary for the formation or implementation of any collaborative effort. The lack of necessity for these broad agreements is further demonstrated by the fact that Defendants engaged in substantial collaborations that either did not include no cold call agreements or contained narrowly tailored hiring restrictions.

Apple-Google Agreement

17. Beginning no later than 2006, Apple and Google agreed not to cold call each other's employees. Senior executives at Apple and Google reached an express no cold call agreement through direct and explicit communications. The executives actively managed and enforced the agreement through direct communications.

18. The Apple-Google agreement covered all Google and all Apple employees and was not limited by geography, job function, product group, or time period. Moreover, employees were not informed of and did not agree to this restriction.

19. In furtherance of this agreement, Apple placed Google on its internal "Do Not Call List," which instructed Apple employees not to cold call employees from the listed companies, including Google. Similarly, in its Hiring Policies and Protocols manual, Google listed Apple among the companies that had special agreements with Google and were part of the "Do Not Cold Call" list. The manual instructed Google employees not to cold call employees of the listed companies.

20. The companies, through their senior executives, policed potential breaches of the agreement. In February 2006 and March 2007, Apple complained to Google regarding recruiting efforts Google had made and, on both occasions, Google investigated the matter internally and reported its findings back to Apple.

Apple-Adobe Agreement

21. Beginning no later than May 2005, Apple and Adobe agreed not to cold call each other's employees. Senior executives at Apple and Adobe reached an express no cold call agreement through direct and explicit communications. The executives actively managed and enforced the agreement through direct communications.

22. The Apple-Adobe agreement covered all Adobe and all Apple employees and was not limited by geography, job function, product group, or time period. Moreover, employees were not informed of and did not agree to this restriction.

23. In furtherance of this agreement, Apple placed Adobe on its internal "Do Not Call List," which instructed Apple employees not to cold call employees from the listed companies, including Adobe. Similarly, Adobe included Apple in its internal list of "Companies that are off limits," instructing recruiters not to cold call candidates from Apple.

Apple-Pixar Agreement

24. Beginning no later than April 2007, Apple and Pixar agreed not to cold call each other's employees. Senior executives at Apple and Pixar reached an express no cold call agreement through direct and explicit communications. The executives actively managed and enforced the agreement through direct communications.

25. The Apple-Pixar agreement covered all Pixar and all Apple employees and was not limited by geography, job function, product group, or time period. Moreover, employees were not informed of and did not agree to this restriction.

26. In furtherance of this agreement, Apple placed Pixar on its internal "Do Not Call List," which instructed Apple employees not to cold call employees from the listed companies, including Pixar. Similarly, Pixar instructed Pixar human resources personnel to adhere to the agreement and maintain a paper trail establishing that Pixar had not actively recruited job applicants from Apple.

Google-Intel Agreement

27. Beginning no later than September 2007, Google and Intel agreed not to cold call each other's employees. Senior executives at Google and Intel reached an express no cold call agreement through direct and explicit communications. The executives actively managed and enforced the agreement through direct communications.

28. The agreement covered all Intel and all Google employees and was not limited by geography, job function, product group, or time period. Moreover, employees were not informed of and did not agree to this restriction.

29. In furtherance of this agreement, Google listed Intel in its Hiring Policies and Protocols manual among the companies that have special agreements with Google and were part of the "Do Not Cold Call" list. The manual instructed Google employees not to cold call employees of the listed companies. Similarly, Intel instructed its human resources staff about the existence of the agreement.

Google-Intuit Agreement

30. In June 2007, Google and Intuit agreed that Google would not cold call any Intuit employee. Senior executives at Google and Intuit reached an express no cold call agreement through direct and explicit communications. The executives actively managed and enforced the agreement through direct communications.

31. The agreement covered all Intuit employees and was not limited by geography, job function, product group, or time period. Moreover, Intuit employees were not informed of and did not agree to this restriction.

32. In furtherance of this agreement, in its Hiring Policies and Protocols manual, Google listed Intuit among the companies that had special agreements with Google and were part of the "Do Not Cold Call" list. The manual instructed Google employees not to cold call employees of the listed companies.

Violation Alleged

Violation of Section 1 of the Sherman Act

33. The United States hereby incorporates paragraphs 1 through 32.

34. Defendants are direct competitors for employees, including specialized computer engineers and scientists, covered by the agreements at issue here. Defendants' concerted behavior both reduced their ability to compete for employees and disrupted the normal price-setting mechanisms that apply in the labor setting. These no cold call agreements are facially anticompetitive because they eliminated a significant form of competition to attract high tech employees, and, overall, substantially diminished competition to the detriment of the affected employees who were likely deprived of competitively important information and access to better job opportunities.

35. Defendants' agreements constitute unreasonable restraints of trade that are per se unlawful under Section 1 of the Sherman Act, 15 U.S.C. 1.

Requested Relief

The United States requests that the Court:

(A) Adjudge and decree that Defendants' agreements not to compete constitute illegal restraints of interstate trade and commerce in violation of Section 1 of the Sherman Act;

(B) Enjoin and restrain Defendants from enforcing or adhering to existing agreements that unreasonably restrict competition for employees between them;

(C) Permanently enjoin and restrain each Defendant from establishing any similar agreement unreasonably restricting competition for employees except as prescribed by the Court;

(D) Award the United States such other relief as the Court may deem just and proper to redress and prevent recurrence of the alleged violations and to dissipate the anticompetitive effects of the illegal agreements entered into by Adobe, Apple, Google, Intel, Intuit, and Pixar; and

(E) The United States be awarded the costs of this action.

Dated this 24th day of September 2010.

Respectfully submitted,

For Plaintiff United States.

Molly S. Boast,

Acting Assistant Attorney General.

J. Robert Kramer II,

Director of Operations.

James J. Tierney,

Chief, Networks and Technology Section. DC Bar #434610.

Scott A. Scheele,

Assistant Chief, Networks and Technology Section, DC Bar #429061.

Ryan S. Struve (DC Bar #495406),
Adam T. Severt,
Jessica N. Butler-Arkow (DC Bar #430022),
H. Joseph Pinto III,
Anthony D. Scicchitano,

Trial Attorneys.

U.S. Department of Justice, Antitrust Division, Networks and Technology Section, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530. *Telephone:* (202) 307–6200. *Facsimile:* (202) 616–8544. ryan.struve@usdoj.gov.

Certificate of Service

I, Ryan Struve, hereby certify that on September 24, 2010, I caused a copy of the Complaint to be served on Defendants Adobe Systems, Inc., Apple, Inc., Google, Inc., Intel Corporation, Intuit, Inc., and Pixar by mailing the document via e-mail to the duly authorized legal representatives of the defendants, as follows:

For Defendant Adobe Systems, Inc., Craig A. Waldman, Esq., Jones Day, 555 California Street, 26th Floor, San Francisco, CA 94104. *Telephone:* (415) 875–5765. *Fax:* (415) 963–6813. *E-mail: cwaldman@jonesday.com.*

For Defendant Apple Inc., Richard Parker, Esq., O'Melveny & Myers LLP, 1625 Eye Street, NW., Washington, DC 20006. *Telephone:* (202) 383–5380. *Fax:* (202) 383–5414. *E-mail: rparker@omm.com.*

For Defendant Google Inc., Mark Leddy, Esq., Cleary Gottlieb Steen & Hamilton LLP, 2000 Pennsylvania Avenue, NW., Washington, DC 20006. *Telephone:* (202) 974–1570. *Fax:* (202) 974–1999. *E-mail: mleddy@cgsh.com.*

For Defendant Intel Corporation, Leon B. Greenfield, Esq., WilmerHale, 1875 Pennsylvania Avenue, NW., Washington, DC 20006. *Telephone:* (202) 663–6972. *Fax:* (202) 663–6363. *E-mail: Leon.Greenfield@wilmerhale.com.*

For Defendant Intuit, Inc., Joe Sims, Esq., Jones Day, 51 Louisiana Avenue, NW., Washington, DC 20001. *Telephone:* (202) 879–3863. *Fax:* (202) 626–1700. *E-mail: jsims@jonesday.com.*

For Defendant Pixar, Deborah A. Garza, Esq., Covington & Burling LLP, 1201 Pennsylvania Avenue, NW., Washington, DC 20004. *Telephone:* (202) 662–5146. *Fax:* (202) 778–5146. *E-mail: dgarza@cov.com.*

Ryan Struve, Esq., Trial Attorney, Networks & Technology Section, U.S. Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530. *Telephone:* (202) 307–6200. *Fax:* (202) 616–8544. *E-mail: ryan.struve@usdoj.gov.*

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Adobe Systems, Inc.; Apple Inc.; Google Inc.; Intel Corporation; Intuit, Inc.; and Pixar,* Defendants.

Case No. 1:10–cv–01629.
Assigned to: Kollar-Kotelly, Colleen.
Assign. Date: 9/24/2010.

Competitive Impact Statement

Plaintiff United States of America ("United States"), pursuant to Section

2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The United States brought this lawsuit against Defendants Adobe Systems, Inc. ("Adobe"), Apple Inc. ("Apple"), Google Inc. ("Google"), Intel Corporation ("Intel"), Intuit, Inc. ("Intuit") and Pixar, on September 24, 2010, to remedy violations of Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint alleges that Defendants entered into a series of bilateral agreements, pursuant to which a Defendant agreed not to cold call another Defendant's employees for employment opportunities. The effect of these agreements was to reduce Defendants' competition for highly skilled technical employees ("high tech employees"), diminish potential employment opportunities for those same employees, and interfere in the proper functioning of the price-setting mechanism that would otherwise have prevailed. Defendants' agreements are naked restraints of trade and violate Section 1 of the Sherman Act, 15 U.S.C. 1.

At the same time the Complaint was filed, the United States also filed a proposed Final Judgment, which would remedy the violation by having the Court declare the Defendants' cold calling agreements illegal, enjoin Defendants from enforcing any such agreements currently in effect, and prohibit Defendants from entering similar agreements in the future.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that this Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation of the Antitrust Laws

The six Defendants entered into five substantially similar agreements that restrained competition for employees and were not disclosed to the affected employees. These agreements banned cold calling of employees. Cold calling involves communicating directly in any manner (including orally, in writing, telephonically, or electronically) with another firm's employee who has not otherwise applied for a job opening. The agreements were between (i) Apple and Google, (ii) Apple and Adobe, (iii) Apple and Pixar, (iv) Google and Intel, and (v) Google and Intuit. Aside from the Google and Intuit agreement, which only prohibited Google from cold calling any Intuit employee, each agreement covered all employees at both firms that were parties to the agreement. Senior executives at each firm entered the express agreements, and implemented and enforced them.

Defendants' agreements disrupted the competitive market forces for employee talent. The agreements are facially anticompetitive because they eliminated a significant form of competition to attract high tech employees, and, overall, substantially diminished competition to the detriment of the affected employees who were likely deprived of competitively important information and access to better job opportunities.

Each of the five agreements was a naked restraint of trade that was per se unlawful under Section 1 of the Sherman Act, 15 U.S.C. 1.

Apple-Google Agreement

Beginning no later than 2006, Apple and Google agreed not to cold call each other's employees. Senior executives at Apple and Google reached this express agreement through direct and explicit communications. The executives actively managed and enforced the agreement through direct communications. The agreement covered all employees of both firms and was not limited by geography, job function, product group, or time period. In furtherance of this agreement, Apple placed Google on its internal "Do Not Call List," which instructed employees not to actively solicit employees from the listed companies. Similarly, Google listed Apple among the companies that had special agreements with Google and were part of its "Do Not Cold Call" list. On occasion, Apple complained to Google when it believed the agreement had been breached. Each time, Google conducted an internal investigation to determine whether Google violated the agreement and reported its findings back to Apple.

Apple-Adobe Agreement

Beginning no later than May 2005, Apple requested an agreement from Adobe to refrain from cold calling each other's employees. Faced with the likelihood that refusing would result in retaliation and significant competition for its employees, Adobe agreed. Senior executives at Apple and Adobe reached this express agreement through direct and explicit communications. The executives actively managed and enforced the agreement through direct communications. The agreement covered all employees of both firms and was not limited by geography, job function, product group, or time period. In furtherance of this agreement, Apple placed Adobe on its internal "Do Not Call List," and similarly, Adobe included Apple in its internal list of "Companies that are off limits."

Apple-Pixar Agreement

Beginning no later than April 2007, Apple and Pixar agreed that they would not cold call each other's employees. Executives at Apple and Pixar reached this express agreement through direct and explicit communications. The executives actively managed and enforced the agreement through direct communications. The agreement covered all employees of both firms and was not limited by geography, job function, product group, or time period. In furtherance of this agreement, Apple placed Pixar on its internal "Do Not Call List" and senior executives at Pixar instructed human resources personnel to adhere to the agreement and maintain a paper trail in the event Apple accused Pixar of violating the agreement.

Google-Intel Agreement

Beginning no later than September 2007, Google and Intel agreed to refrain from cold calling each other's employees. Senior executives at Google and Intel reached this express agreement through direct and explicit communications. The executives actively managed and enforced the agreement through direct communications. The agreement covered all employees of both firms and was not limited by geography, job function, product group, or time period. In furtherance of this agreement, Google listed Intel among the companies that have special agreements with Google and are part of its "Do Not Call" list. Similarly, Intel instructed its human resources staff about the existence of the agreement.

Google-Intuit Agreement

Beginning no later than June 2007, Google and Intuit agreed to prohibit Google from cold calling any Intuit employee. Senior executives at Google and Intel reached this express agreement through direct and explicit communications. The executives actively managed and enforced the agreement through direct communications. The agreement covered all Intuit employees and was

not limited by geography, job function, product group, or time period. In furtherance of this agreement, Google listed Intuit among the companies that have special agreements with Google and are part of its "Do Not Call" list. Google policed the agreement to ensure it was followed, including by investigating complaints from Intuit that Google had violated the agreement. On each occasion, Google determined that it had not violated the agreement and informed Intuit.

III. The Agreements Were Naked Restraints and Not Ancillary To Achieving Legitimate Business Purposes

Section 1 of the Sherman Act outlaws "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States." 15 U.S.C. 1. The Sherman Act is designed to ensure "free and unfettered competition as the rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress * * *." *National Collegiate Athletic Ass'n* v. *Board of Regents of Univ. of Okla.,* 468 U.S. 85, 104 n.27 (1984) (quoting *Northern Pac. Ry.* v. *United States,* 356 U.S. 1, 4–5 (1958)).

The law has long recognized that "certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use." *Northern Pac. Ry.,* 356 U.S. at 545. Such naked restraints of competition among horizontal competitors (*i.e.,* agreements that have a pernicious effect on competition with no redeeming virtue) are deemed per se unlawful.

The United States has previously challenged restraints on employment as per se illegal. In 1996, the United States challenged guidelines designed to curb competition between residency programs for senior medical students and residents of other programs. Members of the Association of Family Practice Residency Directors had agreed not to directly solicit residents from each other, conduct recognized as "per se unlawful" under Section 1. *United States* v. *Ass'n of Family Practice Residency Doctors,* No. 96–575–CV–W–2, Complaint at 6 (W.D.Mo. May 28, 1996); Competitive Impact Statement, 61 FR 28891, 28894 (W.D.Mo. May 28, 1996). The Court entered an agreed-upon Final Judgment, enjoining the association from restraining competition among residency programs for residents, including enjoining all prohibitions on direct and indirect solicitation of residents from other programs. 1996–2 Trade Cases ¶ 71,533, 28894 (W.D.Mo. Aug. 15, 1996).

In analogous circumstances, the Sixth Circuit has held that an agreement among competitors not to solicit one another's customers was a per se violation of the antitrust laws. *U.S.* v. *Cooperative Theaters of Ohio, Inc.,* 845 F.2d 1367 (6th Cir. 1988). In that case, two movie theater booking agents agreed to refrain from actively soliciting each other's customers. Despite the defendants' arguments that they "remained free to accept *unsolicited* business from their competitors' customers," *id.* (emphasis in original), the Sixth Circuit found their "no-solicitation agreement" was "undeniably a type of customer allocation scheme which courts have often condemned in the past as a per se violation of the Sherman Act." *Id.* at 1373.

Antitrust analysis of downstream, customer-related restraints is equally applicable to upstream monopsony restraints on employment opportunities. In 1991, the Antitrust Division brought an action against conspirators who competed to procure billboard leases and had agreed to refrain from bidding on each other's former leases for a year after the space was lost or abandoned by the other conspirator. *United States* v. *Brown,* 936 F.2d 1042 (9th Cir. 1991) (affirming jury verdict convicting defendants of conspiring to restrain trade in violation of 15 U.S.C. 1). The agreement was limited to an input market (the procurement of billboard leases) and did not extend to downstream sales (in which the parties also competed). In affirming defendants' convictions, the appellate court held that the agreement was per se unlawful:

> The agreement restricted each company's ability to compete for the other's billboard sites. It clearly allocated markets between the two billboard companies. A market allocation agreement between two companies at the same market level is a classic per se antitrust violation.

Id. at 1045.

There is no basis for distinguishing allocation agreements based on whether they involve input or output markets. Anticompetitive agreements in both input and output markets create allocative inefficiencies. Hence, naked restraints on cold calling customers, suppliers, or employees are similarly per se unlawful.

Still, an agreement that would normally be condemned as a per se unlawful restraint on competition may nonetheless be lawful if it is ancillary to a legitimate procompetitive venture and reasonably necessary to achieve the procompetitive benefits of the collaboration. Ancillary restraints therefore are not per se unlawful, but rather evaluated under the rule of reason, which balances a restraint's procompetitive benefits against its anticompetitive effects.[1] To be considered "ancillary" under established antitrust law, however, the restraint must be a necessary or intrinsic part of the procompetitive collaboration.[2] Restraints that are broader than reasonably necessary to achieve the efficiencies from a business collaboration are not ancillary and are properly treated as per se unlawful.

Although Defendants at times engaged in legitimate collaborative projects, the agreements to ban cold calling were not, under established antitrust law, properly ancillary to those

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[1] *See generally* Department of Justice, Antitrust Division, and Federal Trade Commission, *Antitrust Guidelines for Collaborations Among Competitors* § 1.2 (2000) ("*Collaboration Guidelines*"). *See also Major League Baseball* v. *Salvino,* 542 F.3d 290, 339 (2d Cir. 2008) (Sotomayor, J., concurring) ("a per se or quick look approach may apply * * * where a particular restraint is not reasonably necessary to achieve any of the efficiency-enhancing benefits of a joint venture and serves only as a naked restraint against competition."); *Dagher* v. *Saudi Refining, Inc.,* 369 F.3d 1108, 1121 (9th Cir. 2004) ("reasonably necessary to further the legitimate aims of the joint venture"); *rev'd on other grounds sub nom. Texaco* v. *Dagher,* 547 U.S. 1, 8 (2006); *Rothery Storage & Van Co.* v. *Atlas Van Lines, Inc.,* 792 F.2d 210, 227 (DC Cir. 1986) ("the restraints it imposes are reasonably necessary to the business it is authorized to conduct"); *In re Polygram Holdings., Inc.,* 2003 WL 21770765 (F.T.C. 2003) (parties must prove that the restraint was "reasonably necessary" to permit them to achieve particular alleged efficiency), *aff'd, Polygram Holdings, Inc.* v. *F.T.C.,* 416 F.3d 29 (DC Cir. 2005).

[2] *See Rothery Storage & Van Co.,* 792 F.2d at 227 (national moving network in which the participants shared physical resources, scheduling, training, and advertising resources, could forbid contractors from free riding by using its equipment, uniforms, and trucks for business they were conducting on their own); *Salvino,* 542 F.3d at 337 (Sotomayor, J., concurring) (Major League Baseball teams created a formal joint venture to exclusively license, and share profits for, team trademarks, resulting in "decreased transaction costs, lower enforcement and monitoring costs, and the ability to one-stop shop * * *." Such benefits "could not exist without the * * * agreements."); *Addamax* v. *Open Software Found.,* 152 F.3d 48 (1st Cir. 1998) (computer manufacturers formed nonprofit joint research and development venture to develop operating system; agreement on price to be paid for security software that was used by joint venture was ancillary to effort to develop a new system). *See also Collaboration Guidelines* at § 3.2 ("[I]f the participants could achieve an equivalent or comparable efficiency-enhancing integration through practical, significantly less restrictive means, then * * * the agreement is not reasonably necessary.").

collaborations. Defendants' agreements were not tied to any specific collaboration, nor were they narrowly tailored to the scope of any specific collaboration. The agreements extended to all employees at the firms, including those who had little or nothing to do with the collaboration at issue. The agreements were not limited by geography, job function, product group, or time period. This overbreadth and other evidence demonstrated that the no cold calling agreements were not reasonably necessary for any collaboration and, hence, not ancillary. The lack of reasonable necessity for these broad agreements is demonstrated also by the fact that Defendants successfully collaborated with other companies without similar agreements, or with agreements containing more narrowly focused hiring restrictions.

Some Defendants had extensive business relationships with one another and, in some cases, common board memberships. Such generalized relationships, however, cannot themselves justify overly broad restraints on competition.

Defendants' agreements regarding cold calling of employees are per se unlawful under Section 1 of the Sherman Act. Defendants' concerted behavior both reduced their ability to compete for employees and disrupted the normal price-setting mechanisms that apply in the labor setting. These no cold call agreements are facially anticompetitive because they eliminated a significant form of competition to attract high tech employees, and, overall, substantially diminished competition to the detriment of the affected employees who were likely deprived of competitively important information and access to better job opportunities.

IV. Explanation of the Proposed Final Judgment

The proposed Final Judgment sets forth (1) conduct in which the parties may not engage; (2) conduct in which the parties may engage without violating the proposed Final Judgment; (3) certain actions the parties are required to take to ensure compliance with the terms of the proposed Final Judgment; and (4) oversight procedures the United States may use to ensure compliance with the proposed Final Judgment. Section VI of the proposed Final Judgment provides that these provisions will expire five years after entry of the proposed Final Judgment.

A. Prohibited Conduct

Section IV of the proposed Final Judgment preserves competition for employees by prohibiting Defendants, and all other persons in active concert or participation with any of the Defendants with notice of the proposed Final Judgment, from agreeing, or attempting to agree, with another person to refrain from cold calling, soliciting, recruiting, or otherwise competing for employees of the other person. It also prohibits each Defendant from requesting or pressuring another person to refrain from cold calling, soliciting, recruiting, or otherwise competing for employees of the other person. Although the Complaint alleges only that the Defendants agreed to ban cold calling of employees, the proposed Final Judgment more broadly enjoins agreements regarding solicitation, recruitment and other methods of competing for employees to provide prophylactic protection against other activities that could interfere with competition for employees.

B. Conduct Not Prohibited

The Final Judgment does not prohibit all agreements related to employee solicitation and recruitment. Section V makes clear that the proposed Final Judgment does not prohibit "no direct solicitation provisions" [3] that are reasonably necessary for, and thus ancillary to, legitimate procompetitive collaborations.[4] Such restraints remain subject to scrutiny under the rule of reason.

Section V.A.1 does not prohibit no direct solicitation provisions contained in existing and future employment or severance agreements with a Defendant's employees. Narrowly tailored no direct solicitation provisions are often included in severance agreements and rarely present competition concerns. Sections V.A.2–4 also makes clear that the proposed Final Judgment does not prohibit no direct solicitation provisions reasonably necessary for:

1. Mergers or acquisitions (consummated or unconsummated), investments, or divestitures, including due diligence related thereto;

2. Contracts with consultants or recipients of consulting services, auditors, outsourcing vendors, recruiting agencies or providers of temporary employees or contract workers;

3. The settlement or compromise of legal disputes; and

4. Contracts with resellers or OEMs; contracts with certain providers or recipients of services; or the function of a legitimate collaboration agreement, such as joint development, technology integration, joint ventures, joint projects (including teaming agreements), and the shared use of facilities.

The investigation focused on anticompetitive agreements related to Defendants' relationships with resellers, OEMs, providers of services, and collaborations with other companies. Section V of the proposed Final Judgment contains additional requirements applicable to no direct solicitation provisions contained in these types of contracts and collaboration agreements. The proposed Final Judgment recognizes that Defendants may sometimes enter written or unwritten contracts and collaboration agreements and sets forth requirements that recognize the different nature of written and unwritten contracts.

Thus, for written contracts, Section V.B of the proposed Final Judgment requires that the Defendants: (1) Identify, with specificity, the agreement to which the no direct solicitation provision is ancillary; (2) narrowly tailor the no direct solicitation provision to affect only employees who are anticipated to be directly involved in the arrangement; (3) identify with reasonable specificity the employees who are subject to the no direct solicitation provision; (4) include a specific termination date or event; and (5) sign the agreement, including any modifications to the agreement.

If the no direct solicitation provision relates to an oral agreement, Section V.C of the proposed Final Judgment requires that the Defendants maintain documents sufficient to show the terms of the no direct solicitation provision, including: (1) The specific agreement to which the no direct solicitation provision is ancillary; (2) an identification, with reasonable specificity, of the employees who are subject to the no direct solicitation provision; and (3) the no direct solicitation provision's specific termination date or event.[5]

[3] Section II.H. of the proposed Final Judgment defines "no direct solicitation provision" as "any agreement, or part of an agreement, among two or more persons that restrains any person from cold calling, soliciting, recruiting, or otherwise competing for employees of another person."

[4] The Complaint alleges a violation of the Sherman Antitrust Act, 15 U.S.C. 1. The scope of the Final Judgment is limited to violations of the Federal antitrust laws. It prohibits certain conduct and specifies other conduct that the Judgment would not prohibit. The Judgment does not address whether any conduct it does not prohibit would be prohibited by other Federal or State laws, including California Business & Professions Code § 16600 (prohibiting firms from restraining employee movement).

[5] For example, a defendant might document these requirements terms through electronic mail or in memoranda that it will retain.

The purpose of Sections V.B. and V.C. is to ensure that no direct solicitation provisions related to Defendants' contracts with resellers, OEMs, and providers of services, and collaborations with other companies, are reasonably necessary to the contract or collaboration. In addition, the requirements set forth in Sections V.B and V.C of the proposed Final Judgment provide the United States with the ability to monitor Defendants' compliance with the proposed Final Judgment.

At least one Defendant has a large number of routine consulting and services agreements that contain no direct solicitation provisions that may not comply with the terms of the proposed Final Judgment. In many cases, these no direct solicitation provisions are contained in contracts acquired through a merger or were presented to the Defendant by third parties in non-negotiated, pre-printed agreements that were not reviewed in the ordinary course by the Defendant's legal department. To avoid the unnecessary burden of identifying these existing contracts and re-negotiating any no direct solicitation provisions, Section V.D of the proposed Final Judgment provides that, subject to the conditions below, Defendants shall not be required to modify or conform existing no direct solicitation provisions included in consulting or services agreements to the extent such provisions violate this Final Judgment. The Final Judgment further prohibits Defendants from enforcing any such existing no direct solicitation provision that would violate the proposed Final Judgment.

Finally, Section V.E of the proposed Final Judgment provides that a Defendant is not prohibited from unilaterally adopting or maintaining a policy not to consider applications from employees of another person, or not to solicit, cold call, recruit or hire employees of another person, provided that the Defendant does not request or pressure another person to adopt, enforce, or maintain such a policy.

C. Required Conduct

Section VI of the proposed Final Judgment sets forth various mandatory procedures to ensure Defendants' compliance with the proposed Final Judgment, including providing officers, directors, human resource managers, and senior managers who supervise employee recruiting with copies of the proposed Final Judgment and annual briefings about its terms. In addition, because the agreements were not disclosed to employees, Section VI.A.5 requires each Defendant to provide its employees with reasonably accessible notice of the existence of all agreements covered by Section V.A.5 and entered into by the company.

Under Section VI, each Defendant must file annually with the United States a statement identifying any agreement covered by Section V.A.5., and describing any violation or potential violation of the Final Judgment known to any officer, director, human resources manager, or senior manager who supervises employee recruiting, solicitation, or hiring efforts. If one of these persons learns of a violation or potential violation of the Judgment, the Defendant must take steps to terminate or modify the activity to comply with the Judgment and maintain all documents related to the activity.

D. Compliance

To facilitate monitoring of the Defendants' compliance with the proposed Final Judgment, Section VII grants the United States access, upon reasonable notice, to Defendants' records and documents relating to matters contained in the proposed Final Judgment. Defendants must also make their employees available for interviews or depositions about such matters. Moreover, upon request, Defendants must answer interrogatories and prepare written reports relating to matters contained in the proposed Final Judgment.

V. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Defendants.

VI. Procedures Applicable for Approval or Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: James J. Tierney, Chief, Networks & Technology Enforcement Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VII. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against the Defendants. The United States is satisfied, however, that the relief contained in the proposed Final Judgment will quickly establish, preserve, and ensure that employees can benefit from competition by Defendant companies. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VIII. Standard of Review Under the APPA for Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In

making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the United States is entitled to "broad discretion to settle with the Defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (DC Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable").[6]

Under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States' complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is '*within the reaches of the public interest.*' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[7] In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

In addition, "a proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft,* 56 F.3d at 1459; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 ("[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged."). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d. at 1459–60. Courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). This language effectuates what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 *Cong. Rec.* 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the Court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature

[6] The 2004 amendments substituted "shall" for "may" in directing relevant factors for a court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

[7] *Cf. BNS,* 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'").

of Tunney Act proceedings." *SBC Commc'ns,* 489 F. Supp. 2d at 11.[8]

IX. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that the United States considered in formulating the proposed Final Judgment.

Dated: September 24, 2010.

Respectfully submitted,

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Adam T. Severt,
Jessica N. Butler-Arkow (DC Bar #430022),
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Trial Attorneys.

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United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Adobe Systems, Inc.; Apple Inc.; Google Inc.; Intel Corporation; Intuit, Inc.; and Pixar,* Defendants.

[Proposed] Final Judgment

Whereas, the United States of America filed its Complaint on September 24, 2010, alleging that each of the Defendants participated in at least one agreement in violation of Section One of the Sherman Act, and the United States and the Defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law;

And whereas this Final Judgment does not constitute any admission by the Defendants that the law has been violated or of any issue of fact or law, other than that the jurisdictional facts as alleged in the Complaint are true;

And whereas, the Defendants agree to be bound by the provisions of this Final Judgment pending its approval by this Court;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the Defendants, it is *ordered, adjudged, and decreed.*

I. Jurisdiction

This Court has jurisdiction over the subject matter and each of the parties to this action. The Complaint states a claim upon which relief may be granted against the Defendants under Section One of the Sherman Act, as amended, 15 U.S.C. 1.

II. Definitions

As used in this Final Judgment:

A. "Adobe" means Adobe Systems, Inc., its (i) successors and assigns, (ii) controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and (iii) their directors, officers, managers, agents acting within the scope of their agency, and employees.

B. "Apple" means Apple Inc., its (i) successors and assigns, (ii) controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and (iii) their directors, officers, managers, agents acting within the scope of their agency, and employees.

C. "Google" means Google Inc., its (i) successors and assigns, (ii) controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and (iii) their directors, officers, managers, agents acting within the scope of their agency, and employees.

D. "Intel" means Intel Corporation, its (i) successors and assigns, (ii) controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and (iii) their directors, officers, managers, agents acting within the scope of their agency, and employees.

E. "Intuit" means Intuit, Inc., its (i) successors and assigns, (ii) controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and (iii) their directors, officers, managers, agents acting within the scope of their agency, and employees.

F. "Pixar" means Pixar, its (i) successors and assigns, (ii) controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and (iii) their directors, officers, managers, agents acting within the scope of their agency, and employees. Pixar shall include directors, officers, managers, agents, or employees of any parent of or any entity under common control with Pixar, only when such individuals are acting in their capacity as directors, officers, managers, agents, or employees of Pixar.

G. "Agreement" means any contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons.

H. "No direct solicitation provision" means any agreement, or part of an agreement, among two or more persons that restrains any person from cold calling, soliciting, recruiting, or otherwise competing for employees of another person.

I. "Person" means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

J. "Senior manager" means any company officer or employee above the level of vice president.

III. Applicability

This Final Judgment applies to Adobe, Apple, Google, Intel, Intuit, and Pixar, as defined in Section II, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Prohibited Conduct

Each Defendant is enjoined from attempting to enter into, entering into, maintaining or enforcing any agreement with any other person to in any way refrain from, requesting that any person in any way refrain from, or pressuring any person in any way to refrain from soliciting, cold calling, recruiting, or otherwise competing for employees of the other person.

V. Conduct Not Prohibited

A. Nothing in Section IV shall prohibit a Defendant and any other person from attempting to enter into, entering into, maintaining or enforcing a no direct solicitation provision, provided the no direct solicitation provision is:

1. Contained within existing and future employment or severance agreements with the Defendant's employees;

2. Reasonably necessary for mergers or acquisitions, consummated or unconsummated, investments, or divestitures, including due diligence related thereto;

3. Reasonably necessary for contracts with consultants or recipients of consulting services, auditors, outsourcing vendors, recruiting agencies or providers of temporary employees or contract workers;

[8] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

4. Reasonably necessary for the settlement or compromise of legal disputes; or

5. Reasonably necessary for (i) contracts with resellers or OEMs; (ii) contracts with providers or recipients of services other than those enumerated in paragraphs V.A. 1–4 above; or (iii) the function of a legitimate collaboration agreement, such as joint development, technology integration, joint ventures, joint projects (including teaming agreements), and the shared use of facilities.

B. All no direct solicitation provisions that relate to written agreements described in Section V.A.5.i, ii, or iii, that a Defendant enters into, renews, or affirmatively extends after the date of entry of this Final Judgment shall:

1. Identify, with specificity, the agreement to which it is ancillary;

2. Be narrowly tailored to affect only employees who are anticipated to be directly involved in the agreement;

3. Identify with reasonable specificity the employees who are subject to the agreement;

4. Contain a specific termination date or event; and

5. Be signed by all parties to the agreement, including any modifications to the agreement.

C. For all no direct solicitation provisions that relate to unwritten agreements described in Section V.A.5.i, ii, or iii, that a Defendant enters into, renews, or affirmatively extends after the date of entry of this Final Judgment, the Defendant shall maintain documents sufficient to show:

1. The specific agreement to which the no direct solicitation provision is ancillary;

2. The employees, identified with reasonable specificity, who are subject to the no direct solicitation provision; and

3. The provision's specific termination date or event.

D. Defendants shall not be required to modify or conform, but shall not enforce, any no direct solicitation provision to the extent it violates this Final Judgment if the no direct solicitation provision appears in Defendants' consulting or services agreements in effect as of the date of this Final Judgment (or in effect as of the time a Defendant acquires a company that is a party to such an agreement).

E. Nothing in Section IV shall prohibit a Defendant from unilaterally deciding to adopt a policy not to consider applications from employees of another person, or to solicit, cold call, recruit or hire employees of another person, provided that Defendants are prohibited from requesting that any other person adopt, enforce, or maintain such a policy, and are prohibited from pressuring any other person to adopt, enforce, or maintain such a policy.

VI. Required Conduct

A. Each Defendant shall:

1. Furnish a copy of this Final Judgment and related Competitive Impact Statement within sixty days of entry of the Final Judgment to each Defendant's officers, directors, human resources managers, and senior managers who supervise employee recruiting, solicitation, or hiring efforts;

2. Furnish a copy of this Final Judgment and related Competitive Impact Statement to any person who succeeds to a position described in Section VI.A.1 within thirty days of that succession;

3. Annually brief each person designated in Sections VI.A.1 and VI.A.2 on the meaning and requirements of this Final Judgment and the antitrust laws;

4. Obtain from each person designated in Sections VI.A.1 and VI.A.2, within 60 days of that person's receipt of the Final Judgment, a certification that he or she (i) has read and, to the best of his or her ability, understands and agrees to abide by the terms of this Final Judgment; (ii) is not aware of any violation of the Final Judgment that has not been reported to the Defendant; and (iii) understands that any person's failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court against each Defendant and/or any person who violates this Final Judgment;

5. Provide employees reasonably accessible notice of the existence of all agreements covered by Section V.A.5 and entered into by the company; and

6. Maintain (i) a copy of all agreements covered by Section V.A.5; and (ii) a record of certifications received pursuant to this Section.

B. For five (5) years after the entry of this Final Judgment, on or before its anniversary date, each Defendant shall file with the United States an annual statement identifying and providing copies of any agreement and any modifications thereto described in Section V.A.5, as well as describing any violation or potential violation of this Final Judgment known to any officer, director, human resources manager, or senior manager who supervises employee recruiting, solicitation, or hiring efforts. Descriptions of violations or potential violations of this Final Judgment shall include, to the extent practicable, a description of any communications constituting the violation or potential violation, including the date and place of the communication, the persons involved, and the subject matter of the communication.

C. If any officer, director, human resources manager, or senior manager who supervises employee recruiting, solicitation, or hiring efforts of a Defendant learns of any violation or potential violation of any of the terms and conditions contained in this Final Judgment, that Defendant shall promptly take appropriate action to terminate or modify the activity so as to comply with this Final Judgment and maintain all documents related to any violation or potential violation of this Final Judgment.

VII. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to each Defendant, subject to any legally recognized privilege, be permitted:

1. Access during each Defendant's regular office hours to inspect and copy, or at the option of the United States, to require each Defendant to provide electronic or hard copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of each Defendant, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, each Defendant's officers, employees, or agents, who may have their counsel, including any individual counsel, present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by any Defendant.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, each Defendant shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States,

except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a Defendant to the United States, the Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and the Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give the Defendant ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

IX. Expiration of Final Judgment

Unless this court grants an extension, this Final Judgment shall expire five (5) years from the date of its approval by the Court.

X. Notice

For purposes of this Final Judgment, any notice or other communication shall be given to the persons at the addresses set forth below (or such other addresses as they may specify in writing to Adobe, Apple, Google, Intel, Intuit, and Pixar): Chief, Networks & Technology Enforcement Section, U.S. Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530.

XI. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the Procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this final judgment is in the public interest.

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

United States District Judge.

[FR Doc. 2010–24624 Filed 9–30–10; 8:45 am]

BILLING CODE 4410–11–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at title 45, part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 1, 2010. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. *Applicant:* Yu-Ping Chin, Department of Geological Sciences, Ohio State University, 275 Mendenhall Laboratory, 125 South Oval Mall, Columbus, OH 43210–1308.

Permit Application No. 2011–018.

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Areas. The applicant plans to center Cape Royds (ASPA 121) and Backdoor Bay, Cape Royds (ASPA 157) to access Pony Lake to collect water samples. Samples were collected previously from the lake and the microbially derived Dissolved Organic Matter (DOM) from this site is now a reference fulvic acid distributed by the International Humic Substances Society (IHSS). The applicant plans to collect more DOM samples for the purpose of comparing their Cotton Glacier samples to Pony Lake DOM.

Location

Cape Royds (ASPA 121) and Backdoor Bay, Cape Royds (ASPA 157).

Dates

January 1, 2011 to January 31, 2011.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 2010–24638 Filed 9–30–10; 8:45 am]

BILLING CODE 7555–01–P

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small business Investment Company License No. 06/76–0316 issued to SBIC Partners II, L.P., on June 16, 1998 and said license is hereby declared null and void as of July 28, 2010.

United States Small Business Administration.

Sean J. Greene,

AA/Investment.

[FR Doc. 2010–24612 Filed 9–30–10; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, under

Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small business Investment Company License No. 02/72–0616 issued to Rock Maple Ventures, L.P., and said license is hereby declared null and void as of August 4, 2010.

United States Small Business Administration.

Sean J. Greene,

AA/Investment, United States Small Business Administration.

[FR Doc. 2010–24613 Filed 9–30–10; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Regulation C; OMB Control No. 3235–0074; SEC File No. 270–68.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget the request for extension of the previously approved collection of information discussed below.

Regulation C (17 CFR 230.400 through 230.498) provides standard instructions to guide persons when filing registration statements under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The information collected is intended to ensure the adequacy of information available to investors in the registration of securities. The information provided is mandatory. Regulation C is assigned one burden hour for administrative convenience because it does not directly impose information collection requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; or send an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Jeffrey Heslop, Director/CIO, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: September 27, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–24650 Filed 9–30–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 204A–1; SEC File No. 270–536; OMB Control No. 3235–0596.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is "Rule 204A–1 (17 CFR 275.204A–1) under the Investment Advisers Act of 1940." (15 U.S.C. 80b–1 *et seq.*) Rule 204A–1, the Code of Ethics Rule, requires investment advisers registered with the SEC to (i) set forth standards of conduct expected of advisory personnel (including compliance with the Federal securities laws), (ii) safeguard material nonpublic information about client transactions, and (iii) require the adviser's "access persons" to report their personal securities transactions, including transactions in any mutual fund managed by the adviser. The code of ethics also requires access persons to obtain the adviser's approval before investing in an initial public offering ("IPO") or private placement. The code of ethics also requires prompt reporting, to the adviser's chief compliance officer or another person designated in the code of ethics, of any violations of the code. Finally, the code of ethics requires the adviser to provide each supervised person with a copy of the code and any amendments, and require the supervised persons to acknowledge, in writing, their receipt of these copies. The purposes of the information collection requirements is (i) to ensure that advisers maintain codes of ethics applicable to their supervised persons; (ii) to provide advisers with information about the personal securities transactions of their access persons for purposes of monitoring such transactions; (iii) to provide advisory clients with information with which to evaluate advisers' codes of ethics; and (iv) to assist the Commission's examination staff in assessing the adequacy of advisers' codes of ethics and assessing personal trading activity by advisers' supervised persons.

The respondents to this information collection are investment advisers registered with the Commission. The Commission has estimated that compliance with rule 204A–1 imposes a burden of approximately 118 hours per adviser annually based on an average adviser having 84 access persons. Our latest data indicate that there were 11,797 advisers registered with the Commission. Based on this figure, the Commission estimates a total annual burden of 1,391,456 hours for this collection of information.

Rule 204A–1 does not require recordkeeping or record retention. The collection of information requirements under the rule are mandatory. The information collected pursuant to the rule are not filed with the Commission, but rather take the form of communications between advisers and their supervised persons. Investment advisers use the information collected to control and assess the personal trading activities of their supervised persons. Responses to the reporting requirements will be kept confidential to the extent each investment adviser provides confidentiality under its particular practices and procedures. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to Shagufta Ahmed at *Shagufta_Ahmed@omb.eop.gov;* and (ii) Jeffrey Heslop, Director/Acting CIO, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or

send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: September 24, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–24651 Filed 9–30–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29440]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

September 24, 2010.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of September, 2010. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 19, 2010, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–4041.

Ashport Mutual Fund Trust [File No. 811–10301]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 15, 2008, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $2,231 incurred in connection with the liquidation were paid by State Trust Capital, applicant's investment adviser.

Filing Dates: The application was filed on August 24, 2009, and amended on September 1, 2010.

Applicant's Address: 800 Brickell Ave., Suite 100, Miami, FL 33131.

First Trust Value Line R & Ibbotson Equity Allocation Fund [File No. 811–21517]

Summary: Applicant, a closed-end investment management, seeks an order declaring that it has ceased to be an investment company. On December 8, 2006, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately $259,859 incurred in connection with the liquidation were paid by applicant and First Trust Advisors L.P., applicant's investment adviser.

Filing Dates: The application was filed on May 28, 2009, and amended on September 17, 2010.

Applicant's Address: 120 East Liberty Dr., Suite 400, Wheaton, IL 60187.

First Trust Value Line R 100 Fund [File No. 811–21336]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 15, 2007, applicant transferred its assets to a corresponding series of First Trust Exchange-Traded Fund, based on net asset value. Expenses of approximately $99,040 incurred in connection with the reorganization were paid by First Trust Advisors L.P., applicant's investment adviser.

Filing Dates: The application was filed on May 28, 2009, and amended on September 15, 2010.

Applicant's Address: 120 East Liberty Dr., Suite 400, Wheaton, IL 60187.

First Trust Value Line Dividend Fund [File No. 811–21381]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 15, 2006, applicant transferred its assets to a corresponding series of First Trust Exchange-Traded Fund, based on net asset value. Expenses of approximately $199,034 incurred in connection with the reorganization were paid by applicant and First Trust Advisors L.P., applicant's investment adviser.

Filing Dates: The application was filed on May 28, 2009, and amended on September 15, 2010.

Applicant's Address: 120 East Liberty Dr., Suite 400, Wheaton, IL 60187.

M&I Special Institutional Funds, Inc. [File No. 811–22232]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on August 24, 2010, and amended on September 22, 2010.

Applicant's Address: 111 East Kilbourn Ave., Suite 200, Milwaukee, WI 53202.

DWS Advisor Funds III [File No. 811–6576]

DWS Investments Trust [File No. 811–8006]

DWS RREEF Securities Trust [File No. 811–9589]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On July 10, 2006, August 21, 2006, and July 10, 2006, respectively, applicants transferred their assets to corresponding series of DWS Advisor Funds, based on net asset value. Applicants incurred no expenses in connection with the reorganizations.

Filing Dates: The applications were filed on August 11, 2010, and amended on September 23, 2010.

Applicants' Address: 345 Park Ave., New York, NY 10154.

DWS Advisor Funds II [File No. 811–7347]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 10, 2006, applicant transferred its assets to DWS U.S. Bond Index Fund and DWS EAFE Equity Index Fund, each a series of DWS Institutional Funds, based on net asset value. Applicant incurred no expenses in connection with the reorganization.

Filing Dates: The application was filed on August 11, 2010, and amended on September 23, 2010.

Applicant's Address: 345 Park Ave., New York, NY 10154.

OFI Tremont Core Strategies Hedge Fund [File No. 811–21110]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On August 1, 2010, applicant made a final liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on August 27, 2010.

Applicant's Address: 6803 S. Tucson Way, Centennial, CO 80112.

Sycuan Funds [File No. 811–21401]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 1, 2010, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $600 incurred in connection with the liquidation were paid by Sycuan Capital Management, Inc., applicant's investment adviser.

Filing Date: The application was filed on September 9, 2010.

Applicant's Address: 1530 Hilton Head Rd., Suite 210, El Cajon, CA 92019.

SGM Funds [File No. 811–22247]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 14, 2010, applicant made its final liquidating distribution to its shareholders, based on net asset value. Expenses of $2,050 incurred in connection with the liquidation were paid by SGM Funds Management, LLC, applicant's investment adviser.

Filing Dates: The application was filed on June 30, 2010, and amended on September 14, 2010.

Applicant's Address: 8000 Town Centre Dr., Suite 400, Broadview Heights, OH 44147.

National Retail Fund I [File No. 811–22197]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on September 15, 2010.

Applicant's Address: 4020 S. 147th St., Omaha, NE 68137.

Federated International Small Company Opportunity Fund [File No. 811–10131]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on September 14, 2010.

Applicant's Address: Federated Investors Funds, 4000 Ericsson Dr., Warrendale, PA 15086–7561.

MLIG Variable Insurance Trust [File No. 811–21038]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 11, 2009, October 23, 2009, and June 22, 2010, applicant made liquidating distributions to its shareholders, based on net asset value. Expenses of approximately $186,650 incurred in connection with the liquidation were paid by Roszel Advisors, LLC, applicant's investment adviser.

Filing Date: The application was filed on June 29, 2010.

Applicant's Address: 1700 Merrill Lynch Drive, Pennington, NJ 08534.

Modern Woodmen of America Variable Account [File No. 811–10497]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. All previously issued policies have been surrendered and the applicant has distributed all of its assets to its shareholders. Applicant incurred expenses of $6,959.50 in connection with the liquidation.

Filing Dates: The application was filed on June 8, 2010, and amended on August 31, 2010.

Applicant's Address: 1701 1st Avenue, Rock Island, Illinois 61201.

Kemper Investors Life Insurance Company Separate Account—3 [File No. 811–22161]

Summary: Applicant, a unit investment trust registered under the Investment Company Act of 1940, seeks an order declaring that it has ceased to be an investment company. Applicant states that it has no contractowners and no outstanding contracts that allocate premiums and contract value to the Separate Account. The contract registered on Form N–4 and offered out of the Separate Account (File No. 333–148489) was sold to only one (1) contractowner; that sale occurred on April 20, 2009. That one (1) contract was surrendered on November 24, 2009. Because the Depositor has decided to discontinue sales of the contract and has no plans to develop any other variable annuity contracts that would be supported by the Separate Account, and because there are currently no assets in the Separate Account or its subaccounts, the Depositor has determined that it will not use the Separate Account as a funding medium to support reserves for future sales of any other variable annuity contract and that the Separate Account should be deregistered.

Filing Dates: The application was filed on March 24, 2010 and an amended application was filed on September 22, 2010.

Applicant's Address: 1400 American Lane, Schaumburg, IL 60196.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–24605 Filed 9–30–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29442; File No. 812–13765]

Jackson National Life Insurance Company, *et al.;* Notice of Application

September 27, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act and under section 6(c) of the Act for an exemption from rule 12d1–2(a) under the Act.

SUMMARY OF THE APPLICATION: Applicants request an order that would (a) permit certain series of registered open-end management investment companies to acquire shares of other registered open-end management investment companies and unit investment trusts ("UITs") that are within or outside the same group of investment companies, and (b) permit certain series of registered open-end management investment companies relying on rule 12d1–2 under the Act to invest in certain financial instruments.

APPLICANTS: Jackson National Life Insurance Company ("Jackson"), Jackson National Life Insurance Company of New York ("Jackson New York," and collectively with Jackson and any insurance company controlling, controlled by, or under common control with Jackson or Jackson New York, the "Insurance Companies"); Jackson National Asset Management, LLC (the "Manager"); JNL Series Trust ("Series Trust"), and JNL Variable Fund LLC ("JNLVF" together with Series Trust, the "Trusts").

FILING DATES: The application was filed on April 8, 2010, and amended on September 22, 2010, and September 24, 2010.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 22, 2010, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: c/o Susan S. Rhee, Jackson National Asset Management, LLC, 1 Corporate Way, Lansing, Michigan 48951.

FOR FURTHER INFORMATION CONTACT: Keith A. Gregory, Senior Counsel, at (202) 551–6815, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Series Trust is a Massachusetts business trust and JNLVF is a Delaware limited liability company. Each Trust is registered under the Act as an open-end management investment company and is comprised of multiple series ("Funds"), each of which has its own investment objective, policies and restrictions.[1] Shares of the Funds are not offered directly to the public. Shares of the Funds are offered to separate accounts that are registered as unit investment trusts under the Act ("Registered Separate Accounts") or that are exempt from registration under the Act ("Unregistered Separate Accounts," and together with the Registered Separate Accounts, "Separate Accounts") of the Insurance Companies and serve as the underlying investment vehicles for the variable life insurance contracts and variable annuity contracts ("Variable Contracts") issued by the Insurance Companies. Shares of the Funds may also be offered to qualified pension and retirement plans, the general accounts of the Insurance Companies, or to series of the Trusts.

2. The Manager is a Michigan limited liability company registered under the Investment Advisers Act of 1940 ("Advisers Act") and serves as investment adviser to the Funds. The Manager is a wholly-owned subsidiary of Jackson. Jackson is a wholly-owned subsidiary of Prudential plc (London, England).

3. Applicants request relief to permit: (a) Certain Funds (each, a "Fund of Funds") to acquire shares of registered open-end management investment companies (the "Unaffiliated Investment Companies") and UITs that are not part of the same "group of investment companies" (as defined in section 12(d)(1)(G)(ii) of the Act) as the Fund of Funds ("Unaffiliated Trusts," and together with the Unaffiliated Investment Companies, the "Unaffiliated Funds");[2] (b) the Unaffiliated Investment Companies, their principal underwriters and any broker or dealer registered under the Securities Exchange Act of 1934 ("Broker") to sell shares of the Unaffiliated Investment Companies to the Funds of Funds; (c) the Funds of Funds to acquire shares of other Funds in the same "group of investment companies" (as defined in section 12(d)(1)(G)(ii) of the Act) as the Fund of Funds (collectively, the "Affiliated Funds," and together with the Unaffiliated Funds, the "Underlying Funds");[3] and (d) the Affiliated Funds, their principal underwriters and any Broker to sell shares of the Affiliated Funds to the Fund of Funds. Applicants also request an order under sections 6(c) and 17(b) of the Act to exempt applicants from section 17(a) to the extent necessary to permit Underlying Funds to sell their shares to Funds of Funds and redeem their shares from Funds of Funds.

4. Applicants also request an exemption to the extent necessary to permit a Fund of Funds that invests in Underlying Funds in reliance on section 12(d)(1)(G) of the Act, and that is eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act ("Same Group Fund of Funds"), to also invest, to the extent consistent with its investment objective, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act ("Other Investments").

5. Consistent with its fiduciary obligations under the Act, each Same Group Fund of Funds' board of trustees will review the advisory fees charged by the Same Group Fund of Funds' investment adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Same Group Fund of Funds may invest.

Applicants' Legal Analysis

Investments in Underlying Funds

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any Broker from selling the shares of the investment company to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be

[1] Applicants request that the order extend to any future series of the Trusts, and any other existing or future registered open-end management investment companies and their series that are part of the same group of investment companies, as defined in section 12(d)(1)(G)(ii) of the Act, as the Trusts and are, or may in the future be, advised by the Manager or any other investment adviser controlling, controlled by, or under common control with the Manager (included in the term, "Funds"). All entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

[2] Certain of the Unaffiliated Funds may have obtained exemptions from the Commission necessary to permit their shares to be listed and traded on a national securities exchange at negotiated prices ("ETFs").

[3] Certain of the Underlying Funds currently pursue, or may in the future pursue, their investment objectives through a master-feeder arrangement in reliance on section 12(d)(1)(E) of the Act. A Fund of Funds may not invest in an Underlying Fund that operates as a feeder fund unless the feeder fund is part of the same group of investment companies (as defined in section 12(d)(1)(G)(ii) of the Act) as its corresponding master fund.

owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) of the Act from the limitations of sections 12(d)(1)(A) and (B) to the extent necessary to permit the Funds of Funds to acquire shares of the Underlying Funds in excess of the limits set forth in section 12(d)(1)(A) of the Act and to permit the Unaffiliated Investment Companies and Affiliated Funds, their principal underwriters and any Broker to sell shares to the Funds of Funds in excess of the limits set forth in section 12(d)(1)(B) of the Act.

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds or its affiliated persons over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by a Fund of Funds or its affiliated persons over the Underlying Funds. The concern about undue influence does not arise in connection with a Fund of Funds' investment in the Affiliated Funds, since they are part of the same group of investment companies. To limit the control that a Fund of Funds or its affiliated persons may have over an Unaffiliated Fund, applicants propose a condition prohibiting: (a) The Manager and any person controlling, controlled by or under common control with the Manager, any investment company and any issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the Act advised or sponsored by the Manager or any person controlling, controlled by or under common control with the Manager (collectively, the "Group"), and (b) any other investment adviser within the meaning of section 2(a)(20)(B) of the Act to a Fund of Funds ("Subadviser"), any person controlling, controlled by or under common control with the Subadviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Subadviser or any person controlling, controlled by or under common control with the Subadviser (collectively, the "Subadviser Group") from controlling (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act.

5. Applicants further state that condition 2 precludes a Fund of Funds, the Manager, any Subadviser, promoter or principal underwriter of a Fund of Funds, and any person controlling, controlled by or under common control with any of those entities (each, a "Fund of Funds Affiliate") from taking advantage of an Unaffiliated Fund, with respect to transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or the Unaffiliated Fund's investment adviser(s), sponsor, promoter, principal underwriter or any person controlling, controlled by or under common control with any of those entities (each, an "Unaffiliated Fund Affiliate"). Condition 5 precludes a Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) from causing an Unaffiliated Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an officer, director, member of an advisory board, Manager, Subadviser, or employee of the Fund of Funds, or a person of which any such officer, director, Manager, Subadviser, member of an advisory board, or employee is an affiliated person (each, an "Underwriting Affiliate," except any person whose relationship to the Unaffiliated Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate). An offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is an "Affiliated Underwriting."

6. As an additional assurance that an Unaffiliated Investment Company understands the implications of an investment by a Fund of Funds under the requested order, prior to an investment in the shares of the Unaffiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i), condition 8 requires that the Fund of Funds and the Unaffiliated Investment Company execute an agreement stating, without limitation, that their boards of directors or trustees ("Boards") and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order ("Participation Agreement"). Applicants note that an Unaffiliated Investment Company (other than an ETF whose shares are purchased by a Fund of Funds in the secondary market) will retain the right to reject an investment by a Fund of Funds.[4]

7. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. With respect to investment advisory fees, applicants state that, in connection with the approval of any investment advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), will find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract(s). Applicants further state that the Manager will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company pursuant to rule 12b–1 under the Act) received from an Unaffiliated Fund by the Manager, or an affiliated person of the Manager, other than any advisory fees paid to the Manager or an affiliated person of the Manager by an Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund.

8. Applicants state that with respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in Rule 2830 of the Conduct Rules of the NASD ("NASD Conduct Rule 2830"), if any, will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of the Fund of Funds will not exceed the limits applicable to funds of funds as set forth in NASD Conduct Rule 2830.[5]

[4] An Unaffiliated Investment Company, including an ETF, would retain its right to reject any initial investment by a Fund of Funds in excess of the limit in section 12(d)(1)(A)(i) of the Act by declining to execute the Participation Agreement with the Fund of Funds.

[5] Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

9. Applicants represent that each Fund of Funds will represent in the Participation Agreement that no insurance company sponsoring a Registered Separate Account funding Variable Contracts will be permitted to invest in the Fund of Funds unless the insurance company has certified to the Fund of Funds that the aggregate of all fees and charges associated with each contract that invests in the Fund of Funds, including fees and charges at the Separate Account, Fund of Funds, and Underlying Fund levels, are reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company.

10. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that an Underlying Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A), except to the extent that such Underlying Fund: (a) acquires such securities in compliance with section 12(d)(1)(E) of the Act; (b) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (c) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and its affiliated persons or affiliated persons of such persons. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that the Funds of Funds and the Affiliated Funds may be deemed to be under common control and therefore affiliated persons of one another. Applicants also state that the Funds of Funds and the Underlying Funds may be deemed to be affiliated persons of one another if a Fund of Funds acquires 5% or more of an Underlying Fund's outstanding voting securities. In light of these possible affiliations, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from a Fund of Funds.[6]

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) The terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act, as the terms are fair and reasonable and do not involve overreaching. Applicants state that the terms upon which an Underlying Fund will sell its shares to or purchase its shares from a Fund of Funds will be based on the net asset value of each Underlying Fund.[7] Applicants also state that the proposed transactions will be consistent with the policies of each Fund of Funds and Underlying Fund, and with the general purposes of the Act.

C. Other Investments by Same Group Funds of Funds

1. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered UITs in reliance on section 12(d)(1)(F) or (G) of the Act.

2. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered UIT that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, "securities" means any security as defined in section 2(a)(36) of the Act.

3. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act, but for the fact that the Same Group Funds of Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Same Group Funds of Funds to invest in Other Investments. Applicants assert that permitting the Same Group Funds of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the

[6] Applicants acknowledge that receipt of any compensation by (a) an affiliated person of a Funds of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to a Fund of Funds may be prohibited by section 17(e)(1) of the Act. The Participation Agreement also will include this acknowledgement.

[7] Applicants note that a Fund of Funds generally would purchase and sell shares of an Unaffiliated Fund that operates as an ETF through secondary market transactions at market prices rather than through principal transactions with the Unaffiliated Fund at net asset value. Applicants would not rely on the requested relief from section 17(a) for such secondary market transactions. To the extent that a Fund of Funds purchases or redeems shares from an ETF that is an affiliated person of the Fund of Funds in exchange for a basket of specified securities as described in the application for the exemptive order upon which the ETF relies, applicants also request relief from section 17(a) of the Act for those in-kind transactions.

requirements of section 12(d)(1) were designed to address.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

Investments in Underlying Funds by Funds of Funds

1. The members of the Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. The members of a Subadviser Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Fund, the Group or a Subadviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Fund, then the Group or the Subadviser Group (except for any member of the Group or the Subadviser Group that is a Separate Account) will vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares. This condition will not apply to a Subadviser Group with respect to an Unaffiliated Fund for which the Subadviser or a person controlling, controlled by, or under common control with the Subadviser acts as the investment adviser within the meaning section 2(a)(20)(A) of the Act (in the case of an Unaffiliated Investment Company) or the sponsor (in the case of an Unaffiliated Trust). A Registered Separate Account will seek voting instructions from its Variable Contract holders and will vote its shares of an Unaffiliated Fund in accordance with the instructions received and will vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. An Unregistered Separate Account will either (i) vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares; or (ii) seek voting instructions from its Variable Contract holders and vote its shares in accordance with the instructions received and vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in an Unaffiliated Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or an Unaffiliated Fund Affiliate.

3. The Board of each Fund of Funds, including a majority of the Independent Trustees, will adopt procedures reasonably designed to assure that the Manager and any Subadviser are conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or a Fund of Funds Affiliate from an Unaffiliated Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, the Board of the Unaffiliated Investment Company, including a majority of the Independent Trustees, will determine that any consideration paid by the Unaffiliated Investment Company to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Investment Company; (b) is within the range of consideration that the Unaffiliated Investment Company would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition will not apply with respect to any services or transactions between an Unaffiliated Investment Company and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Unaffiliated Investment Company, including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Investment Company in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of the Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Unaffiliated Investment Company will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Unaffiliated Investment Company. The Board of the Unaffiliated Investment Company will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Investment Company; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Investment Company in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of an Unaffiliated Investment Company will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. Each Unaffiliated Investment Company will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth (a) the party from whom the securities were acquired, (b) the identity of the underwriting syndicate's members, (c) the terms of the purchase, and (d) the information or materials upon which the determinations of the Board of the Unaffiliated Investment Company were made.

8. Prior to its investment in shares of an Unaffiliated Investment Company in excess of the limit of section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Investment Company will execute a Participation Agreement stating, without limitation, that their Boards and their investment advisers understand the terms and

conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Investment Company in excess of the limit set forth in section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Investment Company of the investment. At such time, the Fund of Funds will also transmit to the Unaffiliated Investment Company a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Investment Company of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Investment Company and the Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Independent Trustees, shall find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Fund of Funds.

10. The Manager will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company pursuant to rule 12b–1 under the Act) received from an Unaffiliated Fund by the Manager, or an affiliated person of the Manager, other than any advisory fees paid to the Manager or its affiliated person by an Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Any Subadviser will waive fees otherwise payable to the Subadviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received by the Subadviser, or an affiliated person of the Subadviser, from an Unaffiliated Fund, other than any advisory fees paid to the Subadviser or an affiliated person of the Subadviser by the Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund made at the direction of the Subadviser. In the event that the Subadviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. With respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in NASD Conduct Rule 2830, if any, will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in NASD Conduct Rule 2830.

12. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund (a) Acquires such securities in compliance with section 12(d)(1)(E) of the Act; (b) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (c) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

Other Investments by Same Group Funds of Funds

13. The Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Same Group Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–24654 Filed 9–30–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29444; File No. 812–13708]

American Fidelity Dual Strategy Fund, Inc. and American Fidelity Assurance Company; Notice of Application

September 27, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act, as well as from certain disclosure requirements.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

APPLICANTS: American Fidelity Dual Strategy Fund, Inc. (the "Fund") and American Fidelity Assurance Company (the "Advisor").

FILING DATES: The application was filed on October 1, 2009, and amended on March 15, 2010, and September 24, 2010.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 22, 2010, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, 2000 N. Classen Boulevard, Oklahoma City, OK 73106.

FOR FURTHER INFORMATION CONTACT: Lewis Reich, Senior Counsel, at (202) 551–6919, or Jennifer Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application

may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Fund, a Maryland corporation, is registered under the Act as an open-end management investment company. The Advisor is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and serves as the investment adviser of the Fund pursuant to an investment advisory agreement ("Advisory Agreement") with the Fund. The Advisory Agreement was approved by the Fund's board of directors ("Board"), including a majority of the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Fund ("Independent Directors") and by the shareholders of the Fund. Under the terms of the Advisory Agreement, the Advisor is responsible for providing a wide variety of services to the Fund including selecting and trading portfolio securities, and will have overall responsibility for the management and investment of the Fund's assets. For the management and investment advisory services that it provides to the Fund, the Advisor receives the fee specified in the Advisory Agreement. The Advisory Agreement also permits the Advisor to operate the Fund with one or more subadvisers ("Sub-Advisors"), and the Advisor's investment management services include selection of the Fund's Sub-Advisors. Pursuant to this authority, the Advisor has entered into investment subadvisory agreements ("Investment Subadvisory Agreements") with four Sub-Advisors [1] to provide investment advisory services to the Fund subject to the supervision of the Advisor and the Board. Each current Sub-Advisor is and each future Sub-Advisor will be an investment adviser as defined in section 2(a)(20) of the Act and registered as an investment adviser under the Advisers Act. The Advisor will evaluate, allocate assets to, and oversee the Sub-Advisors, and make recommendations to the Board about their hiring, retention or release, at all times subject to the authority of the Board. The Advisor will compensate the Sub-Advisors out of the fees paid to the Advisor under the Advisory Agreement.

2. Applicants request an order to permit the Advisor, subject to Board approval, to enter into and materially amend Investment Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Sub-Advisor that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Fund or the Advisor, other than by reason of serving as a Sub-Advisor to the Fund ("Affiliated Sub-Advisor").

3. Applicants also request an exemption from the various disclosure provisions described below that may require the Fund to disclose fees paid by the Advisor to the Sub-Advisors. An exemption is requested to permit a Fund to disclose (as both a dollar amount and as a percentage of its net assets): (a) the aggregate fees paid to the Advisor and any Affiliated Sub-Advisors; and (b) the aggregate fees paid to Sub-Advisors other than Affiliated Sub-Advisors (collectively, "Aggregate Fee Disclosure"). If the Fund employs an Affiliated Sub-Advisor, the Fund will provide separate disclosure of any fees paid to the Affiliated Sub-Advisor.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires disclosure of the method of computing, and amount of, the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 ("1934 Act"). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fees," a description of the "terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b) and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

6. Applicants assert that shareholders of the Fund expect the Advisor to select Sub-Advisors who have the appropriate skills and experience to manage the Fund's assets allocated to them. Applicants assert that, from the perspective of the investor, the role of the Sub-Advisors is substantially equivalent to that of the individual portfolio managers employed in a traditional investment advisory structure. Applicants state that requiring shareholder approval of each Investment Subadvisory Agreement would impose costs and unnecessary delays on the Fund; the requested relief may enable the Fund to act more quickly when the Board and the Advisor feel that a change would benefit the Fund and its shareholders. Applicants note that the Advisory Agreement and any Investment Subadvisory Agreement with an Affiliated Sub-Advisor will remain subject to section 15(a) of the Act.

7. Applicants assert that many advisers use a "posted" rate schedule to set their fees. Applicants state that, while advisers are willing to negotiate fees lower than those posted in the schedule, they are reluctant to do so where the fees are disclosed to other prospective and existing customers. Applicants submit that the requested relief will allow the Advisor to negotiate more effectively with each Sub-Advisor.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before the Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act.

2. The prospectus for the Fund will disclose the existence, substance, and effect of any order granted pursuant to the application. The Fund will hold

[1] Quest Investment Management, Inc., The Renaissance Group, LLC, Beck, Mack & Oliver LLC and WEDGE Capital Management LLP.

itself out to the public as employing the manager of managers structure described in the application. The prospectus will prominently disclose that the Advisor has ultimate responsibility (subject to oversight by the Board) to oversee the Sub-Advisors and recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of a new Sub-Advisor, the Fund's shareholders will be furnished all information about the new Sub-Advisor that would be included in a proxy statement, except as modified by the order to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of the new Sub-Advisor. To meet this obligation, the Fund will provide shareholders, within 90 days of the hiring of a new Sub-Advisor, with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the 1934 Act, except as modified by the order to permit Aggregate Fee Disclosure.

4. The Advisor will not enter into an Investment Subadvisory Agreement with any Affiliated Sub-Advisor without that agreement, including the compensation to be paid thereunder, being approved by Fund shareholders.

5. At all times, at least a majority of the Board will be Independent Directors, and the nomination of new or additional Independent Directors will be placed within the discretion of the then existing Independent Directors.

6. When a Sub-Advisor change is proposed for the Fund with an Affiliated Sub-Advisor, the Board, including a majority of the Independent Directors, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Fund and its shareholders, and does not involve a conflict of interest from which the Advisor or the Affiliated Sub-Advisor derives an inappropriate advantage.

7. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Directors. The selection of such counsel will be within the discretion of the then existing Independent Directors.

8. Whenever a Sub-Advisor is hired or terminated, the Advisor will provide the Board with information showing the expected impact on the profitability of the Advisor.

9. The Advisor will provide general management services to the Fund, including overall supervisory responsibility for the general management and investment of the Fund's assets and, subject to review and approval of the Board, will: (i) Set the Fund's overall investment strategies, (ii) evaluate, select and recommend Sub-Advisors to manage all or a part of the Fund's assets, (iii) when appropriate, allocate and reallocate the Fund's assets among multiple Sub-Advisors, (iv) monitor and evaluate the performance of Sub-Advisors, and (v) implement procedures reasonably designed to ensure that the Sub-Advisors comply with the Fund's investment objective, policies and restrictions.

10. No director or officer of the Fund, or director or officer of the Advisor, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Sub-Advisor, except for (a) ownership of interests in the Advisor or any entity that controls, is controlled by, or is under common control with the Advisor, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Sub-Advisor or an entity that controls, is controlled by or is under common control with a Sub-Advisor.

11. The Fund will disclose in its registration statement the Aggregate Fee Disclosure.

12. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

13. The Advisor will provide the Board, no less frequently than quarterly, with information about the profitability of the Advisor with respect to the Fund. The information will reflect the impact on profitability of the hiring or termination of any Sub-Advisor during the applicable quarter.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–24655 Filed 9–30–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29445; 812–13770]

Highland Capital Management, L.P. and Highland Funds I; Notice of Application

September 27, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

APPLICANTS: Highland Capital Management, L.P. (the "Adviser") and Highland Funds I (the "Trust" and collectively, "Applicants").

FILING DATES: The application was filed on May 7, 2010, and amended on September 10, 2010, September 24, 2010, and September 27, 2010.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 25, 2010, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: The Trust and the Adviser, NexBank Tower, 13455 Noel Road, Suite 800, Dallas, TX 75240.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 551–6811, or Julia Kim Gilmer, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment

company and currently offers three series (each a "Series" and together with the Trust, the "Funds"), each of which has its own distinct investment objectives, policies and restrictions.[1] The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and serves as the investment adviser to each Series pursuant to a separate investment advisory agreement (each an "Investment Advisory Agreement" and collectively, the "Investment Advisory Agreements") with each Series. Each Investment Advisory Agreement was approved by the Trust's board of trustees (the "Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Trust or the Adviser ("Independent Trustees") and by the shareholders of the Series in the manner required by sections 15(a) and 15(c) of the Act and rule 18f–2 under the Act.

2. Under the terms of the Investment Advisory Agreement, the Adviser, subject to the oversight of the Board, furnishes a continuous investment program for each Series. The Adviser periodically reviews investment policies and strategies of each Series and based on the need of a particular Series may recommend changes to the investment policies and strategies of the Series for consideration by its Board. For its services to each Series, the Adviser receives an investment advisory fee from that Series as specified in the applicable Investment Advisory Agreement based on the average daily managed assets of that Series. The terms of the Investment Advisory Agreement also permit the Adviser, subject to the approval of the relevant Board, including a majority of the Independent Trustees, and the shareholders of the applicable Series (if required by applicable law), to delegate portfolio management responsibilities of all or a portion of the Series to one or more subadvisers ("Sub-Advisers"). The Adviser has entered into subadvisory agreements ("Sub-Advisory Agreements") with various Sub-Advisers to provide investment advisory services to various Subadvised Funds.[2] Each Sub-Adviser is, and each future Sub-Adviser will be, an investment adviser as defined in section 2(a)(20) of the Act as well as registered with the Commission as an "investment adviser" under the Advisers Act. The Adviser evaluates, allocate assets to and oversees the Sub-Advisers, and makes recommendations about their hiring, termination and replacement to the relevant Board, at all times subject to the authority of the relevant Board. The Adviser will compensate each Sub-Adviser out of the fee paid to the Adviser under the Investment Advisory Agreement, or the Subadvised Fund will be responsible for paying subadvisory fees to the Sub-Adviser.

3. Applicants request an order to permit the Adviser, subject to Board approval, to select certain Sub-Advisers to manage all or a portion of the assets of a Series pursuant to a Sub-Advisory Agreement and materially amend Sub-Advisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Subadvised Fund or the Adviser, other than by reason of serving as a Sub-Adviser to one or more of the Subadvised Funds ("Affiliated Sub-Adviser").

4. Applicants also request an order exempting the Subadvised Funds from certain disclosure provisions described below that may require the Applicants to disclose fees paid by the Adviser or a Subadvised Fund to each Sub-Adviser. Applicants seek an order to permit each Subadvised Fund to disclose (as a dollar amount and a percentage of each Subadvised Fund's net assets) only: (a) The aggregate fees paid to the Adviser and any Affiliated Sub-Advisers; and (b) the aggregate fees paid to Sub-Advisers other than Affiliated Sub-Advisers (collectively, the "Aggregate Fee Disclosure"). A Subadvised Fund that employs an Affiliated Sub-Adviser will provide separate disclosure of any fees paid to the Affiliated Sub-Adviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 ("1934 Act"). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fees," a description of the "terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b) and (c) of Regulation S–X require a registered investment company to include in its financial statement information about the investment advisory fees.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect the Adviser, subject

[1] Applicants also request relief with respect to future Series and any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser (collectively, the "Adviser") or its successors; (b) uses the multi-manager structure described in the application; and (c) complies with the terms and conditions of this application (together with any Fund that currently uses Sub-Advisers (as defined below), each a "Subadvised Fund" and collectively, the "Subadvised Funds"). The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an applicant. For purposes of the requested order, "successor" is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization. If the name of any Subadvised Fund contains the name of a Sub-Adviser (as defined below), the name of the Adviser, or a trademark or trade name that is owned by the Adviser, will precede the name of the Sub-Adviser.

[2] The Adviser has entered into a Sub-Advisory Agreement with JS Asset Management, LLC. The Adviser has also entered into a Sub-Advisory Agreement with an affiliated Sub-Adviser, Cummings Bay Capital Management, L.P. ("Cummings Bay"), to serve as Sub-Adviser to the Highland Long/Short Equity Healthcare Fund, a Series of the Trust. The requested relief will not extend to Cummings Bay or any other Affiliated Sub-Adviser, as defined below.

to the review and approval of the Board, to select the Sub-Advisers who are best suited to achieve the Subadvised Fund's investment objective. Applicants assert that, from the perspective of the shareholder, the role of the Sub-Adviser is substantially equivalent to the role of the individual portfolio managers employed by an investment adviser to a traditional investment company. Applicants state that requiring shareholder approval of each Subadvisory Agreement would impose unnecessary delays and expenses on the Subadvised Funds, and enable the Subadvised Fund to act more quickly when the Board and the Adviser believe that a change would benefit a Subadvised Fund and its shareholders. Applicants note that the Investment Advisory Agreement and any Sub-Advisory Agreement with an Affiliated Sub-Adviser (if any) will continue to be subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f–2 under the Act.

7. Applicants assert that the requested disclosure relief would benefit shareholders of the Subadvised Funds because it would improve the Adviser's ability to negotiate the fees paid to Sub-Advisers. Applicants state that the Adviser may be able to negotiate rates that are below a Sub-Adviser's "posted" amounts, if the Adviser is not required to disclose the Sub-Advisers' fees to the public. Applicants submit that the requested relief will encourage Sub-Advisers to negotiate lower subadvisory fees with the Adviser if the lower fees are not required to be made public.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Subadvised Fund may rely on the order requested herein, the operation of the Subadvised Fund in the manner described in this application will be approved by a majority of the Subadvised Fund's outstanding voting securities as defined in the Act or, in the case of a Subadvised Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder before such Subadvised Fund's shares are offered to the public.

2. The prospectus for each Subadvised Fund will disclose the existence, substance, and effect of any order granted pursuant to the application. In addition, each Subadvised Fund will hold itself out to the public as employing a multi-manager structure as described in the application. The prospectus will prominently disclose that the Adviser has the ultimate responsibility, subject to oversight by the Board, to oversee the Sub-Advisers and recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of a new Sub-Adviser, shareholders of the relevant Subadvised Fund will be furnished all information about the new Sub-Adviser that would be included in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in disclosure caused by the addition of the new Sub-Adviser. To meet this obligation, each Subadvised Fund will provide its shareholders, within 90 days of the hiring of a new Sub-Adviser, an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the 1934 Act, except as modified by the order to permit Aggregate Fee Disclosure.

4. The Adviser will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Subadvised Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

7. Whenever a Sub-Adviser change is proposed for a Subadvised Fund with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Subadvised Fund and its shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Sub-Adviser derives an inappropriate advantage.

8. Whenever a Sub-Adviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

9. The Adviser will provide general management services to each Subadvised Fund, including overall supervisory responsibility for the general management and investment of the Subadvised Fund's assets and, subject to review and approval of the Board, will: (a) Set the Subadvised Fund's overall investment strategies; (b) evaluate, select and recommend Sub-Advisers to manage all or a portion of the Subadvised Fund's assets; (c) allocate and, when appropriate, reallocate the Subadvised Fund's assets among Sub-Advisers; (d) monitor and evaluate the Sub-Advisers' performance; and (e) implement procedures reasonably designed to ensure that Sub-Advisers comply with the Subadvised Fund's investment objective, policies and restrictions.

10. No trustee or officer of a Subadvised Fund or director or officer of the Adviser, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Sub-Adviser except for (a) ownership of interests in the Adviser or any entity that controls, is controlled by or is under common control with the Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Sub-Adviser or an entity that controls, is controlled by or is under common control with a Sub-Adviser.

11. Each Subadvised Fund will disclose in its registration statement the Aggregate Fee Disclosure.

12. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

13. The Adviser will provide the Board, no less frequently than quarterly, with information about the profitability of the Adviser on a per Subadvised Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Sub-Adviser during the applicable quarter.

14. For Subadvised Funds that pay fees to a Sub-Adviser directly from Fund assets, any changes to a Sub-Advisory Agreement that would result in an increase in the total management and advisory fees payable by a Subadvised Fund will be required to be approved by the shareholders of the Subadvised Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–24722 Filed 9–30–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62995; File No. SR–FINRA–2010–048]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to FINRA Trade Reporting Notice on Price Validation and Price-Override Protocol

September 27, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 17, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as "constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule" under Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is filing a FINRA *Trade Reporting Notice* ("*Notice*") that explains the price validation protocol of the FINRA trade reporting facilities and sets forth guidance on the use of the price-override indicator in trade reports. Members are required to make systems changes necessary to trade report in accordance with the *Notice* no later than November 16, 2010.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The FINRA trade reporting facilities (*i.e.,* the Alternative Display Facility, Trade Reporting Facilities and OTC Reporting Facility) (collectively referred to herein as the "FINRA Facilities") price validate over-the-counter trades by comparing the submitted price against price validation parameters established by FINRA, generally based on a price deviation against the national best bid or offer. The attached *Trade Reporting Notice* explains the price validation protocol of the FINRA Facilities. Additionally, the *Notice* advises members that the price-override indicator should not be appended automatically to all trade reports submitted to a FINRA Facility. Rather, this special indicator should be appended only after a trade has been rejected by a FINRA Facility, pursuant to the established price validation protocol, as described more fully in the *Notice.*

Proper trade reporting has become increasingly important because of the single-stock trading pause pilot.[5] Specifically, a firm that reports a trade with an incorrect price could trigger a trading pause in certain NMS stocks, as defined in Rule 600(b) of SEC Regulation NMS, and trading in the stock may be unnecessarily halted, which is inconsistent with the intent and purpose of the trading pause rules.

Any member that has programmed its systems to append the price-override indicator to its trade reports prior to rejection of the trade must make the technological changes necessary to cease this practice as soon as possible, and no later than November 16, 2010 (60 days from the date of the *Notice*). After November 16, 2010, a pattern and practice of reporting trades with the price-override indicator not in accordance with the established protocol and the *Notice* may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of FINRA Rule 2010.

FINRA has filed the proposed rule change for immediate effectiveness, and it is operative on the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will enhance market transparency and further the goal of investor protection by helping to ensure that the trade prices that are publicly disseminated are correct and by reducing the potential for unnecessary trading pauses in certain NMS stocks.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and paragraph (f)(1) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* FINRA Rule 6121 and *Regulatory Notice* 10–30 (June 2010).

[6] 15 U.S.C. 78o–3(b)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(1).

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2010–048 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2010–048. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–FINRA–2010–048 and should be submitted on or before October 22, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–24675 Filed 9–30–10; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62992; File No. SR–NASDAQ–2010–114]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Prohibit Members From Voting Uninstructed Shares on Certain Matters

September 24, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 14, 2010, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to modify Rule 2251 to prohibit members from voting on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, unless instructed by the beneficial owner of the shares. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.[3]

2251. Forwarding of Proxy and Other Issuer-Related Materials

(a)–(c) No change.

(d) Notwithstanding the foregoing, a Nasdaq Member that is not the beneficial owner of a security registered under Section 12 of the Act is prohibited from granting a proxy to vote the security in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, by rule, unless the beneficial owner of the security has instructed the member to vote the proxy in accordance with the voting instructions of the beneficial owner.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") adopted new Section 6(b)(10) of the Securities Exchange Act.[4] This new provision requires all national securities exchanges to adopt rules that prohibit their members from voting on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, unless the member receives voting instructions from the beneficial owner of the shares.

NASDAQ Rule 2251 governs when NASDAQ members may vote shares held for customers by adopting the FINRA rule on this point. The FINRA rule, in turn, prohibits members from voting any uninstructed shares, but also permits the member to follow the rules of another SRO instead.[5] In order to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaqomx.cchwallstreet.com*.

[4] 15 U.S.C. 78f(b)(10).

[5] The Commission notes that the FINRA rule, and by reference Nasdaq's rule, only allows a member to follow the rules of another SRO of which it is a member, provided that the records of the member

assure compliance, in all cases, with newly adopted Section 6(b)(10), NASDAQ proposes to modify Rule 2251 to provide that in no event could a member vote uninstructed shares on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, unless instructed by the beneficial owner of the shares.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general and with Section 6(b)(10) of the Act,[7] in particular. Section 6(b)(10) requires that a national securities exchange's rules must prohibit any member that is not the beneficial owner of a security registered under Section 12 from granting a proxy to vote the security in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission. The proposed rule change will adopt the prohibition required by Section 6(b)(10).

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2010–114 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–114. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–114 and should be submitted on or before October 22, 2010.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

In its filing, Nasdaq requested that the Commission approve the proposal on an accelerated basis so that the Exchange could immediately comply with the requirements imposed by the Dodd-Frank Act. After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8]

The Commission believes that the proposal is consistent with Section 6(b)(10)[9] of the Act, which requires that national securities exchanges adopt rules prohibiting members that are not beneficial holders of a security from voting uninstructed proxies with respect to the election of a member of the board of directors of an issuer (except for uncontested elections of directors for companies registered under the Investment Company Act), executive compensation, or any other significant matter, as determined by the Commission by rule. The Commission also believes that the proposal is consistent with Section 6(b)(5)[10] of the Act, which provides, among other things, that the rules of the Exchange must be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposal is consistent with Section 6(b)(10) of the Act because it adopts revisions that comply with that section. As noted in the accompanying Senate Report, Section 957, which adopts Section 6(b)(10), reflects the principle that "final vote tallies should reflect the wishes of the beneficial owners of the stock and not be affected by the wishes of the broker that holds the shares."[11] The proposed rule change will make Nasdaq compliant with the new requirements of Section 6(b)(10) by specifically prohibiting, in Nasdaq's rule language, broker-dealers, who are not beneficial owners of a security, from voting uninstructed shares in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission by rule, unless the member receives voting instructions

clearly indicate the procedure it is following. *See* FINRA Rule 2251(c)(2).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(10).

[8] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(10).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* S. Rep. No. 111–176, at 136 (2010).

from the beneficial owner of the shares.[12]

The Commission believes that the proposal is consistent with Section 6(b)(5) of the Act because the proposal will further investor protection and the public interest by assuring that shareholder votes on the election of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940) and on executive compensation matters are made by those with an economic interest in the company, rather than by a broker that has no such economic interest, which should enhance corporate governance and accountability to shareholders.[13]

Based on the above, the Commission finds that the Nasdaq proposal will further the purposes of Sections 6(b)(5) and 6(b)(10) of the Act because it should enhance corporate accountability to shareholders while also serving to fulfill the Congressional intent in adopting Section 6(b)(10) of the Act.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,[14] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register.** Section 6(b)(10) of the Act, enacted under Section 957 of the Dodd-Frank Act, does not provide for a transition phase, and requires rules of national securities exchanges to prohibit broker voting on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission by rule. The Commission believes that good cause exists to grant accelerated approval to the Exchange's proposal, because it will conform Nasdaq Rule 2251 to the requirements of Section 6(b)(10) of the Act.

[12] The Commission has not, to date, adopted rules concerning other significant matters where uninstructed broker votes should be prohibited, although it may do so in the future. Should the Commission adopt such rules, we would expect Nasdaq to adopt coordinating rules promptly to comply with the statute.

[13] As the Commission stated in approving NYSE rules prohibiting broker voting in the election of directors, having those with an economic interest in the company vote the shares, rather than the broker who has no such economic interest, furthers the goal of enfranchising shareholders. *See* Securities Exchange Act Release No. 60215 (July 1, 2009), 74 FR 33293 (July 10, 2009) (SR–NYSE–2006–92).

[14] 15 U.S.C. 78s(b)(2).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–Nasdaq–2010–114) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–24606 Filed 9–30–10; 8:45 am]

BILLING CODE 8010–01–P

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7164]

Notice of Intent To Establish the President's Emergency Plan for AIDS Relief (PEPFAR) Scientific Advisory Board, Hereinafter Referred to as "the Board"

SUMMARY: This is a notice of intent to establish The President's Emergency Plan for AIDS Relief (PEPFAR) Scientific Advisory Board, hereinafter referred to as "the Board."

The Board serves the Global AIDS Coordinator ("the Coordinator") in a solely advisory capacity concerning scientific, implementation, and policy issues related to the global response to HIV/AIDS. These issues will be of concern as they influence the priorities and direction of PEPFAR evaluation and research, the content of national and international strategies and implementation, and the role of PEPFAR in the international discourse regarding appropriate and resourced responses.

The Board will be composed of 25 to 30 members appointed by the Coordinator, representing U.S. Government and non-U.S. Government personnel. The membership will be representative of the HIV/AIDS community, academia, international experts, partner government representatives, multilateral and bilateral agency representatives, foundations, advocates, and non-governmental organizations. Members who are not U.S. employees will be representative members.

Public notice of all meetings of the Panel will be provided in the **Federal Register** in accordance with the FACA.

FOR FURTHER INFORMATION CONTACT: Paul D. Bouey, Office of the U.S. Global AIDS Coordinator, Washington, DC 20037, *BoueyPD@state.gov.*

This certification will be published in the **Federal Register**.

Dated: September 27, 2010.

Paul D. Bouey,

Deputy Coordinator, Office of the U.S. Global AIDS Coordinator, Department of State.

[FR Doc. 2010–24691 Filed 9–30–10; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice: 7184]

Bureau of Consular Affairs; Registration for the Diversity Immigrant (DV–2012) Visa Program

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: This public notice provides information on how to apply for the DV–2012 Program. This notice is issued pursuant to 22 CFR 42.33(b)(3) which implements sections 201(a)(3), 201(e), 203(c) and 204(a)(1)(I) of the Immigration and Nationality Act, as amended, (8 U.S.C. 1151, 1153, and 1154(a)(1)(I)).

Instructions for the 2012 Diversity Immigrant Visa Program (DV–2012)

The congressionally mandated Diversity Immigrant Visa Program is administered on an annual basis by the Department of State and conducted under the terms of Section 203(c) of the Immigration and Nationality Act (INA). Section 131 of the Immigration Act of 1990 (Pub. L. 101–649) amended INA 203 and provides for a class of immigrants known as "diversity immigrants." Section 203(c) of the INA provides a maximum of 55,000 Diversity Visas (DV) each fiscal year to be made available to persons from countries with low rates of immigration to the United States.

The annual DV program makes permanent residence visas available to persons meeting the simple, but strict, eligibility requirements. A computer-generated random lottery drawing chooses selectees for Diversity Visas. The visas are distributed among six geographic regions with a greater number of visas going to regions with lower rates of immigration, and with no visas going to nationals of countries sending more than 50,000 immigrants to the United States over the period of the past five years. Within each region, no single country may receive more than seven percent of the available Diversity Visas in any one year.

For DV–2012, natives of the following countries are not eligible to apply because the countries sent a total of

more than 50,000 immigrants to the United States in the previous five years:

BRAZIL, CANADA, CHINA (mainland-born), COLOMBIA, DOMINICAN REPUBLIC, ECUADOR, EL SALVADOR, GUATEMALA, HAITI, INDIA, JAMAICA, MEXICO, PAKISTAN, PERU, the PHILIPPINES, POLAND, SOUTH KOREA, UNITED KINGDOM (except Northern Ireland) and its dependent territories, and VIETNAM.

Persons born in Hong Kong SAR, Macau SAR and Taiwan are eligible. For DV–2012, no countries have been added or removed from the previous year's list of eligible countries.

The Department of State implemented the electronic registration system beginning with DV–2005 in order to make the Diversity Visa process more efficient and secure. The Department utilizes special technology and other means to identify those who commit fraud for the purposes of illegal immigration or who submit multiple entries.

Diversity Visa Registration Period

Entries for the DV–2012 Diversity Visa Lottery must be submitted electronically between noon, Eastern Daylight Time (EDT) (GMT–4), Tuesday, October 5, 2010, and noon, Eastern Standard Time (EST) (GMT–5) Wednesday, November 3, 2010. Applicants may access the electronic Diversity Visa Entry Form (E–DV) at *http://www.dvlottery.state.gov* during the registration period. Paper entries will not be accepted. Applicants are strongly encouraged not to wait until the last week of the registration period to enter. Heavy demand may result in Web site delays. No entries will be accepted after noon, EST, on November 3, 2010.

Requirements for Entry

To enter the DV lottery, you must be a native of one of the listed countries. *See* "List of Countries by Region Whose Natives Qualify." In most cases this means the country in which you were born. However, there are two other ways you may be able to qualify. First, if you were born in a country whose natives are ineligible but your spouse was born in a country whose natives are eligible; you can claim your spouse's country of birth, provided both you and your spouse are on the selected entry, are issued visas, and enter the United States simultaneously. Second, if you were born in a country whose natives are ineligible, but neither of your parents was born there or resided there at the time of your birth, you may claim nativity in one of your parents' country of birth, if it is a country whose natives qualify for the DV–2012 program.

To enter the lottery, you must meet either the education or work experience requirement of the DV program. You must have either a high school education or its equivalent, defined as successful completion of a 12-year course of elementary and secondary education; OR, two years of work experience within the past five years in an occupation requiring at least two years of training or experience to perform. The U.S. Department of Labor's *O*Net OnLine* database will be used to determine qualifying work experience. For more information about qualifying work experience, *see* Frequently Asked Question #13. If you cannot meet either of these requirements, you should NOT submit an entry to the DV program.

Procedures for Submitting an Entry to DV–2012

The Department of State will only accept completed Electronic Diversity Visa (E–DV) Entry Forms submitted electronically at *http://www.dvlottery.state.gov* during the registration period between noon, Eastern Daylight Time (EDT) (GMT–4), Tuesday, October 5, 2010 and noon, Eastern Standard Time (EST) (GMT–5) Wednesday, November 3, 2010.

All entries by an individual will be disqualified if more than ONE entry for that individual is received, regardless of who submitted the entry. You may prepare and submit your own entry, or have someone submit the entry for you.

A successfully registered entry will result in the display of a confirmation screen containing your name and a unique confirmation number. You may print this confirmation screen for your records using the print function of your Web browser. You will be able to check the status of your DV–2012 entry by returning to the Web site and entering your unique confirmation number and personal information.

Paper entries will not be accepted.

It is very important that all required photographs be submitted. Your entry will be disqualified if all required photographs are not submitted. Recent photographs of the following people must be submitted electronically with the Electronic Diversity Visa Entry Form: You; your spouse; each unmarried child under 21 years of age at the time of your electronic entry, including all natural children as well as all legally-adopted children and stepchildren, even if a child no longer resides with you or you do not intend for a child to immigrate under the DV program. You do not need to submit a photo for a child who is already a U.S. citizen or a Legal Permanent Resident.

Group or family photographs will not be accepted; there must be a separate photograph for each family member. Failure to submit the required photographs for your spouse and each child listed will result in an incomplete entry to the E–DV system. The entry will not be accepted and must be resubmitted. Failure to enter the correct photograph of each individual in the case into the E–DV system will result in disqualification of the principal applicant and refusal of all visas in the case at the time of the visa interview.

A digital photograph (image) of you, your spouse, and each child must be submitted on-line with the E–DV Entry Form. The image file can be produced either by taking a new digital photograph or by scanning a photographic print with a digital scanner.

Entries are subject to disqualification and visa refusal for cases in which the photographs are not recent or have been manipulated or fail to meet the specifications explained below.

Instructions for Submitting a Digital Photograph (Image)

The image file must adhere to the following compositional specifications and technical specifications and can be produced in one of the following ways: taking a new digital image or using a digital scanner to scan a submitted photograph. Entrants may test their photos for suitability through the photo validator link on the e-DV Web site before submitting their entries. The photo validator provides additional technical advice on photo composition along with examples of acceptable and unacceptable photos.

Compositional Specifications

The submitted digital image must conform to the following compositional specifications or the entry will be disqualified: The person being photographed must directly face the camera; the head of the person should not be tilted up, down, or to the side; the head height or facial region size (measured from the top of the head, including the hair, to the bottom of the chin) must be between 50% and 69% of the image's total height. The eye height (measured from the bottom of the image to the level of the eyes) should be between 56% and 69% of the image's height; the photograph should be taken with the person in front of a neutral, light-colored background; dark or patterned backgrounds are not acceptable; the photograph must be in focus; photos in which the person being photographed is wearing sunglasses or other items that detract from the face

will not be accepted; photographs of applicants wearing head coverings or hats are only acceptable if the headcovering is worn for religious beliefs, and even then, the head covering may not obscure any portion of the face of the applicant. Photographs of applicants with Tribal or other headgear not specifically religious in nature will not be accepted; photographs of military, airline, or other personnel wearing hats will not be accepted.

Color photographs in 24-bit color depth are required. Photographs may be downloaded from a camera to a file in the computer, or they may be scanned to a file in the computer. If you are using a scanner, the settings must be for True Color or 24-bit color mode. Color photographs must be scanned at this setting for the requirements of the DV program. *See* the additional scanning requirements below.

Technical Specifications

The submitted digital photograph must conform to the following specifications or the system will automatically reject the E–DV Entry Form and notify the sender.

When taking a new digital image: the image file format must be in the Joint Photographic Experts Group (JPEG) format; it must have a maximum image file size of two hundred forty kilobytes (240 KB); the minimum acceptable image resolution and dimensions are 600 pixels (width) x 600 pixels (height). Image pixel dimensions must be in a square aspect ratio (meaning the height must be equal to the width). The image color depth must be 24-bit color. [**Note:** Color photographs are required. Black and white, monochrome images (2-bit color depth), 8-bit color or 8-bit grayscale will *not* be accepted.]

Before a photographic print is scanned it must meet the compositional specifications listed above. If the photographic print meets the print color and compositional specifications, scan the print using the following scanner specifications: Scanner resolution must be at least 300 dots per inch (dpi); the image file format in Joint Photographic Experts Group (JPEG) format; the maximum image file size must be two hundred forty kilobytes (240 KB); the image resolution 600 by 600 pixels; the image color depth 24-bit color. [Note that black and white, monochrome, or grayscale images will not be accepted.]

Information required for the Electronic Entry

There is only one way to enter the DV–2012 lottery. You must submit the DS 5501, the Electronic Diversity Visa Entry Form (E–DV Entry Form), which is accessible only online at *http://www.dvlottery.state.gov.* Failure to complete the form in its entirety will disqualify the entry. **Note:** To ensure that the form is completed accurately, the Department of State strongly encourages applicants to complete the application without the assistance of "Visa Consultants," "Visa Agents," or other individuals who offer to submit an application on behalf of applicants.

Those who submit the E–DV entry will be asked to include the following information on the E–DV Entry Form.

1. *Full Name*—Last/Family Name, First Name, Middle name.
2. *Date of Birth*—Day, Month, Year.
3. *Gender*—Male or Female.
4. *City Where You Were Born.*
5. *Country Where You Were Born*—The name of the country should be that which is currently in use for the place where you were born.
6. *Country of Eligibility or Chargeability for the DV Program*—Your country of eligibility will normally be the same as your country of birth. Your country of eligibility is not related to where you live. If you were born in a country that is not eligible for the DV program, please review the instructions to see if there is another option for country of chargeability available for you. For additional information on chargeability, please review "Frequently Asked Question #1" of these instructions.
7. *Entry Photograph(s)—See* the technical information on photograph specifications. Make sure you include photographs of your spouse and all your children, if applicable. *See:* Frequently Asked Question #3.
8. *Mailing Address*—In Care Of, Address Line 1, Address Line 2, City/Town, District/Country/Province/State, Postal Code/Zip Code, and Country.
9. *Country Where You Live Today*
10. *Phone Number (Optional)*
11. *E-Mail Address*—provide an e-mail address to which you have direct access rather than using someone else's address or a standard company address. Notifications to those selected in the random lottery are NOT sent by e-mail. Official notifications of selection will be made through Entry Status Check, available from May 1, 2011 on the E–DV Web site *http://www.dvlottery.state.gov.* Should you receive an e-mail notification or a mailed letter about your E–DV selection, be aware that the notification is not legitimate. It is only after you are selected, and respond to the notification instructions made available to you via Entry Status Check, and processing begins on your case, that you may receive follow-up e-mail communication from the KCC informing you to review Entry Status Check for new information about your application.
12. *What is the Highest Level of Education You Have Achieved, as of Today?* You must indicate which one of the following represents your own highest level of educational achievement: (1) Primary school only, (2) High school, no degree, (3) High school degree, (4) Vocational school, (5) Some university courses, (6) University degree, (7) Some graduate level courses, (8) Master degree, (9) Some doctorate level courses, and (10) Doctorate degree.
13. *Marital Status*—Unmarried, Married, Divorced, Widowed, Legally Separated.
14. *Number of Children:* Entries must include the name, date and place of birth of your spouse and all natural children, as well as all legally-adopted children and stepchildren who are unmarried and under the age of 21 on the date of your electronic entry (do not include children who are already U.S. citizens or Legal Permanent Residents), even if you are no longer legally married to the child's parent, and even if the spouse or child does not currently reside with you and/or will not immigrate with you. Note that married children and children 21 years or older are not eligible for the Diversity Visa; however, U.S. law protects children from "aging out" in certain circumstances. If your electronic DV entry is made before your unmarried child turns 21, and the child turns 21 before visa issuance, he/she may be protected from aging out by the Child Status Protection Act and be treated as though he/she were under 21 for visa-processing purposes. Failure to list all children who are eligible will result in disqualification of the principal applicant and refusal of all visas in the case at the time of the visa interview. *See:* Frequently Asked Question #11.
15. *Spouse Information*—Name, Date of Birth, Gender, City/Town of Birth, Country of Birth, and Photograph. Failure to list your spouse will result in disqualification of the principal applicant and refusal of all visas in the case at the time of the visa interview.
16. *Children Information*—Name, Date of Birth, Gender, City/Town of Birth, Country of Birth, and Photograph: Include all children declared in question #14 above.

Selection of Applicants

The computer will randomly select individuals from among all qualified entries. Starting May 1, 2011, entrants may enter their DV–2012 entry confirmation number into the Entry Status Check available at *http://www.dvlottery.state.gov* to find out

whether their entry was selected or not. The notification information provided on the site will give further instructions for selectees, including information on fees connected with immigration to the United States. Those selected in the random drawing are NOT notified by e-mail. Applicants MUST go to *http://www.dvlottery.state.gov* to confirm their selection status and to receive further instructions. U.S. embassies and consulates will not be able to provide a list of successful entrants. Successful entrants' spouses and unmarried children under age 21 may also apply for visas to accompany or follow-to-join the principal applicant. DV–2012 visas will be issued between October 1, 2011 and September 30, 2012. Selectees who provide information requested in the notification instructions will be informed of their visa interview appointment through the E–DV Web site's Entry Status Check four to six weeks before the scheduled interviews with U.S. consular officers at overseas posts. Each month, visas will be issued to those applicants who are ready for issuance during that month, visa-number availability permitting. Once all of the 50,000 DV visas have been issued, the program will end. In principle, visa numbers could be finished before September 2012. Selected applicants who wish to receive visas must be prepared to act promptly on their cases.

Processing of entries and issuance of diversity visas to successful individuals and their eligible family members MUST occur by midnight on September 30, 2012. Under no circumstances can Diversity Visas be issued or adjustments approved after this date, nor can family members obtain Diversity Visas to follow-to-join the principal applicant in the United States after this date.

In order to receive a Diversity Visa to immigrate to the United States, those chosen in the random drawing must meet ALL eligibility requirements under U.S. law. These requirements may significantly increase the level of scrutiny required and time necessary for processing for natives of some countries listed in this notice, including, but not limited to, countries identified as State sponsors of terrorism.

Important Notice

No fee is charged for the electronic lottery entry in the annual DV program. The U.S. Government employs no outside consultants or private services to operate the DV program. Any intermediaries or others who offer assistance to prepare DV entries do so without the authority or consent of the U.S. Government. Use of any outside intermediary or assistance to prepare a DV entry is entirely at the entrant's discretion.

A qualified electronic entry submitted directly by an applicant has an equal chance of being randomly selected by the computer at the Kentucky Consular Center, as does a qualified electronic entry received from an outside intermediary on behalf of the applicant. However, receipt of more than one entry per person will disqualify the person from registration, regardless of the source of the entry.

Frequently Asked Questions About E–DV Registration

1. What do the terms "eligibility", "native" and "chargeability" mean? Are there any situations in which persons who were not born in a qualifying country may apply?

Your country of eligibility will normally be the same as your country of birth. Your country of eligibility is not related to where you live. "Native" ordinarily means someone born in a particular country, regardless of the individual's current country of residence or nationality. For immigration purposes "native" can also mean someone who is entitled to be "charged" to a country other than the one in which he/she was born under the provisions of Section 202(b) of the Immigration and Nationality Act. For example, if you were born in a country that is not eligible for this year's DV program, you may claim chargeability to the country where your derivative spouse was born, but you will not be issued a DV–1 unless your spouse is also eligible for and issued a DV–2, and both of you must enter the United States together with the diversity visas. In a similar manner, a minor dependent child can be "charged" to a parent's country of birth.

Finally, if you were born in a country not eligible to participate in this year's DV program, you can be "charged" to the country of birth of either of your parents as long as neither parent was a resident of the ineligible country at the time of the your birth. In general, people are not considered residents of a country in which they were not born or legally naturalized if they are only visiting the country, studying in the country temporarily, or stationed temporarily in the country for business or professional reasons on behalf of a company or government from a country other than the country in which the applicant was born. If you claim alternate chargeability, you must indicate such information on the E–DV electronic online entry form, in question #6. Please be aware that listing an incorrect country of eligibility or chargeability (*i.e.,* one to which you cannot establish a valid claim) may disqualify your entry.

2. Are there any changes or new requirements in the application procedures for this Diversity Visa registration?

Yes. The registration period for DV–2012 will be 30 days in duration. Photographs must now be scanned at a resolution of at least 300 dots per inch (dpi), rather than the previous 150 dots per inch (dpi). All other requirements for scanning a submitted photograph are the same.

Additionally, the Entry Status Check available on the E–DV Web site *http://www.dvlottery.state.gov* will be the sole means by which you will be notified of your selection, or that you were not selected. The KCC will not mail you official notification letters, but will instead include notification instructions on how to follow up on your selection and pursue a DV visa application on your confirmation page. Entry Status Check will also be the means by which you are informed of your DV visa interview appointment date. The KCC will not send anyone mailed letters informing them of their interview appointment.

Entry Status Check will be available for DV–2012 beginning May 1, 2011. If you applied for the previous year's DV–2011 program, you may check the status of your entry until the end of June 2011. All other requirements for DV–2012 remain the same.

3. Are signatures and photographs required for each family member, or only for the principal entrant?

Signatures are not required on the Electronic Diversity Visa Entry Form. Recent and individual photographs of you, your spouse and all children under 21 years of age are required. Family or group photographs are not accepted. Refer to information on the photograph requirements located in this notice.

4. Why do natives of certain countries not qualify for the Diversity program?

Diversity Visas are intended to provide an immigration opportunity for persons from countries other than the countries that send large numbers of immigrants to the United States. The law states that no Diversity Visas shall be provided for natives of "high admission" countries. The law defines this to mean countries from which a total of 50,000 persons in the Family-Sponsored and Employment-Based visa categories immigrated to the United States during the period of the previous

five years. Each year, the U.S. Citizenship and Immigration Services (USCIS) adds the family and employment immigrant admission figures for the previous five years in order to identify the countries whose natives will be ineligible for the annual diversity lottery. Because there is a separate determination made before each annual E–DV entry period, the list of countries whose natives are not eligible may change from one year to the next.

5. What is the numerical limit for DV–2012?

By law, the U.S. diversity immigration program makes available a maximum of 55,000 permanent residence visas each year to eligible persons. However, the Nicaraguan Adjustment and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulates that beginning as early as DV–1999, and for as long as necessary, up to 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NACARA program. The actual reduction of the limit by up to 5,000 diversity visas began with DV–2000 and is likely to remain in effect through the DV–2012 program.

6. What are the regional Diversity Visa (DV) limits for DV–2012?

The U.S. Citizenship and Immigration Services (USCIS) determines the DV regional limits for each year according to a formula specified in Section 203(c) of the Immigration and Nationality Act (INA). Once the USCIS has completed the calculations, the regional visa limits will be announced.

7. When will entries for the DV–2012 program be accepted?

The DV–2012 entry period will run through the registration period listed above. Each year millions of people apply for the program during the registration period. The massive volume of entries creates an enormous amount of work in selecting and processing successful individuals. Holding the entry period from October 5, 2010, until November 3, 2010 will ensure that selectees are notified in a timely manner, and gives both the visa applicants and our embassies and consulates time to prepare and complete cases for visa issuance. You are strongly encouraged to enter early in the registration period. Excessive demand at end of the registration period may slow the system down. No entries whatsoever will be accepted after noon EST Wednesday, November 3, 2010.

8. May persons who are in the United States apply for the program?

Yes, an applicant may be in the United States or in another country, and the entry may be submitted from the United States or from abroad.

9. Is each applicant limited to only one entry during the annual E–DV registration period?

Yes, the law allows only one entry by or for each person during each registration period. Individuals for whom more than one entry is submitted will be disqualified. The Department of State will employ sophisticated technology and other means to identify individuals who submit multiple entries during the registration period. People submitting more than one entry will be disqualified and an electronic record will be permanently maintained by the Department of State. Individuals may apply for the program each year during the regular registration period.

10. May a husband and a wife each submit a separate entry?

Yes, a husband and a wife may each submit one entry if each meets the eligibility requirements. If either is selected, the other is entitled to derivative status.

11. What family members must I include on my E–DV entry?

On your entry you must list your spouse (husband or wife), and all unmarried children under 21 years of age, with the exception of children who are already U.S. citizens or Legal Permanent Residents. You must list your spouse even if you are currently separated from him/her, unless you are legally separated (*i.e.* there is a written agreement recognized by a court or a court order). If you are legally separated or divorced, you do not need to list your former spouse. You must list ALL your children who are unmarried and under 21 years of age at the time of your initial electronic DV entry, whether they are your natural children, your spouse's children, or children you have formally adopted in accordance with the laws of your country, unless such child is already a U.S. citizen or Legal Permanent Resident. List all children under 21 years of age at the time of your electronic entry even if they no longer reside with you or you do not intend for them to immigrate under the DV program.

The fact that you have listed family members on your entry does not mean that they later must travel with you. They may choose to remain behind. However, if you include an eligible dependent on your visa application forms that you failed to include on your original entry, your case will be disqualified. This only applies to those who were family members at the time the original application was submitted, not those acquired at a later date. Your spouse may still submit a separate entry, even though he or she is listed on your entry, as long as both entries include details on all dependents in your family. *See* question #10 above.

12. Must I submit my own entry, or may someone act on my behalf?

You may prepare and submit your own entry, or have someone submit the entry for you. Regardless of whether an entry is submitted by the individual directly, or assistance is provided by an attorney, friend, relative, *etc.,* only one entry may be submitted in the name of each person and the entrant remains responsible for insuring that information in the entry is correct and complete. If the entry is selected, the notification letter will be sent only to the mailing address provided on the entry. All entrants, including those not selected, will be able to check the status of their entry through the official DV Web site. Entrants should keep their own confirmation page information so they may independently check the status of their entry.

13. What are the requirements for education or work experience?

The law and regulations require that every entrant must have at least a high school education or its equivalent or have, within the past five years, two years of work experience in an occupation requiring at least two years training or experience. A "high school education or equivalent" is defined as successful completion of a twelve-year course of elementary and secondary education in the United States or successful completion in another country of a formal course of elementary and secondary education comparable to a high school education in the United States. Only formal courses of study meet this requirement; correspondence programs or equivalency certificates (such as the G.E.D.) are not acceptable. Documentary proof of education or work experience must be presented to the consular officer at the time of the visa interview.

What Occupations qualify for the Diversity Visa Program? To determine eligibility based on work experience, definitions from the Department of Labor's (DOL) O*Net Online Database will be used. The O*Net Online Database groups job experience into five "job zones." While many occupations are listed on the DOL Web site, only

certain specified occupations qualify for the Diversity Visa Program. To qualify for a Diversity Visa on the basis of your work experience, you must have, within the past five years, two years of experience in an occupation that is designated as Job Zone 4 or 5, classified in a Specific Vocational Preparation (SVP) range of 7.0 or higher.

How do I find the qualifying occupations on the Department of Labor Web site? Qualifying DV Occupations are shown on the Department of Labor *O*Net Online Database*. Follow these steps to find out if your occupation qualifies: Select "Find Occupations" and then select a specific "Job Family." For example, select Architecture and Engineering and click "GO." Then click on the link for the specific Occupation. Following the same example, click Aerospace Engineers. After selecting a specific Occupation link, select the tab "Job Zone" to find out the designated Job Zone number and Specific Vocational Preparation (SVP) rating range.

14. How will successful entrants be selected?

At the Kentucky Consular Center, all entries received from each region will be individually numbered. After the end of the registration period, a computer will randomly select entries from among all the entries received for each geographic region. Within each region, the first entry randomly selected will be the first case registered; the second entry selected the second registration, *etc.* All entries received during the registration period will have an equal chance of being selected within each region. Beginning on May 1, 2011 selected entrants will be able to receive further instructions at *http://www.dvlottery.state.gov/.* The Kentucky Consular Center will continue to process the case until those selected to be visa applicants are instructed to appear for visa interviews at a U.S. consular office or until those qualifying to change status in the United States apply at a domestic USCIS office.

Important Note: Notifications to those selected in the random lottery are *not* sent by e-mail or mail. Should you receive an e-mail or mail notification about your E–DV selection, be aware that the message is not legitimate. It is only after you are selected, and respond to the notification instructions made available to you via Entry Status Check, and processing begins on your case, that you may receive follow-up e-mail communication from the KCC informing you to review Entry Status Check for new information about your application. The Kentucky Consular Center will *not* ask you to send money to them by mail or by services such as Western Union.

15. May selectees adjust their status with USCIS?

Yes, provided they are otherwise eligible to adjust status under the terms of Section 245 of the INA, selected individuals who are physically present in the United States may apply to the USCIS for adjustment of status to permanent resident. Applicants must ensure that USCIS can complete action on their cases, including processing of any overseas derivatives, before September 30, 2012, since on that date registrations for the DV–2012 program expire. No visa numbers for the DV–2012 program will be available after midnight on September 30, 2012 under any circumstances.

16. Will entrants who are not selected be informed?

All entrants, including those NOT selected, may check the status of their entry through the E–DV Web site and find out if their entry was or was not selected. Entrants should keep their own confirmation page information from the time of their entry until they may check the status of their entry online. Status information for DV–2012 will be available online beginning May 1, 2011. (Status information for the previous DV lottery, DV–2011, is available online until June 30, 2011.) All official notification letters are sent to the address indicated on the entry within five to seven months from the end of the application period.

17. How many individuals will be selected?

There are 50,000 DV visas available for DV–2012, but more than that number of individuals will be selected. Because it is likely that some of the first 50,000 persons who are selected will not qualify for visas or pursue their cases to visa issuance, more than 50,000 entries will be selected by the Kentucky Consular Center to ensure that all of the available DV visas are issued. However, this also means that there will not be a sufficient number of visas for all those who are initially selected. All applicants who are selected will be informed promptly of their place on the list. Interviews for the DV–2012 program will begin in October 2011. The Kentucky Consular Center will notify selected applicants via the Electronic Diversity Visa Lottery Web site, *http://www.dvlottery.state.gov/,* four to six weeks before the scheduled interviews with U.S. consular officers at overseas posts. Selectees will only receive e-mail communications from the KCC alerting them that a visa appointment has been scheduled after they have responded to the notification instructions on Entry Status Check. Such e-mails will direct selectees to check their interview appointment details on Entry Status Check and will not contain information on the actual appointment date and time. Each month visas will be issued to those applicants who are ready for issuance during that month, visa number availability permitting. Once all of the 50,000 DV visas have been issued, the program for the year will end. In principle, visa numbers could be finished before September 2012. Selected applicants who wish to receive visas must be prepared to act promptly on their cases. Random selection by the Kentucky Consular Center computer as a selectee does not automatically guarantee that you will receive a visa. You must qualify for the visa as well.

18. Is there a minimum age for applicants to apply for the E–DV program?

There is no minimum age to apply for the program, but the requirement of a high school education or work experience for each principal applicant at the time of application will effectively disqualify most persons who are under age 18.

19. Are there any fees for the E–DV program?

There is no fee for submitting an electronic lottery entry. DV applicants must pay all required visa fees at the time of visa application directly to the consular cashier at the embassy or consulate. Details of required diversity visa and immigration visa application fees will be included with the instructions sent by the Kentucky Consular Center to applicants who are selected.

20. Do DV applicants receive waivers of any grounds of visa ineligibility or receive special processing for a waiver application?

Applicants are subject to all grounds of ineligibility for immigrant visas specified in the Immigration and Nationality Act. There are no special provisions for the waiver of any ground of visa ineligibility aside from those ordinarily provided in the Act, nor is there special processing for waiver requests. Some general waiver provisions for people with close relatives who are American Citizens of Lawful Permanent Resident aliens may be available to DV applicants as well, but the time constraints in the DV program will make it difficult for applicants to benefit from such provisions.

21. May persons who are already registered for an immigrant visa in another category apply for the DV program?

Yes, such persons may apply for the DV program.

22. How long do applicants who are selected remain entitled to apply for visas in the DV category?

Persons selected in the DV–2012 lottery are entitled to apply for visa issuance only during fiscal year 2012, from October 1, 2011, through September 30, 2012. Applicants must obtain the DV visa or adjust status by the end of the fiscal year. There is no carry-over of DV benefits into the next year for persons who are selected but who do not obtain visas by September 30, 2012 (the end of the fiscal year). Also, spouses and children who derive status from a DV–2012 registration can only obtain visas in the DV category between October 2011 and September 2012. Applicants who apply overseas will receive an appointment letter from the Kentucky Consular Center four to six weeks before the scheduled appointment.

23. If an E–DV selectee dies, what happens to the DV case?

The death of an individual selected in the lottery results in automatic revocation of the DV case. Any eligible spouse and/or children are no longer entitled to the DV visa, for that entry.

24. When will E–DV online be available?

Online entry will be available during the registration period beginning at noon EDT (GMT–4) on October 5, 2010 and ending at noon EST (GMT–5) on November 3, 2010.

25. Will I be able to download and save the E–DV entry form to a microsoft word program (or other suitable program) and then fill it out?

No, you will not be able to save the form into another program for completion and submission later. The E–DV Entry Form is a Web form only. This makes it more "universal" than a proprietary word processor format. Additionally, it does require that the information be filled in and submitted while online.

26. If I don't have access to a scanner, can I send photographs to my relative in the United States to scan the photographs, save the photographs to a diskette, and then mail the diskette back to me to apply?

Yes, this can be done as long as the photograph meets the photograph requirements in the instructions and the photograph is electronically submitted with, and at the same time as, the E–DV online entry is submitted. The applicants must already have the scanned photograph file when they submit the entry online. The photograph cannot be submitted separately from the online application. Only one online entry can be submitted for each person. Multiple submissions will disqualify the entry for that person for DV–2012. The entire entry (photograph and application together) can be submitted electronically from the United States or from overseas.

27. Can I save the form online so that I can fill out part and then come back later and complete the remainder?

No, this cannot be done. The E–DV Entry Form is designed to be completed and submitted at one time. However, because the form is in two parts, and because of possible network interruptions and delays, the E–DV system is designed to permit up to sixty (60) minutes between the forms download and when the entry is received at the E–DV Web site. If more than sixty minutes elapse and the entry has not been electronically received, the information already received is discarded. This is done so that there is no possibility that a full entry could accidentally be interpreted as a duplicate of a previous partial entry. The DV–2012 instructions explain clearly and completely what information is required to fill in the form. Thus you can be fully prepared, making sure you have all of the information needed before you start to complete the form online.

28. If the submitted digital images do not conform to the specifications, the procedures state that the system will automatically reject the E–DV entry form and notify the sender. does this mean I will be able re–submit my entry?

Yes, the entry can be resubmitted. Since the entry was automatically rejected, it was not actually considered as submitted to the E–DV Web site. It does not count as a submitted E–DV entry, and no confirmation notice of receipt is sent. If there are problems with the digital photograph sent, because it does not conform to the requirements, it is automatically rejected by the E–DV Web site. However, the amount of time it takes the rejection message to reach the sender is unpredictable given the nature of the Internet. If the problem can be fixed by the applicant, and the Form Part One or Two is re-sent within sixty (60) minutes, there is no problem. Otherwise, the applicant will have to restart the submission process. An applicant can try to submit an application as many times as is necessary until a complete application is received and the confirmation notice sent.

29. Will the electronic confirmation notice that the completed E–DV ENTRY form has been received through the online system be sent immediately after submission?

The response from the E–DV Web site which contains confirmation of the receipt of an acceptable E–DV Entry Form is sent by the E–DV Web site immediately. However, how long it takes the response to reach the sender is unpredictable due to the nature of the Internet. If many minutes have elapsed since pressing the 'Submit' button, there is no harm in pressing the 'Submit' button a second time. The E–DV system will not be confused by a situation where the 'Submit' button is hit a second time, because no confirmation response has been received. An applicant can try to submit an application as many times as is necessary until a complete application is received and the confirmation notice sent. However, once you receive a confirmation notice, do not resubmit your information.

30. How will I know if the notification of selection that I have received is authentic? How can I confirm that I have in fact been chosen in the random DV lottery?

Keep your confirmation page. You will need your confirmation number to access information through the Entry Status Check available on the E–DV Web site *http://www.dvlottery.state.gov*. Entry Status Check will be the sole means by which DV–2012 entrants are notified of their selection, provided instructions on how to proceed with their application, and notified of their immigrant visa interview appointment date and time.

Status information will be available from May 1, 2011. If you lose your confirmation information, you will not be able to check your DV entry status by yourself, and we will not resend the confirmation page information to you. Only the randomly selected individuals will be given additional instructions on how to pursue their DV visa application. Persons not selected may verify the non-selection of their entry using their confirmation information through the official DV Web site, but they will not receive any additional instructions. We will NOT forward the confirmation page information to you. U.S. Embassies and Consulates will NOT provide a list of

those selected to continue the visa process.

Randomly selected entrants will receive notification instructions for the DV visa application process on the selectee confirmation page available through Entry Status Check on the E–DV Web site *http://www.dvlottery.state.gov*. The instructions say the selected applicants will pay all diversity and immigrant visa fees in person only at the U.S. Embassy or Consulate at the time of the visa application. The consular cashier or consular officer immediately gives the visa applicant a U.S. Government receipt for payment. Selected applicants applying for an immigrant visa at a U.S. Embassy or Consulate should never send money for DV fees through the mail, Western Union, or any other delivery service. Selected applicants who are already present in the United States and who file for adjustment of status will receive separate instructions on how to mail DV fees to a US bank.

The E–DV lottery entries are submitted on the Internet, on the official U.S. Government E–DV Web site at *http://www.dvlottery.state.gov*. The KCC will not send notification letters to the selected applicants. The KCC, consular offices, or the U.S. Government have never sent e-mails to notify individuals they have been selected, and there are no plans to use e-mail for this purpose for the DV–2012 program. Selectees will only receive e-mail communications from the KCC alerting them that a visa appointment has been scheduled after they have responded to the notification instructions on Entry Status Check. Such e-mails will direct selectees to check their interview appointment details on Entry Status Check and will not contain information on the actual appointment date and time.

The Department of State's Bureau of Consular Affairs advises the public that only Internet sites including the ".gov" domain suffix are official government Web sites. Many other non-governmental Web sites (*e.g.,* using the suffixes ".com" or ".org" or ".net") provide immigration and visa related information and services. Regardless of the content of non-governmental Web sites, the Department of State does not endorse, recommend, or sponsor any information or material shown at these other Web sites.

Some Web sites may try to mislead customers and members of the public into thinking they are official Web sites and may contact you by e-mail to lure you to their offers. These Web sites may attempt to require you to pay for services such as forms and information about immigration procedures, which are otherwise free on the Department of State Visa Services Web site or through U.S. Embassy Consular Section's Web sites. Additionally, these other Web sites may require you to pay for services you will not receive (such as fees for DV immigration applications and visas). Also, you should be wary of sending any personal information to these Web sites that might be used for identity fraud/theft.

31. How do I report internet fraud or unsolicited e-mail?

If you wish to file a complaint about Internet fraud, please *see* the econsumer.gov Web site, hosted by the Federal Trade Commission, in cooperation with consumer protection agencies from 17 nations (*http://www.econsumer.gov/english/*). You may also report fraud to the Federal Bureau of Investigation (FBI) *Internet Crime Complaint Center*. To file a complaint about unsolicited e-mail, contact the Department of Justice *Contact Us page*.

32. If I am successful in obtaining a visa through the DV program, will the U.S. government assist with my airfare to the United States, provide assistance to locate housing and employment, provide healthcare, or provide any subsidies until I am fully settled?

No, applicants who obtain a DV visa are not provided any type of assistance such as airfare, housing assistance, or subsidies. If you are selected to apply for a DV visa, before you can be issued a visa, you will be required, before you are issued a visa, to provide evidence that you will not become a public charge in the United States. This evidence may be in the form of a combination of your personal assets, an Affidavit of Support (Form I–134) from a relative or friend residing in the United States, and/or an offer of employment from an employer in the United States.

List of Countries by Region Whose Natives Are Eligible for DV–2012

The lists below show the countries whose natives are eligible for DV–2012, grouped by geographic region. Dependent areas overseas are included within the region of the governing country. The countries whose natives are not eligible for the DV–2012 program were identified by the U.S. Citizenship and Immigration Services (USCIS) according to the formula in Section 203(c) of the Immigration and Nationality Act. The countries whose natives are NOT eligible for this diversity program (because they are the principal source countries of Family-Sponsored and Employment-Based immigration or "high admission" countries) are noted after the respective regional lists.

Africa

Algeria
Angola
Benin
Botswana
Burkina Faso
Burundi
Cameroon
Cape Verde
Central African Republic
Chad
Comoros
Congo
Congo, Democratic Republic of the
Cote D'Ivoire (Ivory Coast)
Djibouti
Egypt
Equatorial Guinea
Eritrea
Ethiopia
Gabon
Gambia, The
Ghana
Guinea
Guinea-Bissau
Kenya
Lesotho
Liberia
Libya
Madagascar
Malawi
Mali
Mauritania
Mauritius
Morocco
Mozambique
Namibia
Niger
Nigeria
Rwanda
Sao Tome and Principe
Senegal
Seychelles
Sierra Leone
Somalia
South Africa
Sudan
Swaziland
Tanzania
Togo
Tunisia
Uganda
Zambia
Zimbabwe

Persons born in the Gaza Strip are chargeable to Egypt.

List of Countries by Region Whose Natives Are Eligible for DV–2012

Asia

Afghanistan
Bahrain
Bangladesh
Bhutan

Brunei
Burma
Cambodia
East Timor
Hong Kong Special Administrative Region
Indonesia
Iran
Iraq
Israel
Japan
Jordan
Kuwait
Laos
Lebanon
Malaysia
Maldives
Mongolia
Nepal
North Korea
Oman
Qatar
Saudi Arabia
Singapore
Sri Lanka
Syria
Taiwan
Thailand
United Arab Emirates
Yemen

Natives of the following Asian countries are not eligible for this year's diversity program: China [mainland-born], India, Pakistan, South Korea, Philippines, and Vietnam. Hong Kong S.A.R and Taiwan do qualify and are listed above. Macau S.A.R. also qualifies and is listed below. Persons born in the areas administered prior to June 1967 by Israel, Jordan and Syria are chargeable, respectively, to Israel, Jordan and Syria.

List of Countries by Region Whose Natives Are Eligible for DV–2012

Europe

Albania
Andorra
Armenia
Austria
Azerbaijan
Belarus
Belgium
Bosnia and Herzegovina
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark (including components and dependent areas overseas)
Estonia
Finland
France (including components and dependent areas overseas)
Georgia
Germany
Greece
Hungary
Iceland
Ireland
Italy
Kazakhstan
Kosovo
Kyrgyzstan
Latvia
Liechtenstein
Lithuania
Luxembourg
Macedonia, the Former Yugoslav Republic
Macau Special Administrative Region
Malta
Moldova
Monaco
Montenegro
Netherlands (including components and dependent areas overseas)
Northern Ireland
Norway
Portugal (including components and dependent areas overseas)
Romania
Russia
San Marino
Serbia
Slovakia
Slovenia
Spain
Sweden
Switzerland
Tajikistan
Turkey
Turkmenistan
Ukraine
Uzbekistan
Vatican City

Natives of the following European countries are not eligible for this year's diversity program: Great Britain and Poland. Great Britain (United Kingdom) includes the following dependent areas: Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, St. Helena, and Turks and Caicos Islands. Note that for purposes of the diversity program only, Northern Ireland is treated separately; Northern Ireland does qualify and is listed among the qualifying areas.

List of Countries by Region Whose Natives Are Eligible for DV–2012

North America

The Bahamas

In North America, natives of Canada and Mexico are not eligible for this year's diversity program.

Oceania

Australia (including components and dependent areas overseas)
Fiji
Kiribati
Marshall Islands
Micronesia, Federated States of
Nauru
New Zealand (including components and dependent areas overseas)
Palau
Papua New Guinea
Samoa
Solomon Islands
Tonga
Tuvalu
Vanuatu

South America, Central America, and the Caribbean

Antigua and Barbuda
Argentina
Barbados
Belize
Bolivia
Chile
Costa Rica
Cuba
Dominica
Grenada
Guyana
Honduras
Nicaragua
Panama
Paraguay
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Suriname
Trinidad and Tobago
Uruguay
Venezuela

Countries in this region whose natives are not eligible for this year's diversity program: Brazil, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Jamaica, Mexico, and Peru.

Dated: September 24, 2010.

Janice Jacobs,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 2010–24688 Filed 9–30–10; 8:45 am]

BILLING CODE 4710–06–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

2010 Special 301 Out of Cycle Review of Notorious Markets: Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public.

SUMMARY: Pursuant to Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242) the United States Trade Representative (USTR) issues an annual review of the global state of intellectual property rights (IPR) protection and enforcement, conducted by the Office of the United States Trade Representative (USTR), commonly referred to as the

"Special 301 Report". Included in this report is the "Notorious Markets" list, which is a compilation of examples of Internet and physical markets that have been the subject of enforcement action or that may merit further investigation for possible intellectual property infringements. The list does not represent a finding of violation of law, but rather is a summary of information USTR reviewed during the Special 301 process that serves to highlight the problem of marketplaces that deal in infringing goods and help sustain global piracy and counterfeiting.

In an effort to increase public awareness and guide related trade enforcement actions, USTR plans to begin publishing the notorious market list separately from the annual Special 301 report in which it has previously been included. USTR is hereby requesting written submissions from the public identifying potential Internet and physical notorious markets that exist outside the United States.

Deadline for interested parties to submit written comments: November 5, 2010.

ADDRESSES: All written comments should be sent electronically via *http://www.regulations.gov,* docket number USTR–2010–0029. Submissions should contain the term "2010 Special 301 Notorious Markets Review" in the "Type comment & Upload file" field on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kira M. Alvarez, Chief Negotiator and Deputy Assistant U.S. Trade Representative for Intellectual Property Enforcement, Office of the United States Trade Representative, at (202) 395–4510. Further information about Special 301 can be found at *http://www.ustr.gov.*

SUPPLEMENTARY INFORMATION:

1. Background

Global piracy and counterfeiting continue to thrive due in part to marketplaces that deal in infringing goods. The 2010 Special 301 Report provides, on pages 43–45, a list of markets, including those on the Internet, that have been the subject of enforcement action, or that may merit further investigation for possible IPR infringements, or both. The list represents a selective summary of information reviewed during the Special 301 process; it is not a finding of violations of law. In the report, the United States encourages the responsible authorities to step up efforts to combat piracy and counterfeiting in these and similar markets.

The 2010 Joint Strategic Plan on Intellectual Property Enforcement stated that USTR, in coordination with the office of the Intellectual Property Enforcement Coordinator, would initiate an interagency process to assess opportunities to further publicize and potentially expand on the notorious markets list in an effort to increase public awareness and guide related trade enforcement actions. As a result of that discussion, USTR has concluded that it can further publicize and potentially expand on the notorious markets list by publishing the notorious market list separately from the annual Special 301 report in which it has previously been included, following a separate, dedicated request for comments. USTR expects to publish the list on the earliest practicable date after receipt of public comments.

2. Public Comments

a. Written Comments

The Special 301 Subcommittee invites written submissions from the public concerning potential examples of Internet and physical "notorious markets." Notorious markets are those where counterfeit or pirated products are prevalent to such a degree that the market exemplifies the problem of marketplaces that deal in infringing goods and help sustain global piracy and counterfeiting.

b. Requirements for Comments

Interested parties must submit written comments by November 5, 2010 at 5 p.m.

Written comments should be as detailed as possible and should clearly identify the reason or reasons why the nature or scope of activity associated with the identified market or markets exemplify the problem of marketplaces that deal in infringing goods and help sustain global piracy and counterfeiting.

Comments should also include the following information for identifying these markets assessing their impact: Location; principal owners/operators (if known); types of products sold, distributed, or otherwise made available; any known civil or criminal enforcement activity against the market; any other efforts to remove/limit infringing materials; any positive progress made. Any comments that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses. Comments must be in English. All comments should be sent electronically via *http://www.regulations.gov,* docket number USTR–2010–0029.

To submit comments to *http://www.regulations.gov,* find the docket by entering the number USTR–2010–0029 in the "Enter Keyword or ID" window at the *http://www.regulations.gov* home page and click "Search." The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search-results page, and click on the link entitled "Submit a comment." (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on "How to Use This Site" on the left side of the home page.)

The *http://www.regulations.gov* site provides the option of providing comments by filling in a "Type comment & Upload file" field, or by attaching a document. It is USTR's preference that comments be provided in an attached document. If a document is attached, please type "2010 Special 301 Notorious Markets Review" in the "Type comment & Upload file" field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the "Comments" field.

3. Inspection of Comments, Notices, and Hearing Statements

USTR will maintain a docket on the 2010 Special 301 Notorious Markets Review, accessible to the public. The public file will include all comments received which will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Comments may be viewed on the *http://www.regulations.gov* Web site by entering docket number USTR–2010–0029 in the search field on the home page.

Stanford K. McCoy,

Assistant U.S. Trade Representative for Intellectual Property and Innovation.

[FR Doc. 2010–24710 Filed 9–30–10; 8:45 am]

BILLING CODE 3190–W0–P

DEPARTMENT OF TRANSPORTATION

[DOT Docket No. DOT–OST–2010–0074]

The Future of Aviation Advisory Committee (FAAC) Subcommittee on Labor and World-Class Workforce; Notice of Meeting

AGENCY: Office of the Secretary of Transportation, Department of Transportation.

ACTION: The Future of Aviation Advisory Committee (FAAC) Subcommittee on Labor and World-class Workforce; amendment to notice of meeting.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary of Transportation, announced a meeting of the FAAC Subcommittee on Labor and World-class Workforce, which will be held via teleconference. A call-in number and pass code will be issued upon registration. This notice announced the date and time of the meeting, which will be open to the public. The purpose of the FAAC is to provide advice and recommendations to the Secretary of Transportation to ensure the competitiveness of the U.S. aviation industry and its capability to effectively manage the evolving transportation needs, challenges, and opportunities of the global economy. The subcommittee is charged with ensuring the availability and quality of a workforce necessary to support a robust, expanding commercial aviation industry in light of the changing socio-economic dynamics of the world's technologically advanced economies. Among other matters, the subcommittee will examine three issues affecting the future employment requirements of the aviation industry: (1) The need for science, technology, engineering, and math skills in the industry; (2) the creation of a culture of dignity and respect in workplace; and (3) the effect of NextGen on various workforces. This teleconference meeting was described as "solely for discussion with Mr. Joshua M. Javits, a professional arbitrator and mediator, who has mediated a number of air carrier labor-management disputes." However, at the subcommittee meeting on September 23, 2010, it was determined additional time would be needed during the October 1, 2010, meeting to refine the subcommittee's topic proposals for presentation to the full FAAC on October 20, 2010. Accordingly, in addition to the scheduled discussion with Mr. Javits on October 1, the subcommittee will discuss possible actionable items for presentation at the October 20 FAAC meeting in Los Angeles, California, and work related to the general responsibilities of the subcommittee.

DATES: The meeting will be held on October 1, 2010, from 1 p.m. to 4 p.m. Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held via teleconference. A call-in number and pass code will be issued upon registration. (*See* below for registration instructions.)

Public Access: The meeting is open to the public. (*See* below for registration instructions.)

Public Comments: Persons wishing to offer written comments and suggestions concerning the activities of the advisory committee or subcommittee should file comments in the Public Docket (Docket Number DOT–OST–2010–0074 at *http://www.Regulations.Gov*) or alternatively through the *FAAC@dot.gov* e-mail. If comments and suggestions are intended specifically for the Subcommittee on Labor and World-class Workforce, the term "Labor/Workforce" should be listed in the subject line of the message. In order to ensure such comments can be considered by the subcommittee before its October 1, 2010, meeting, public comments must be filed by 5 p.m. EDT on Tuesday, September 28, 2010.

SUPPLEMENTARY INFORMATION:

Background

Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the FAAC Subcommittee on Labor and World-class Workforce taking place on October 1, 2010, from 1 p.m. to 4 p.m. EDT, via teleconference. A call-in number and pass code will be issued upon registration. Background information may be found at the FAAC Web site, located at *http://www.dot.gov/faac/.* The agenda includes—

1. Discussion of topics selected by subcommittee members on the subject of labor and improving the workforce of the aviation industry.
2. Establishment of a plan and timeline for further work.
3. Discussion to refine the subcommittee's topic proposals and possible actionable items for presentation at the full FAAC meeting to be held October 20, 2010, in Los Angeles, California.
4. Identification of priority issues for the fifth subcommittee meeting.

Registration

The telephone conference can accommodate up to 50 members of the public. Persons desiring to listen to the discussion must pre-register through e-mail to *FAAC@dot.gov.* The term "Registration: Labor/Workforce" must be listed in the subject line of the message, and admission will be limited to the first 50 persons to pre-register and receive a confirmation of their pre-registration.

No arrangements are being made for audio or video transmission or for oral statements or questions from the public at the meeting. Minutes of the meeting will be taken and will be posted on the FAAC Web site at *http://www.dot.gov/faac/.*

Request for Special Accommodation

The DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please send a request to *FAAC@dot.gov* with the term "Special Accommodations" listed in the subject line of the message by close of business on Tuesday, September 28, 2010.

FOR FURTHER INFORMATION CONTACT: Terri L. Williams, Acting Executive Director for Strategic Performance and Organizational Success, Office of the Assistant Administrator for Human Resources, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; (202) 267–3456, extension 7472; or Regis P. Milan, Office of Aviation Analysis, U.S. Department of Transportation; Room 86W–309, 1200 New Jersey Avenue, SE., Washington, DC 20590; (202) 366–2349.

Issued in Washington, DC, on September 27, 2010.

Pamela Hamilton-Powell,

Designated Federal Official, Future of Aviation Advisory Committee.

[FR Doc. 2010–24622 Filed 9–30–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2010 0084]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice of intention to request extension of OMB approval and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval (with modifications) for three years of a currently approved information collection.

DATES: Comments should be submitted on or before November 30, 2010.

FOR FURTHER INFORMATION CONTACT: Michael Pucci, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–5167; or e-mail: michael.pucci@dot.gov. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Requirements for Establishing U.S. Citizenship—46 CFR Parts 355 and 356.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0012.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: Maritime Administration implementing regulations at 46 CFR Parts 355 and 356 set forth requirements for establishing U.S. citizenship in accordance with MARAD statutory authority. Those receiving benefits under 46 U.S.C. chapters 531, 535, and 537 (formerly the Merchant Marine Act, 1936, as amended), or applicants seeking a fishery endorsement eligibility approval pursuant to the American Fisheries Act must be citizens of the United States within the meaning of 46 U.S.C. 50501, (formerly Section 2 of the Shipping Act, 1916, as amended). In either case, whether seeking program benefits or fishery endorsement eligibility, Section 50501 sets forth the statutory requirements for determining whether an applicant, be it a corporation, partnership, or association is a U.S. citizen. 46 CFR part 356 is distinguished from 46 CFR part 355 in that part 356 establishes requirements for U.S. citizenship exclusively in accordance with the AFA while part 355 is applied for purposes of establishing citizenship across multiple MARAD programs arising under other statutory authority. Most program participants are required to submit to MARAD on an annual basis the form of affidavit prescribed by part 355 or part 356.

Need and Use of the Information: MARAD will review the Affidavits of U.S. Citizenship to determine if the applicants are eligible to participate in the programs offered by the agency or to receive a MARAD fishery endorsement eligibility approval.

Description of Respondents: The Affidavits of U.S. Citizenship are filed with MARAD by shipowners, trustees, ship mortgagees, charterers, equity owners, ship managers, etc.

Annual Responses: 500 responses.

Annual Burden: 2,500 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://regulations.gov/search/index.jsp*. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. *EDT (or EST),* Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://regulations.gov*.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://regulations.gov*.

Authority: 49 CFR 1.66.

By Order of the Maritime Administrator.

Dated: September 23, 2010.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2010–24695 Filed 9–30–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2010 0085]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before November 30, 2010.

FOR FURTHER INFORMATION CONTACT: Kenneth Willis, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–2306; or e-mail: *kenneth.willis@dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Application and Reporting Requirements for Participation in the Maritime Security Program.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0525.

Form Numbers: MA–172.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: The Maritime Security Act of 2003 provides for the enrollment of qualified vessels in the Maritime Security Program Fleet. Applications and amendments are used to select vessels for the fleet. Periodic reporting is used to monitor adherence of contractors to program parameters.

Need and Use of the Information: The collected information is necessary for MARAD to determine if selected vessels are qualified to participate in the Maritime Security Program.

Description of Respondents: Respondents are vessel operators.

Annual Responses: 195.

Annual Burden: 210 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://regulations.gov/search/index.jsp*. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. *EDT (or EST),* Monday through Friday, except Federal Holidays. An electronic version of this document is available on the

World Wide Web at *http://regulations.gov*.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://regulations.gov.*

Authority: 49 CFR 1.66.

By Order of the Maritime Administrator.

Dated: September 23, 2010.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2010–24699 Filed 9–30–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 15, 2010. No comments were received.

DATES: Comments must be submitted on or before November 1, 2010.

FOR FURTHER INFORMATION CONTACT: Sheila Brown, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–5178; or e-mail *Sheila.Brown@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Maritime Administration (MARAD)

Title: Elements of Request for Course Approval.

OMB Control Number: 2133–0535.

Type of Request: Extension of currently approved collection.

Affected Public: Respondents are public and private maritime security course training providers. *Form(s):* None.

Abstract: Under this voluntary collection, public and private maritime security training course providers may choose to provide the Maritime Administration (MARAD) with information concerning the content and operation of their courses. MARAD will use this information to evaluate whether the course meets the training standards and curriculum promulgated under Section 109 of the Maritime Transportation Security Act of 2002 (MTSA) (Pub. L. 107–295). Courses found to meet these standards will receive a course approval.

Annual Estimated Burden Hours: 990.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

By Order of the Maritime Administrator.

Dated: September 21, 2010.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2010–24700 Filed 9–30–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 23, 2010. No comments were received.

DATES: Comments must be submitted on or before November 1, 2010.

FOR FURTHER INFORMATION CONTACT: Linden Houston, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–4839; or e-mail *linden.houston@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Application for Conveyance of Port Facility Property, formerly, Port Facility Conveyance Information.

OMB Control Number: 2133–0524.

Type of Request: Extension of currently approved collection.

Affected Public: Eligible state and local public entities.

Form (s): MA–1047.

Abstract: Section 2927 of Public Law 103–160 authorizes the Department of Transportation to convey excess federal real and related personal property needed by states and local government entities for the development or operation of a port facility. The requested information is required to evaluate the applicants need and eligibility for the property. Compliance data is required on a yearly basis to determine if conveyed property is being used in accordance with the terms of the conveyance.

Annual Estimated Burden Hours: 440 hours.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or

other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

By Order of the Maritime Administrator. Dated: September 21, 2010.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2010–24701 Filed 9–30–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2010–44]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before October 12, 2010.

ADDRESSES: You may send comments identified by Docket Numbers FAA–2010–0930 and/or FAA–2010–0931 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Keira Jones (202) 267–4025 or Tyneka Thomas (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on September 28, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2010–0930 and FAA–2010–0931.

Petitioner: Boeing Company.

Section of 14 CFR Affected: 14 CFR 61.3(a)(1), 91.9(a) and 91.531(a).

Description of Relief Sought: The Boeing Company requests relief to allow FAA certified pilots to operate aircraft as a single pilot, or without the required second in command crew member, during pilot training and familiarization of foreign certified pilots in U.S. registered aircraft.

[FR Doc. 2010–24676 Filed 9–30–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Orange Empire Railway Museum

[Waiver Petition Docket Number FRA–2010–0123]

The Orange Empire Railway Museum (OERM) seeks a waiver of compliance from certain provisions of 49 CFR part 232, *Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment.* Specifically, OERM seeks a waiver from the requirements of Appendix B to 49 CFR part 232 for passenger car maintenance requirements. *See also* 49 CFR 232.17(b)(2).

OERM is a non-profit corporation that operates a historical and excursion train known as the Southern California Railway Museum, Inc. on its own tracks as a Non-insular Tourist Railway. Occasionally, OERM operates off of its line and onto the San Jacinto Industrial Spur for approximately ¼ mile in order to reach the Historic Perris Depot. As the San Jacinto Industrial Spur is part of the general system of transportation, compliance with part 232 is required. Because of the expense, mileage, low speed operation, and frequency of use of the four passenger cars for which relief is requested, OERM is requesting a 5-year waiver and increased time cycle for the servicing of the brake valves attached to these passenger cars.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2010–0123) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that

date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Page 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on September 27, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–24703 Filed 9–30–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Western Maryland Scenic Railroad

[Waiver Petition Docket Number FRA–2010–0089]

The Western Maryland Scenic Railroad (WMSR) petitioned FRA for relief from the requirements of CFR 223.15 *Existing passenger cars,* and § 223.13 *Existing cabooses,* for nine (9) passenger cars, and one (1) caboose. Specifically, passenger cars WMSR 200, 540, 541, 726, 844, 846, 850, 851, and 855, which were built between 1946, and 1954, and used by Class I Railroads until their retirement in long distance passenger service. Also, the cars are not equipped with the required number of emergency windows exits. The caboose, WMSR 1906, was built in 1969. Since FRA's long-standing definition of "antiquated" is being built prior to the end of World War II, even though this equipment is used on in tourist/excursion/educational service, relief from the Federal safety glazing requirements is required.

WMSR operates this equipment primarily on trackage between Cumberland, and Frostburg, Maryland. A portion of the trackage is leased from the CSX Transportation Inc. (CSXT), in Ridgeley, WV, where the railroad's maintenance, storage, and repair facilities are located. WMSR is the only operator/tenant of this least trackage and acreage.

The above referenced passenger cars and caboose have occasionally been leased/loaned for excursion service purposes to other organizations, including CSXT, such as Charity Train, Masters Golf Tournament, and the Kentucky Derby Train. In addition, WMSR has been requested to provide excursion passenger equipment for an anniversary celebration on the South Branch Valley Railroad later in 2010. WMSR tourist railroad operations are conducted at speeds of 20 mph, but while the equipment is on loan/lease to other operators, the operating speeds may differ.

There have been no reported incidents of stoning or acts of vandalism against the excursion trains. WMSR believes that the cost to retrofit these cars is not economically feasible, would impose a serious financial hardship to the non-profit organization, and would jeopardize their ability to utilize the equipment in its current service.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2010–0089) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on September 27, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–24705 Filed 9–30–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Port Manatee Railroad

[Waiver Petition Docket Number FRA–2010–0091]

The Port Manatee Railroad (PMRR) seeks a waiver of relief from the statutory requirements of 49 U.S.C. 21103(a)(4), whereby train employees have 48 or 72-hour off-duty periods following the initiation of on-duty

periods of either 6 or 7 consecutive days. PMRR is a marine terminal-switching railway operated on Manatee County Authority property at Port Manatee in Palmetto, Florida. PMRR provides support in vessel loading/discharge cargo operations and is not part of the General Railroad system of transportation. To avoid substantial operational and financial burdens and, at the same time, maintain a level of appropriate service to vessels while ensuring a safe working environment for its employees, a waiver request was submitted to FRA for approval.

PMRR currently has 6 train and engine service employees who typically work three assignments as follows: (1) A regular shift between 8 a.m. and 5 p.m.; (2) an overtime shift between 8 a.m. and 8 p.m.; and (3) a split shift that includes 8 a.m. to noon, an 8 hour break, followed by 8 p.m. to 8 a.m. PMRR reports that its employees are not unionized, and with its waiver request, the railroad filed documentation indicating that its employees unanimously support the request for relief. PMRR's entire petition may be viewed at *http://www.regulations.gov* under the docket number listed above.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2010–0091) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on September 27, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–24704 Filed 9–30–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1998–4334; FMCSA–2000–8398; FMCSA–2002–11714; FMCSA–2006–24015; FMCSA–2008–0106; FMCSA–2008–0174]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 59 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on August 26, 2010 (75 FR 44050).

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 59 renewal applications, FMCSA renews the Federal vision exemptions for Catarino Aispuro, Gary R. Andersen, Edwin A. Betz, Donald L. Carman, Mitchell L Carman, Christopher R. Cone, Walter O. Connelly, Stephen B. Copeland, Armando P. D'Angeli, Donald R. Davis, Ivory Davis, Louis A. DiPasqua, Jr., Henry L. Donivan, Randy J. Doran, Robert E. Dukes, Roger D. Elders, James F. Epperson, Lucious J. Erwin, Riche Ford, Kelly L. Foster, Kevin J. Friedel, Donald W. Garner, Paul W. Goebel, Jr., Ronnie L. Hanback, Steven G. Harter, Michael C. Hensley, George F. Hernandez, Jr., Scott A. Hillman, Charles S. Huffman, Jesse P. Jamison, James A. Jones, Ronnie M. Jones, Andrew C. Kelly, Jason W. King, James T. Leek, Billy J. Lewis, Velmer L. McClelland, Larry McCoy, Sr., Robert W. McMillian, Danny W. Nuckles, Richard A. Peterson, William R. Proffitt, Chad M. Quarles, Carroll G. Quisenberry, Daniel S. Rebstad, Ryan J. Reimann, Ronney L. Rogers, Manuel C. Savin, Brandon J. See, Douglas A. Sharp, Ricky L. Shepler, LeTroy D. Sims, Robert M. Stewart, John L. Stone, Nils S. Thornberg, Daniel W. Toppings, Kenneth E. Valentine, Christopher R. Whitson and George L. Young.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would

not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: September 28, 2010.

Charles A. Horan III,

Director, Office of Bus and Truck Standards and Operations.

[FR Doc. 2010–24726 Filed 9–30–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5748; FMCSA–1999–6156; FMCSA–1999–6480; FMCSA–2001–11426; FMCSA–2002–12294; FMCSA–2005–22194; FMCSA–2006–24015; FMCA–2008–0106; FMCSA–2008–0174]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 18 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on September 16, 2010 (75 FR 50799).

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 18 renewal applications, FMCSA renews the Federal vision exemptions for Juan D. Adame, Frank R. Berritto, Daniel K. Davis, III, Timothy J. Droeger, Robert E. Engel, James H. Facemyre, James M. Fairman, Gregory L. Farrar, Jeffrey M. Hall, Victor B. Hawks, Oskia D. Johnson, Richard W. O'Neill, Larry A. Priewe, Robert J. Szeman, Patrick D. Talley, Loren R. Walker, Kris Wells and Timothy J. Wilson.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: September 21, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–24724 Filed 9–30–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010–0083]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel HAWK.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0083 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before November 1, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0083. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel HAWK is:
INTENDED COMMERCIAL USE OF VESSEL: "Day charter, eco/historic tourism."

Geographic Region: "Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the

name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: September 21, 2010.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2010–24693 Filed 9–30–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Safety Advisory 2010–02

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Safety Advisory; Signal Recording Devices for Highway-Rail Grade Crossing Active Warning Systems that are Interconnected with Highway Traffic Signal Systems.

SUMMARY: FRA is issuing Safety Advisory 2010–02 to address Safety Recommendations I–96–10 and I–96–11, issued by the National Transportation Safety Board (NTSB) that relate to railroad and highway signal recording devices at highway-rail grade crossings equipped with active warning systems that are interconnected with highway traffic signal systems. This safety advisory recommends that States, local highway authorities, and railroads install, maintain, and upgrade railroad and highway traffic signal recording devices at these types of grade crossings. This safety advisory also recommends that States, local highway authorities, and railroads conduct comprehensive periodic joint inspections of highway traffic signal pre-emption interconnections and use information obtained from any railroad and highway traffic signal recording devices during those inspections.

FOR FURTHER INFORMATION CONTACT: Ron Ries, Staff Director, Highway-Rail Grade Crossing & Trespasser Prevention Division, FRA, RRS–23, Mail Stop 25, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: (202) 493–6285); Thomas McFarlin, Staff Director, Signal & Train Control Division, FRA, RRS–13, Mail Stop 25, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: (202) 493–6203); or Kathy Shelton, Office of Chief Counsel, FRA, RCC–11, Mail Stop 10, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: (202) 493–6063).

SUPPLEMENTARY INFORMATION: In Safety Recommendation I–96–10, the NTSB recommended that DOT require the use and maintenance of railroad and highway traffic signal recording devices at all new and improved highway-rail grade crossings equipped with active warning systems that are interconnected with highway traffic signal systems. These devices should be capable of recording sufficient parameters to allow railroad and highway personnel to readily determine that the highway traffic signals and railroad active warning systems are operating properly and in a coordinated manner. The NTSB further recommended that DOT require the use of information obtained from these railroad and highway traffic signal recording devices during comprehensive and periodic joint inspections.

In Safety Recommendation I–96–11, the NTSB recommended that DOT require the retention or upgrading of existing recording devices installed at highway-rail grade crossings equipped with active railroad warning systems that are interconnected with highway traffic signal systems. In addition, the NTSB recommended that DOT require maintenance of these recording devices and the use of information obtained from the devices during comprehensive and periodic joint inspections.

Highway traffic signal pre-emption interconnections, when present, play a critical role in the proper functioning of a highway-rail grade crossing active warning system. By changing the sequence of the traffic signal to allow highway traffic to exit the crossing prior to the arrival of a train, they can prevent vehicle entrapment on the highway-rail grade crossing. Also, the changed traffic signal sequence prevents conflicting visual traffic control messages for motorists approaching highway-rail grade crossings located in close proximity to highway traffic control signals (*i.e.,* a proceed highway traffic signal display into a nearby highway-rail grade crossing active warning system which is activated to indicate the approach or occupancy of a train).

In order to facilitate the proper functioning of the highway traffic signal pre-emption interconnection, 49 CFR 234.261 requires that railroads test each highway traffic signal pre-emption interconnection at least once each month. Therefore, States, local highway authorities, and railroads should identify which highway-rail grade crossings are equipped, or intended to be equipped, with a highway traffic signal pre-emption interconnection. If so equipped, railroads should ensure that the circuit plan shows the actual interconnection and the designed pre-emption time. Railroads should also ensure that the interconnection is in place and the train detection device (or equivalent) is programmed or equipped to provide the appropriate designed pre-emption function.

While FRA regulations require the testing of highway traffic signal pre-emption interconnections at least once a month, this requirement has historically only been applicable to the proper functioning of the railroad's control circuit to the highway traffic controller. While inspecting the highway traffic signal pre-emption interconnection, the actual operation of the highway traffic signal should be observed. Railroads should not rely solely on the operation of a relay or the opening of a control circuit to the traffic signal control housing. In fact, the preferred method of testing highway traffic signal pre-emption is by observation of a train movement and of the actual pre-emption function. Therefore, FRA recommends that railroads conduct comprehensive joint inspections of the highway traffic signal pre-emption interconnection with State and local highway authorities. These comprehensive joint inspections should be conducted when the highway-rail grade crossing active warning system is placed in service, whenever any portion of the system which may affect the proper function of the interconnection is modified or disarranged, and at least once every 12 months, during which observation of the actual pre-emption function and its effect on the highway traffic signal system can be made. These comprehensive periodic joint inspections should also include an inspection of the timing and operation of highway traffic signal systems that are interconnected with highway-rail grade crossing active warning devices, in order to ensure that the highway traffic signal system responds appropriately to the railroad control circuit and as designed. By conducting comprehensive periodic joint inspections, the railroad and State and local highway authorities can work together to observe and verify proper functioning of all necessary components of the highway traffic signal pre-emption upon activation of the highway-rail grade crossing active warning system.

Neither the Federal Highway Administration (FHWA) nor FRA require the retention or installation of railroad or highway signal recording devices at highway-rail grade crossings

equipped with active warning systems that are interconnected with highway traffic signal systems. However, in recognition of the critical role served by highway traffic signal pre-emption interconnections with respect to the proper functioning of a highway-rail grade crossing active warning system, States, local highway authorities, and railroads are encouraged to install railroad and highway traffic signal recording devices at all new and improved highway-rail grade crossings that have (or will have) active warning systems which are (or will be) interconnected with highway traffic signal systems. Railroad and highway traffic signal recording devices can provide a record of any anomalies associated with the operation of the highway-rail grade crossing active warning system and/or the highway traffic signal system, which may prompt further investigation. Thus, as noted by the NTSB, these recording devices should be capable of recording sufficient parameters to allow railroad and highway personnel to readily determine that the highway traffic signals and railroad-activated warning systems are coordinated and operating properly.

States, local highway authorities, and railroads are also encouraged to maintain and upgrade existing railroad and highway traffic signal recording devices at highway-rail grade crossings that have active warning systems which are interconnected with highway signal systems. With respect to signal recording devices for highway-rail grade crossing active warning systems, older devices can record basic information such as approach time and estimated train speed. However, current signal recording devices for highway-rail grade crossing active warning systems can monitor a variety of system functions and provide reports on the "health" of the warning system, such as the status of the flashing light units, gate position, power supply, the presence of any grounded circuits, etc. Many modern traffic signal systems feature software that includes various event logs that get recorded in the traffic signal controller itself. These event logs are periodically retrieved by the central system software. Among the data retrieved would be any observed conflicts or preempts, as well as logs and diagnostics on the vehicle detector in-pavement "loops". Recognizing that data provided by signal recording devices can assist States, local highway authorities, and railroads with the maintenance of interconnected highway-rail grade crossing active warning systems and highway traffic signal systems, FRA recommends that States, local highway authorities, and railroads use the data provided by these recording devices during their comprehensive periodic joint inspections to determine whether further investigation of any recorded operational anomalies may be warranted. It should be noted that railroad and highway traffic signal recording devices may be eligible for funding through FHWA's Railway-Highway Crossings Program (23 USC 130).

Recommended Action: Based on the foregoing discussion and to promote the safety of highway-rail grade crossings on the Nation's railroads, FRA recommends the following:

(1) Each State and local highway authority and railroad should conduct comprehensive joint inspections of highway traffic signal pre-emption interconnections when the highway-rail grade crossing active warning system is placed in service, whenever any portion of the system which may affect the proper function of the interconnection is modified or disarranged, and at least once every 12 months, during which observation of the actual pre-emption function and its effect on the highway traffic signal system can be made;

(2) Each State and local highway authority and railroad should install railroad and highway traffic signal recording devices at all new and improved highway-rail grade crossings that have active warning systems which are interconnected with highway traffic signal systems;

(3) Each State and local highway authority and railroad should maintain and upgrade existing railroad and highway traffic signal recording devices at highway-rail grade crossings that have active warning systems which are interconnected with highway traffic signal systems; and

(4) Each State and local highway authority and railroad should use the data provided by railroad and highway traffic signal recording devices during their comprehensive periodic joint inspections of interconnected highway-rail grade crossing active warning systems and highway traffic signal systems to determine whether further investigation of any recorded operational anomalies may be warranted.

States and local highway authorities and railroads are encouraged to take action consistent with the preceding recommendations to help ensure the safety of highway-rail grade crossings. FRA may modify this Safety Advisory 2010–02, or take other appropriate action necessary, to ensure the highest level of safety on the Nation's railroads.

Issued in Washington, DC, on September 27, 2010.

Jo Strang,

Associated Administrator for Railroad Safety/ Chief Safety Officer.

[FR Doc. 2010–24702 Filed 9–30–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

United States Mint

Senior Executive Service Combined Performance Review Board (PRB)

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Combined Performance Review Board (PRB) for the Bureau of Engraving and Printing (BEP), Financial Management Service (FMS), Bureau of the Public Debt (BPD), United States Mint (USM), Alcohol and Tobacco Tax and Trade Bureau (TTB) and Financial Crimes Enforcement Network (FINCEN). The Board reviews the performance appraisals of career senior executives below the level of bureau head and principal deputy in the bureaus, except for executives below the Assistant Commissioner/Executive Director level in the Financial Management Service and Bureau of the Public Debt. The Board makes recommendations regarding proposed performance appraisals, ratings, bonuses, pay adjustments and other appropriate personnel actions.

Composition of Combined PRB: The Board shall consist of at least three voting members. In the case of an appraisal of a career appointee, more than half of the members shall consist of career appointees. The names and titles of the Combined PRB members are as follows:

Primary Members

Wanda Rogers, Deputy Commissioner, FMS.

Anita Shandor, Deputy Commissioner, BPD.

Pamela J. Gardiner, Deputy Director, BEP.

Andrew D. Brunhart, Deputy Director, USM.

Mary G. Ryan, Deputy Administrator, TTB.

Charles M. Steele, Deputy Director, FINCEN.

Alternate Members

John Kopec, Assistant Commissioner, Business Architecture, FMS.
Lori Santamorena, Executive Director, Government Securities Regulations Staff, BPD.
Scott Wilson, Associate Director, Management, BEP.
Marty Greiner, Chief Financial Officer, USM.
John Manfreda, Administrator, TTB.
Diane K. Wade, Associate Director, Management Programs Division, FINCEN.

DATES: Membership is effective on 09/30/2010.

FOR FURTHER INFORMATION CONTACT: Andrew D. Brunhart, Deputy Director, United States Mint; 801 9th Street, NW.; Washington, DC 20220; or call 202–354–7200.

Authority: 5 U.S.C. 4314(c)(4).

Dated: September 27, 2010.

Andrew D. Brunhart,

Deputy Director, United States Mint.

[FR Doc. 2010–24630 Filed 9–30–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Allied World Reinsurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 3 to the Treasury Department Circular 570, 2010 Revision, published July 1, 2010, at 75 FR 38192.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued under 31 U.S.C. 9305 to the following company: Allied World Reinsurance Company (NAIC # 22730). Business Address: 199 Water Street, New York, NY 10038. Phone: (646) 794–0500.

Underwriting Limitation b/: $40,957,000. *Surety Licenses c/:* AL, AK, AZ, AR, CA, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 ("Circular"), 2010 Revision, to reflect this addition.

Certificates of Authority expire on June 30th each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (see 31 CFR part 223). A list of qualified companies is published annually as of July 1st in the Circular, which outlines details as to the underwriting limitations, areas in which companies are licensed to transact surety business, and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: September 20, 2010.

Laura Carrico,

Director, Financial Accounting and Services Division.

[FR Doc. 2010–24631 Filed 9–30–10; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Amendment—Allegheny Casualty Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 2 to the Treasury Department Circular 570, 2010 Revision, published July 1, 2010, at 75 FR 38192.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: The underwriting limitation for Allegheny Casualty Company (NAIC #13285), which was listed in the Treasury Department Circular 570, published on July 1, 2010, is hereby amended to read $1,743,000.

Federal bond-approving officers should annotate their reference copies of the Treasury Department Circular 570 ("Circular"), 2010 Revision, to reflect this change.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: September 24, 2010.

Laura Carrico,

Director, Financial Accounting and Services Division.

[FR Doc. 2010–24635 Filed 9–30–10; 8:45 am]

BILLING CODE 4810–35–M

Federal Register

Friday,
October 1, 2010

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 660

Fisheries off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Amendments 20 and 21; Trawl Rationalization Program; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 660

[Docket No. 100212086–0354–04]

RIN 0648–AY68

Fisheries off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Amendments 20 and 21; Trawl Rationalization Program

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

ACTION: Final rule.

SUMMARY: NMFS is implementing Amendments 20 and 21 to the Pacific Coast Groundfish Fishery Management Plan (FMP), which were partially approved by the Secretary on August 9, 2010. Amendment 20 establishes a trawl rationalization program for the Pacific Coast groundfish fishery. Amendment 20's trawl rationalization program consists of: an individual fishing quota (IFQ) program for the shorebased trawl fleet (including whiting and non-whiting sectors); and cooperative (coop) programs for the at-sea (whiting only) mothership and catcher/processor trawl fleets. The trawl rationalization program is intended to increase net economic benefits, create individual economic stability, provide full utilization of the trawl sector allocation, consider environmental impacts, and achieve individual accountability of catch and bycatch. Amendment 21 establishes fixed allocations for limited entry trawl participants. These allocations are intended to improve management under the rationalization program by streamlining its administration, providing stability to the fishery, and addressing halibut bycatch. This rule finalizes only certain key components necessary for issuance of permits and endorsements in time for use in the 2011 fishery and in order to have the 2011 specifications reflect the new allocation scheme. Specifically, this rule establishes the allocations set forth under Amendment 21 and establishes procedures for initial issuance of permits, endorsements, quota shares (QS), and catch history assignments under the IFQ and coop programs. In addition, this rule restructures the entire Pacific Coast groundfish regulations to more closely track the organization of the proposed management measures and to make the total groundfish regulations more clear.

DATES: This rule is effective November 1, 2010.

ADDRESSES: Background information and documents, including the final environmental impacts statements for Amendment 20 and Amendment 21, are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.* NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is summarized in the Classification section of this final rule. Copies of the FRFA and the Small Entity Compliance Guide are available from William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; or by phone at 206–526–6150.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, and by e-mail to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Jamie Goen, 206–526–4656; (fax) 206–526–6736; *Jamie.Goen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Amendment 20 trawl rationalization program is a limited access privilege program under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), as reauthorized in 2007. It consists of: (1) An IFQ program for the shorebased trawl fleet; and (2) coop programs for the mothership and catcher-processor trawl fleets. The trawl rationalization program is intended to increase net economic benefits, create individual economic stability, provide full utilization of the trawl sector allocation, consider environmental impacts, and achieve individual accountability of catch and bycatch. Amendment 21 establishes fixed allocations for limited entry trawl participants. These allocations are intended to improve management under the rationalization program by streamlining its administration, providing stability to the fishery, and addressing halibut bycatch.

The trawl rationalization program is scheduled to be implemented on January 1, 2011. Due to the complexity of the program and the tight timeline for implementation, NMFS has issued, or is in the process of issuing multiple rulemakings that would implement this program. The following actions are related to the trawl rationalization program:

- A final rule (75 FR 4684, January 29, 2010) which announced that potential participants in the program should review and, if necessary, correct their data that will be used for the issuance of QS, permits, and endorsements. It also established which data NMFS would use and requested ownership information from potential participants.
- A notice of availability for Amendments 20 and 21 (75 FR 26702, May 12, 2010).
- A proposed rule (75 FR 32994, June 10, 2010) that would implement Amendments 20 and 21, focused on provisions deemed necessary to issue permits and endorsements in time for use in the 2011 fishery and to have the 2011 harvest specifications reflect the new allocation scheme. In addition, the June 10th proposed rule also proposed to restructure the entire Pacific Coast groundfish regulations at 50 CFR part 660 from one subpart (Subpart G) to five subparts (Subparts C–G).
- A correction to the June 10th proposed rule (75 FR 37744, June 30, 2010) which corrected two dates referenced in the preamble to the proposed rule regarding the decision date for the FMP amendments and the end date for the public comment period.
- The Secretary's review of and decision to partially approve Amendments 20 and 21 on August 9, 2010.
- A proposed rule (75 FR 53380, August 31, 2010) which proposes for implementation on January 1, 2011, additional program details, including: measures applicable to gear switching for the IFQ program, observer programs, retention requirements, equipment requirements, catch monitors, catch weighing requirements, coop permits, coop agreement requirements, first receiver site licenses, QS accounts, vessel accounts, further tracking and monitoring components, and economic data collection requirements.

This final rule follows the June 10th proposed rule (75 FR 32994) and implements the following aspects of Amendments 20 and 21: (1) The allocations set forth under Amendment 21, and (2) procedures for initial issuance of permits, endorsements, QS, individual bycatch quota (IBQ), and catch history assignments under the IFQ and coop programs. In addition, this rule restructures the entire Pacific Coast groundfish regulations to more closely track the organization of the proposed

management measures and to make the total groundfish regulations more clear. The preamble to the proposed rule (75 FR 32994, June 10, 2010), called the "initial issuance" proposed rule because it proposed the requirements for initial issuance of new permits and endorsements for the trawl rationalization program, provided detailed information on the trawl rationalization program and a general overview on the provisions in Amendments 20 and 21, and is not fully repeated here.

Partial Approval of Amendments 20 and 21

NMFS partially approved Amendments 20 and 21 on August 9, 2010. Some minor provisions were disapproved in both Amendments 20 and 21. In Amendment 20, NMFS disapproved three provisions applicable to mothership coops (MS coops): (1) The requirement that MS coops file a coop contract with the Council and to make it available for public review [it must still be filed with NMFS]; (2) the requirement that MS coops file a letter from the Department of Justice; and (3) the requirement that coop agreements include a clause that at least a majority of the members are required to dissolve the coop. In Amendment 21, NMFS disapproved language that referred to the trawl, non-trawl allocations superseding limited entry, open access allocations. This partial disapproval of Amendment 21 does not affect implementation of the trawl rationalization program or the harvest specifications for 2011 because these allocations are currently suspended as a result of overfished species rebuilding plans. However, NMFS has requested the Council to go through the amendment process to make the FMP more clear on how the limited entry, open access allocations relate to the trawl, non-trawl allocations.

Description of Data Used for Initial Issuance Decisions

The allocation formulas in Amendment 20 and implemented by this final rule are based on vessel landings or processor receipt histories for the shoreside sector. As discussed in the preamble to the proposed rule, NMFS will use data from the Pacific Fisheries Information Network (PacFIN) of the Pacific States Marine Fisheries Commission (PSMFC) to derive these histories. Since 1974, PSMFC has worked actively with its member states and State and Federal fisheries agencies to improve the quality and timeliness of fisheries data collection, processing, and analysis, and to produce regionally coherent data summaries required for regional conservation and management purposes. PacFIN is a regional fisheries data network that is a joint Federal and State data collection and information management project; for more information *see http://pacfin.psmfc.org/index.php.* Although it addresses other species of fish and related uses, PacFIN has a strong focus on the informational needs of the Council. PacFIN first came on line in 1981 by providing the Council's Groundfish Management Team, originally called the Plan Team, with two reports and an associated retrieval system. One report displayed monthly catch by species by area and another report displayed monthly catch by species by data source, including foreign countries and joint-ventures.

The data in PacFIN include fish tickets, or state landings receipts, which are official documents required by the states of California, Oregon, and Washington, and logbook information. The information collected by the states undergoes substantial quality control and quality assurance processes before and after it is submitted to PacFIN. Since 1981, PacFIN data have provided the basis for numerous Federal and state fishery management actions, including harvest determinations necessary to take inseason action to maintain fishing levels within established quotas and fishery closures; analyses of major management restructuring programs such as the Council's groundfish limited entry system or the Federal groundfish trawl buyback program; assessments of salmon and groundfish fishery disaster programs including determining and verifying which fishermen and processors receive aid and at what level; and for scientific stock assessments and other scientific research carried out by states, NMFS, and academia. The states, the Council, and NMFS rely on the PacFIN information as the best scientific information available.

Similarly, the initial allocations for the at-sea coops rely on the observer data from NMFS' Northwest Fisheries Science Center's Pacific whiting observer data in NORPAC (NORPAC data), which also undergoes substantial quality control and quality assurance of the data. As with the PacFIN data, NMFS, the Council, and the states rely on the NORPAC data as the best scientific information available, and use it for multiple purposes, including quota monitoring and stock assessments.

In addition to the PacFIN and NORPAC quality control and quality assurance process, in early 2010, NMFS provided notice to all participants (basically all current owners of limited entry trawl permits and groundfish first receivers) to review their catch data for the purpose of ensuring that the QS and other calculations would be based on the best available data. As explained in more detail in the preamble to the proposed rule, NMFS provided instructions and Federal and state contact information for participants to use in requesting data and correcting data, and in support of this process, the PSMFC developed scripts for the States to use in providing fishermen and processors their data directly related to their business interests, specifically landings sold or purchased by the data requestor. A similar process was established for the NORPAC data. In order for participants to understand the calculations and application of the PacFIN and NORPAC information, the Council provided a series of tables with its preliminary estimates of QS, which were mailed to current permit owners, who were again notified of the importance of correcting the underlying data bases. These timely corrections through the states and ultimately to PacFIN were extremely important to assure that the data used by NMFS to determine the initial allocations are based on the best scientific information available because the correction process cannot be made by NMFS unilaterally and additional corrections or modifications to the underlying data would not be appropriate during the application process.

Use of 2011 Harvest Specifications and Management Measures

Some of the initial issuance formulas include calculations that depend on results of the 2011–2012 biennial harvest specifications and management measures process. In particular, calculations for initial issuance of QS for overfished species caught incidentally (Group 2 and Group 3 species) and for Pacific halibut IBQ require that the target species used as a basis for the calculation be converted to pounds using the 2011 OYs in order to determine the relative weighting between the target species. The use of 2011 OYs in these formulas presents several implementation issues. First, the harvest specifications and management measures will not be final until after the initial issuance of QS and IBQ for the trawl rationalization program is scheduled to occur. Second, while the Council motion for trawl rationalization and the final initial issuance rule published here refer to OYs, the Council has been proceeding with the adoption of an FMP amendment on a parallel track, Amendment 23, which would replace OYs with annual catch limits

(ACLs) (if Amendment 23 is adopted, NMFS intends to replace all references to OY in the initial issuance regulations with references to ACL). Because of these two issues, pre-filled applications and initial issuance of QS and IBQ will be provisional based on the projected 2011 ACLs recommended by the Council during the 2011–2012 harvest specifications and management measures process. Thus, the initial issuance of QS and IBQ may be adjusted if NMFS adopts different OYs or ACLs for 2011 and 2012 than the ACLs adopted by the Council at their June 2010 meeting.

Similarly, some of the QS allocation formulas depend upon allocations between whiting and non-whiting trips developed as part of the 2011–2012 harvest specifications and management measures process. As described at § 660.140(d)(8)(iv)(A)(*10*) of this final rule, canary rockfish, bocaccio, cowcod, yelloweye rockfish, minor shelf rockfish N. of 40°10′ N. lat., and minor shelf rockfish S. of 40°10′ N. lat., and minor slope rockfish S. of 40°10′ N. lat. were not allocated between whiting and non-whiting trips through Amendment 21, and instead will be decided through the harvest specifications and management measures process. Consistent with the Council's June 2010 motion on the harvest specifications and with Amendment 21, Table 1e of the harvest specifications and management measures will list all of the IFQ species and the percentages of QS for whiting trips versus non-whiting trips. The initial issuance of QS for these species will be provisional based on the allocations recommended by the Council at its June 2010 meeting, pending final decision of the Secretary on the 2011 harvest specifications and management measures.

Comments and Responses

NMFS solicited public comment on both Amendments 20 and 21 (75 FR 26702, May 12, 2010) and on the proposed rule (75 FR 32994, June 10, 2010). The comment period for these notices ended July 12, 2010. Because these notices are related, the responses to public comments in this section of the preamble address Amendments 20 and 21 and the proposed rule.

NMFS received 33 individualized letters of comments on the proposed rule and amendments, submitted by individuals or organizations and 385 form letters. The letters raised a variety of issues related to the proposed rule and Amendments 20 and 21.

Some commenters have incorporated by reference previous comments submitted during the Council process. Comments presented to the Council are part of the record and were considered by the Council during their deliberation. In reviewing the proposed rule and amendments, NMFS considered the record as a whole.

General Comments in Support and Opposed

Comment 1. NMFS received multiple comments expressing general support for the proposed rule and amendments.

Response. NMFS acknowledges these comments.

Comment 2. NMFS received multiple comments expressing general disagreement with the proposed rule and amendments.

Response. NMFS acknowledges these comments.

Comment 3. NMFS received multiple comments expressing support for the proposed rule and amendments and identifying expected benefits such as that it would help conservation of the resource, increase net economic benefits, provide stability, and reduce bycatch; stabilize the whiting fishery and traditional fisheries; give fishermen greater control over the resource; stabilize fishing communities; and eliminate regulatory discards.

Response. NMFS concurs that multiple benefits are anticipated as a result of Amendments 20 and 21 and the proposed rule. The analyses supporting the amendments and the rule describe both costs and benefits, and conclude that the costs are justified by the benefits.

Comment 4. NMFS received multiple comments objecting to the proposed rule and amendments on the grounds that they would not promote conservation or maximize economic benefit. Commenters stated that predicted benefits have been overstated and cited the example of the Orange Roughy. Commenters also cited studies that show catch share programs have hidden costs and adverse impacts on quality of life. Some commenters stated that the proposed rule and amendments would not meet the objectives of rationalization.

Response. The underlying analyses support the conclusions regarding the anticipated effects of these measures and the extent to which they meet their objectives. While we can learn from other fisheries around the world, every fishery is different. The 5 year review will give us a chance to assess whether the program is working as anticipated and what changes may need to be made.

Comment 5. NMFS received multiple comments objecting to the proposed rule and amendments due to general policy objections including to the use of quotas, the perception that the proposal serves the interests of a few against the interests of many, and objections to perceived redistribution of wealth and privatization of a public resource. In addition, NMFS received comments suggesting alternative management measures that commenters would prefer to see adopted such as owner on board requirements, IFQs for all three whiting sectors, and other approaches.

Response. The MSA expressly authorizes the use of Limited Access Privilege Programs (LAPPs) and vests the Council with responsibility for developing and identifying which management measures to recommend through its open public process. The Council considered a number of alternative management measures in the development of this program, inclusive of those suggested in public comments. Appendix A "Analysis of Components, Elements, and Options for the Individual Fishing Quota Alternative Trawl Individual Quota Components" of the final EIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery" documents these considerations in two sections. Under Section A–2, IFQ System Details, pages A–33 to A–397, for many of the program details, a description is provided of options considered but either not included or not analyzed further. Additionally, Section A–3 of Appendix A, pages A–402 to A–444, addressed a number of options, including: Adaptive Management; Halibut Individual Bycatch Quota; Program Duration (Fixed Term and Auctions); Gear Conversion; Regional Landing Zones; Community Fishing Associations; Owner on Board Provisions; and Sideboard Measures to Prevent Spillover (into other fisheries). Council rationale and decisions regarding which options were selected, and which were not, are described. NMFS has reviewed the FEIS's, the public comments, and the record as a whole and concludes that the decision is consistent with MSA and other applicable law.

Comment 6. NMFS received multiple comments praising the Council's process for development of the amendments for its transparency and fairness.

Response. NMFS agrees that the Council utilized a fair and transparent public process that included numerous public committee meetings and Council meetings, as described in pages 19–22 in the FEIS (detailed list of those meetings).

Comment 7: NMFS received some comments stating that the public process has been inadequate.

Response. NMFS disagrees. In addition to the Council process referenced above, the agency complied with the MSA requirement to have a public comment period on both amendments and the proposed rule for initial issuance, and the NEPA requirement to have a comment period on the draft environmental impact statement (DEIS). NMFS also intends to publish for public comment the proposed rule on the program components.

Comment 8. NMFS received multiple comments objecting to the proposed rule because it did not contain certain components such as the observer coverage requirements and tracking and monitoring requirements. One commenter added that the proposed rule's administrative provisions lack due process.

Response. NMFS published a proposed rule to implement program components on August 31, 2010 (75 FR 53380). Prior to publication in the **Federal Register,** both rules to implement the rationalization program have gone through substantial public review and comment by the Council, including several public meetings of the Council's Regulatory Deeming Workgroup. As described above, the Council and NMFS followed an open public process in developing and adopting the amendments and the implementing regulations.

Comment 9: Some commenters advocated partial approval for different elements of the program, such as disapproval of the shorebased section; approval of whiting components only; disapproval with respect to non-whiting groundfish.

Response. NMFS has reviewed the amendments in their entirety and, except for several minor provisions, has not identified a basis for partial approval.

Comment 10. One commenter stated that the trailing amendments burden the wrong people.

Response. These amendments are currently under development by the Council. When completed, they will be submitted to NMFS for agency review in conjunction with public comment periods. Members of the public should participate in the Council process to help design these amendments.

Comment 11. One commenter stated that the proposed rule and amendments should be disapproved due to unexplored alternatives and negative impacts.

Response. As described in the EIS, NMFS and the Council have explored a wide range of alternatives and analyzed the potential impacts. As stated in the responses to comments 19 and 34, the underlying analyses conclude that the negative impacts are justified by the anticipated benefits.

Comment 12. NMFS received multiple comments citing problems with the status quo.

Response. NMFS acknowledges this comment.

Comment 13. One commenter requested a workshop to explain the shoreside whiting allocation procedure.

Response. NMFS has developed outreach materials that are currently available at: *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Trawl-Program/index.cfm.* In addition, NMFS is planning a series of public workshops in September/October in California, Oregon and Idaho (session in Idaho during two evenings at the September Council meeting) at six locations to discuss the specifics of the program. These workshops are designed to address all aspects of the trawl rationalization program.

Comments Pertaining to Timing

Comment 14. Congressman Thompson submitted a comment requesting a delay issuing rules until fully briefed.

Response. The Congressman's staff has been briefed by NMFS on the provisions associated with the trawl rationalization program.

Comment 15. One commenter suggested not making this a permanent program, to keep some flexibility when stocks rebuild.

Response. The Council envisions a process whereby the program will adapt to changing circumstances. A major component of the program at the outset is the Adaptive Management Program (AMP), which sets aside 10 percent of the nonwhiting shoreside quota shares to address unforeseen impacts, beginning with year 3 of the program. Additionally, a comprehensive review of the program to evaluate effectiveness in relation to the original program goals and objectives is scheduled for year five of the program. Flexibility to adapt to changing circumstances was specifically acknowledged. On page 54 of the EIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery", it states "In taking this action, the Council acknowledged that work will have to continue to monitor the program and to make adjustments in response to program performance. Even prior to implementation, the Council will continue to work on provisions for Community Fishing Associations (CFAs) and an AMP. While there may be unintended and unanticipated consequences, there will be an opportunity to modify the program through a review process, and a data collection process will be implemented to support that review."

Comment 16. One commenter suggested a delay of the program until a referendum is conducted.

Response. The Council chose not to consider a referendum (vote by fishermen in support or disapproval) prior to moving forward. This program has been under development through the Council process for over five years, and ample opportunities have been provided for input into the design of the program. See response to comment 18 below for additional details on the public input process.

Comment 17. One commenter suggested the program should not be implemented because the fishermen are still experiencing negative effects and financial impacts from buyback.

Response. In 2003, approximately one-half of the West Coast Limited Entry Groundfish Trawl Fishery permits were retired as part of a voluntary government-backed loan and auction buyback scheme. Section 2.6.5 of the EIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery" describes broad level Council concerns and tradeoffs in choosing between status quo and trawl rationalization, and the buyback program was part of that discussion (page 53). The Council concluded that the trawl rationalization program addresses many of the difficult, time-consuming management problems it has struggled with under status quo. It is expected to provide a basic management framework that will provide the most benefits to the nation for the public resource, including: assigning personal accountability for the fisheries; providing opportunities for bycatch reduction; enhancing stock rebuilding through improved fishery information and full observer coverage; providing opportunities to maximize catch of targeted species while protecting species of concern; improving economic performance; helping to maintain community stability; improving safety; guarding against local stock depletion; and addressing unforeseen circumstances through an innovative adaptive management provision. The trawl rationalization program is a program that will help address conservation concerns and take a system that is not economically viable for many and turn it into one that will work for those who remain in the fishery after rationalization.

Comment 18. There were a number of public comments on timing and implementation of the trawl

rationalization program. The comments ranged from those wanting to implement the program as proposed, without delay, to comments stating their opposition to implementation generally, to the "incremental approach, and the lack of opportunity for public comment and short time frames for review.

Response. The public participation process involving the Council's deliberations is specifically identified in detail in Chapter 1 of the Final Environmental Impact Statement "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery, June 2010" on pages 15–18. Development and refinement of the alternatives leading to the Council's choice of a preferred alternative has taken more than five years, with numerous Council and committee meetings during the process. The Council's initial scoping and program development process began at a Council meeting in September, 2003. The EIS includes Table 1–1 on page 18, listing all of the Council committees associated with this subject matter. The EIS also includes Table 1–2, on pages 19–22, listing the meetings that have been held by the committees as well as Council meetings at which trawl rationalization or intersector allocation were discussed, with a brief description of the topics covered in each meeting.

At the agency level, NMFS has complied with the statutory requirements regarding public comment on the Amendments, the proposed initial issuance rule, and the DEIS. In addition, consistent with statutory requirements, NMFS will provide for public review and comment on the program components rule. NMFS believes that were adequate opportunities for public comment on proposed Amendments 20 and, the NEPA documents and the initial issuance rule for trawl rationalization. As for the incremental approach, NMFS has fully analyzed the program and made that analysis available to the public and used it in the decision on the Amendments. The Council agreed with the agency's approach to implement the Amendments through two rulemakings.

Comments on Program Costs

Comment 19. One commenter expressed concern about negative impacts on smaller boats, deckhands, and smaller ports, pointing out issues such as vessels in certain ports that will receive lower catch, but have increased costs, and the effects of fleet reduction on port infrastructure.

Response. While the trawl rationalization program would move the fishery toward some of its most important goals and objectives, in order for the program to realize those benefits, a large amount of consolidation would have to occur, resulting in fewer people employed in the fishery. The Council acknowledged and expressed concern about the expected consolidation and its impacts, and noted the need to attend to the potential for disproportionate impacts on some communities. There was also concern that the potential accumulation of wealth under the IFQ program should have corresponding levels of benefit for the nation, and that state implementation costs be addressed. The Council also expressed an interest in maintaining the character of the fleet and a diversified industry. Balancing the need for consolidation to generate adequate levels of benefit with the potential adverse impacts of consolidation was a major challenge. At the same time, continuation of status quo would have its own impacts, with both the buyback program and cumulative limits having caused significant consolidation in the fleet and a redistribution of vessels along the coast.

Because of the high degree of concern about impacts on communities and maintaining some sharing of benefits (both among harvesters and between harvesters, processors, and others dependent on the fishery) the Council made a number of tradeoffs in the trawl rationalization program that may prevent the program from reaching the full degree of economic efficiency that might otherwise be achievable through rationalization. For example, accumulation limits would help disperse fishery benefits, but would inhibit consolidation. Additionally, some QS was set aside for use in an AMP to address such objectives as community and processor stability, new entry, conservation, and other unidentified/unforeseen adverse consequences. A number of other measures were also considered as the Council struggled to find a balance among sectors, states, vessels, ports, conservation obligations, and its responsibility to try to develop a regime that maximizes economic benefits while simultaneously realizing, recognizing, and honoring the social effects of its decisions.

Consideration was also given to allocating QSs to communities and crew members. With respect to the Council consideration of CDQs, up to the very end of the Council's deliberations, communities expressed little or no interest in receiving an initial allocation of QSs. Therefore, the Council developed other mechanisms to address concerns about communities, including, but not limited to, the AMP, a two-year moratorium on QS transfers, a five-year review that includes a community advisory committee, accumulation limits and a two-year review of some of the limits, the opportunity for communities to receive an initial QS allocation by acquiring a trawl permit, and a trailing action on CFAs. With respect to crew members, an initial allocation is difficult because there is limited historic information on the identity of crew members who have fished on trawl vessels. It is the Council's hope that by providing highly divisible QSs and ensuring that other elements of the program design facilitate crew ownership of QS, that crew members who want to do so will be able to incrementally accumulate QSs.

In terms of impacts on small businesses, the trawl rationalization program is intended to increase net economic benefits, create economic stability, provide full utilization of the trawl sector allocation, consider environmental impacts, and promote conservation through individual accountability for catch and bycatch. The allocations of quota under the new program do not differ significantly from status quo allocations made biennially in terms of total allocations. However, instead of fleetwide quotas, there will now be individual allocations of quota shares and quota pounds to permit owners. Allocations of overfished species constrain all groundfish fishermen, for both large and small operations. In some cases, smaller operators may be constrained to a greater extent. This was recognized in development of the program, and operators are encouraged to work together cooperatively, through mechanisms like combining and sharing quota amounts. The program provides for leasing of additional quota as needed to facilitate operations.

The proposed action includes provisions that would have a beneficial impact on small entities. It would create a management program under which most recent participants in the Pacific Coast groundfish limited entry trawl fishery (many of which are small entities) would be eligible to continue participating in the fishery and under which the fishery itself would experience an increase in economic profitability. Small entities choosing to exit the fishery should receive financial compensation from selling their permit or share of the resource. To prevent a particular individual, corporation, or other entity from acquiring an excessive share of the total harvest privileges in the program, accumulation limits would restrict the amount of harvest privileges

that can be held, acquired, or used by individuals and vessels. In addition, for the shoreside sector of the fishery, an AMP was created to mitigate any adverse impacts, including impacts on small entities and communities that might result from the proposed action.

Comment 20. The Council has not adopted a methodology for a cost-recovery plan, as required by the MSA, and the cost to taxpayers and participants is too high.

Response. Information about program costs was included in the EIS and the RIR/IRFA. The Council took all of these factors into consideration in moving forward with a recommendation to implement the trawl rationalization program. The Council intends to develop a cost recovery plan through a trailing amendment. NMFS encourages public participation in both the Council and the Secretarial review process.

Comment 21. The costs to the government are too high and will divert funds from other conservation purposes.

Response. NMFS has taken the costs of implementing the amendments into consideration when approving them. To the extent allowed by the MSA, NMFS will recover the agency costs of management, data collection and analysis, and enforcement activities from the fishing industry when a cost-recovery plan is implemented.

Comment 22. The program costs to fishermen, including the costs of entering the fishery and the costs of observers and monitoring, are too high.

Response. Analyses indicate that the program benefits will outweigh the program costs. The EIS anticipates that the value of the fishery will increase through a variety of mechanisms, including increased efficiency of existing vessels, the transfer of effort to the most efficient vessels, and increased retention of target species. The program includes opportunities for adaptive management if actual impacts differ from projected impacts. In addition, the Council made quota shares highly divisible to increase the ability of crew members and others to buy into the fishery. To aid the fishing industry during the transition to a rationalized fishery, the agency has announced its intent, subject to available Federal funding, to cover a portion of the initial cost of hiring observers and catch monitors. As stated by the agency, participants would initially be responsible for 10 percent of the cost of hiring observers and catch monitors, with that amount increased every year so that by 2014, the industry would be responsible for 100 percent of the cost of hiring the observers and catch monitors.

Comments on the Observer Program

Comment 23. One commenter stated that observer rules need to change for trawl and small boats to reflect the "vastly different bycatch which occurs when mistakes are made."

Response. The final design features of the observer program and applicability to both large and small vessels were evaluated thoroughly through development of these program components, and ultimately led to the Council decision to require 100 percent observations for those fishing vessels that continue trawling under this rationalization program. By "mistakes" we assume the commenter meant situations where high bycatch of overfished species events occur, and that larger vessels may have potentially greater negative impacts. While this may be true, vessels that participate in the shorebased IFQ program will be held individually accountable for any bycatch of overfished species. In the at-sea program, there are sector specific bycatch caps that will remain in place. These bycatch caps are limits, and can have the effect of closing sectors of the trawl industry when reached. Conservation measures in order to facilitate the rebuilding of overfished species were specific components of the trawl rationalization program.

Comment 24. Public comments expressed concern that the cost of the observer program disadvantages smaller operators; that IFQs, even with observers, increase the risk of high-grading; that observer costs are generally too high; and that observer program doesn't enhance conservation, just total catch accounting.

Response. Appendix H to the EIS for Amendment 20, the "Regulatory Impact Review and Initial Regulatory Flexibility Analysis, (RIR/IRFA)" addresses a number of these issues. As noted in the RIR/IRFA, the cost estimates are preliminary; the direct observer and monitoring costs depend heavily on operational decisions by industry (both fishing vessels and processors) to reduce costs. In addition, it is impossible to predict how much consolidation will occur, especially in the initial years of program implementation. For these reasons, the RIR/IRFA makes broad assumptions about industry behavior to frame the range of costs. At one extreme, annual observer costs could rise to $18 million if a 100-vessel fleet needed observers 365 days a year at a cost of $500 per day. However, as stated at numerous Council meetings, the industry could reduce costs by voluntary limits on the number of vessels that can be at sea at any one time or agreements to share observer coverage between multiple vessels. Observer and other costs could decline as the number of participating vessels decline, when the fleet consolidates because of the program. As discussed in the RIR/IRFA, the Lian analysis (Lian *et al.,* 2008) indicates an expectation that there will be a fleet of 50 to 60 vessels of a size of 60 to 70 feet after rationalization. If this were to happen, one would expect the costs to be significantly lower and approximately half of the estimated costs for the current fleet.

As stated in the response to comments on the draft EIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery," analysis indicates that the program benefits will outweigh the program costs. For those participants who feel the costs are too much of a burden, they have the option of selling or leasing their QS. In addition, as stated at Council meetings, vessels, both large and small, are encouraged to coordinate with each other and with the observer providers to reduce costs and provide more efficiency.

In terms of the comment that the risk of high-grading (sorting to retain more marketable fish) will be increased under and IFQ system, NMFS believes that the exact opposite will occur under total catch accounting. With 100 percent mandated observer coverage, all catch will be accounted for, and individuals will be held responsible for their behavior. This structure leads to the opposite conclusion regarding high-grading.

One commenter questioned what conservation goals the observer program is achieving other than total catch accounting, citing lack of economic benefits and lack of individual stability. NMFS disagrees with this perspective. Conservation of the fishery resources and rebuilding of overfished species are the main reasons why the Council has recommended a program with total catch accounting. Individuals will be held responsible for conducting harvests consistent with their QS and QP allocated. To the extent that individuals may need additional QS and QP to conduct their operations, the options of leasing of QS and purchasing QS and QP through time should lead to economic stability for those individuals whom choose to remain as active participants in the trawl rationalization program.

Comments on Initial Allocation of Catch Shares

a. General Comments

Comment 25. One commenter argued that shore-based processors should not receive 20 percent of the quota because that sector has too much control over the fishing fleet. Another commenter expressed support for the proposed allocation of quota to processors.

Response. The Council recommended that 20 percent of the shoreside harvest allocation of whiting would be initially allocated to shoreside processors, based on those processors' history. The Council concluded, and NMFS agrees, that this initial allocation was fair and equitable, thus consistent with section 303A(c)(5) of the MSA, which requires the Council to "ensure fair and equitable allocations, including consideration of (i) current and historical harvests; (ii) employment in the harvesting and processing sectors; (iii) investments in, and dependence upon, the fishery; and (iv) the current and historical participation of fishing communities." As explained in Section A–2.1.1a (Appendix A) of the EIS, NMFS and the Council took the statutory factors into account and determined that, among the various alternatives under consideration, the initial allocation of whiting harvesting privileges as a 20/80 percent split to processors and current permit holders was fair and equitable.

The issue of reduced competition and anticompetitive impacts of allocating quota to processors was analyzed extensively in the EIS and was discussed and considered carefully by the Council. During development of the trawl rationalization program, the NOAA Office of General Counsel (GC) had informal consultations with the Antitrust Division of the U.S. Department of Justice. Based on those informal consultations and analysis of relevant facts and applicable legal rules, NOAA GC submitted a letter to the Council dated October 11, 2008, in which the antitrust savings clause in Section 303A of the MSA was noted and advised "that any fishery participants that are uncertain about the legality under the antitrust laws of the United States of any of their anticipated activities should consult legal counsel prior to commencing those activities." The NOAA GC letter provided citations to guidance or resource documents available on the Federal Trade Commission Web site. The NOAA GC letter is available on the Pacific Council's Web site at *http://www.pcouncil.org/bb/2008/1108/F3d_SUP_GC_1108.pdf.*

Comment 26. It is unfair that permits that have not made payments for the buyback program will receive an initial allocation.

Response. All permits will receive an initial allocation of non-overfished species, based on the equal division of QS associated with the history of the permits bought back plus an amount of QS related to the actual 1994–2003 deliveries by the permit. The designation of an equal allocation amount based on the history of the buyback permits was viewed as an equitable way to help resolve the initial allocation issue, ensuring that the smaller producing harvesters were more likely to receive an initial allocation adequate to cover their needs while the larger producing harvesters, more likely to be better financed, might have to purchase more QS to maintain their recent harvest levels. NMFS and the Council are aware that this will include some permits that have not made landings since the inception of the buyback loan payback program (December 2003). The Council recommended, and NMFS is implementing, what it believes to be the best balance among a variety of possible allocation approaches.

Comment 27. The quota allocations do not support current fishing practices. In order to keep fishing, some fishermen will have to purchase additional quota of some species while receiving more than needed of other species. In order for high producers to fish all their boats, they will have to buy more quota.

Response. Chapter 4 the Amendment 20 EIS described in detail the anticipated impacts of the trawl rationalization program on the various sectors of the fishing industry. NMFS acknowledges that, depending on the allocation formula, some permit holders and catcher vessels may receive a greater or lesser amount of allowable catch than under status quo conditions. In addition, they may receive a different mix of species allocated as quota compared to the mix of species they currently harvest. In the long run, however, transfers of those fishing privileges should occur in a way that is more optimal to individual harvesters, and that transfer will act as a cost to those that purchase the shares and as a benefit to those that sell them.

The Council anticipates that consolidation is likely to occur in the nonwhiting sector that will trend toward the most efficient vessels. The fleet reduction and cost efficiency model shows the consolidation that may occur could diminish the number of vessels by 50 to 66 percent.

Comment 28. One comment criticizes the eligibility criteria for initial allocations as too narrowly focused, not providing for captains and crew due to a lack of data.

Response. Although a lack of data was one factor in the decision not to extend eligibility to receive an initial QS allocation, there were several other factors considered. The Council enumerates several of the reasons behind the decision to allocate to permits and processors in A–14 and A–15 of the Amendment 20 EIS, Appendix A.

Direct allocation to skippers and crewmembers was discussed and the costs and complexity of identifying vessel workers and determining whether they participated on vessels while those vessels were fishing in the groundfish trawl fishery were noted. Complexities include the fact that crew member-licensing requirements vary between states and in some cases crewmembers are not required to have permits. Multiple alternative sources of information would have to be considered in determining crew member eligibility for an initial allocation.

With respect to relative impacts of an initial QS allocation on different classes of fishery participants, it was noted that for a crew member dislocated because of the IFQ program there would likely be a greater number of economic alternatives available, as compared to a fishing permit or vessel. Additionally, since crew members move between fishing operations, an allocation to crew could reduce the initial allocation available to a harvester in comparison with its recent operation levels, leaving fixed capital assets without significant production opportunities. While harvesters receiving less than their needs would be able to acquire additional QS through purchase, the need to make such purchases would likely mean a greater disruption during initial implementation of the program.

b. Allocation Formula in General

Comment 29. Several commenters addressed the qualifying history period selected by the Council for both whiting and nonwhiting non-overfished species. One commenter criticized the period as "arbitrary." Others expressed a belief that MSA "recency" requirements are not being met because the qualifying period of 1994–2003 is too out of date. One commenter suggested increasing emphasis on recent years by moving the start of the allocation period from 1994 to 1997 and the end from 2003 to 2006 (and using 2003 through 2006 for the allocation period for overfished species), recognizing a new control date

of January 1, 2007. Further comments on the qualifying history period include:

- It rewards the inefficiencies, inadequate infrastructure and lack of investment that characterized the qualifying year window. Allocations of nonwhiting groundfish to inactive participants in the fishery harm active participants.
- The allocation period includes years with inaccurate species composition and discard data that will skew the picture of the true state of nature.
- More current data is available and critically important.
- There have been dramatic changes in the whiting fishery starting in 2001, and which have been especially significant after 2003.

Response. Similar comments were received during the public comment period on the draft EIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery." Parts of the detailed response to those comments bears repeating as directly relevant and responsive to the comments received recently. In recommending initial allocations, the Council is required to consider several factors including current harvests and historic harvests. *See* 16 U.S.C. 1853a(c)(5)(A); see also 16 U.S.C. 1853(b)(6). Appendix A to the Amendment 20 EIS includes a review of the Council's consideration of all of these factors, including a discussion of the rationale for considering a variety of dates for the allocation period, including start dates of 1994 and each year from 1997 through 2001. The allocation dates selected represent a balance between emphasis on more recent history and considering the historic fishing opportunities which may have had a determining effect on the levels of capital investment by individual firms. The start date of 1994 was selected because 1994 was the first year of the license limitation program. The decision to utilize a long allocation period was deliberate; it is likely that capital investment is based on longer term opportunity and that capital persists after contractions in the fishery such as that reflected by the disaster declaration in 2000. On this basis it is appropriate to give some weight to landings from the 1990s. Because more fish was taken during that time period, the relative pounds approach (measuring catch history as a vessel's share of total catch) reduces the emphasis on a pound of fish caught in the 1990s as compared to a pound of fish caught after 2000. While some argue that fishermen who caught fish in the mid-1990s caused the disaster and should not receive QS for that fish, the catch taken in the mid-1990s was in line with what was allowed under the regulations and believed to be sustainable at the time.

The Council selected the ending year of 2003 because that year corresponds to the previously announced control date for the fishery. The Council adopted and published the control date of November 6, 2003 (see 69 FR 1563 (January 9, 2004); 70 FR 29713 (May 24, 2005). The Council believes it is very important that the 2003 control date be used in order to prevent future fishery disruptions. The purpose of announcing a control date in advance of developing a LAPP is to discourage entry into a fishery and increased harvest while the Council goes through the process of developing the program details, which can be a lengthy exercise. If the Council develops a pattern of announcing and abandoning control dates, then the announcement of control dates will become a signal to harvesters to intensify their efforts to catch fish in order to increase their odds of qualifying for greater initial allocations. Such a response would be disruptive to fisheries and exacerbate the challenges of meeting conservation objectives. Additionally, abandoning the original control date would reduce the perceived fairness of the program by rewarding those who fished speculatively after the control date (fishing primarily on the chance that the control date would be abandoned and they would acquire more quota as a result of their post control date fishing) at the expense of those who heeded the control date. In balancing the importance of the reliable control date, and the importance of considering historic participation, against the potential for some disruption of using a time period ending several years prior to the start of the program, the Council found that it was preferable to use the 2003 control date.

The public was given significant notice of the use of November 6, 2003, as a potential control date. The notice was originally published in the **Federal Register** on January 9, 2004, and an additional notice was published on May 24, 2005. Both notices were posted on the Council's Web site, with an explanation of the possible consequences of the control date. In addition, starting in October 2003, The Council and its Trawl Individual Quota Committee held numerous public meetings and discussions at Council meetings on the trawl rationalization program including the use of the control date and the alternate qualifying periods.

The Council disagrees with the commenter's assertion that Amendment 15 to the Groundfish management plan created a new control date of January 1, 2007, that should be controlling here. Nowhere does Amendment 15 address the 2003 control date or purport to change the qualifying period for the groundfish trawl program. Amendment 15 was a limited interim action for the non-Tribal whiting fishery issued in anticipation of the trawl rationalization that in no way attempted to address matters beyond its limited scope. Moreover, the Council has explicitly stated that vessels that qualified for Pacific whiting fishery participation under Amendment 15 were not guaranteed future participation or inclusion in the Pacific whiting fishery under the provisions of Amendment 20. *See http://www.pcouncil.org/groundfish/fishery-management-plan/fmp-amendment-15.*

With regards to "recency" concerns, the Council does take into account recent participation patterns in the fishery by allocating QS to current permit holders rather than to individuals or vessels that originally caught the fish. In this way, during the extensive period required to develop a program of this kind, entry and exit can occur and QS can be allocated in a less disruptive manner than would occur if the allocations went to the individuals who caught the fish historically.

While the overfished species allocation formula includes logbooks for 2003–2006, these records are used to determine the fishing pattern, not the overall level of harvest activity. The Council's methodology for allocating overfished species is significantly different than the methodology for allocating target catch. The 1994–2003 period is still used to determine the target species allocation, and the harvest patterns from the 2003–2006 logbooks are used to determine the amount of overfished species an entity would need to take its target species. In this fashion, more recent information for the fishery is used without rewarding post control date increases in effort. The 1994–2003 harvest patterns were not used to determine a target species QS recipient's need for overfished species QS. This is because of the substantial changes in fishing patterns which were induced by the determination that some species were overfished and the implementation of the rockfish conservation areas (RCAs) and because the RCAs will remain in place after the trawl rationalization system is put into place. Therefore the Council considered that an estimate of likely patterns of activity should be based on a period of time when the RCAs were in place. The RCAs were not in place for most of the

1994–2003 period but were in place for 2003–2006.

One commenter made the point that the initial allocation, because it is different from the current distribution of harvest, may reward inefficiencies and reverse recent conservation gains, including reductions in bycatch. While it is possible that the initial allocations may not go to the most efficient and innovative harvesters, because of the need to draw a balance between a reliable control date and disruption, fairness and equity, recent participation and historic participation issues, it is expected that society will benefit over the long haul as the quota is transferred to use by the most efficient harvesters as the program progresses. Independent of the initial allocation, the QS system is expected to provide substantial incentive for vessels to avoid bycatch. One hundred percent observer coverage will ensure full individual vessel accountability. These individual vessel incentives are expected to preserve gains made in bycatch avoidance in recent years.

The same commenter also made the point that the discard and catch composition data quality from those years is poor and will skew the picture of the true state of nature. The allocation formula does not use discard data from the mid-1990s. With respect to catch composition data, it has been accepted that these data may skew the mix of species any particular permit would receive away from its actual catch, simply because the catch composition data was designed to estimate catch at the fleet level rather than the individual vessel level. Catch composition data has the same problem whether it is from the mid-1990s or early 2000s. While the catch composition data might be of better quality in more recent years, the Council felt that it was more important that the control date and longer allocation period be maintained and worth the tradeoff entailed in relying on older catch composition data.

Comment 30. A comment was submitted on behalf of owners and operators of a harvesting vessel, in support generally of Amendments 20 and 21 for improving management of groundfish but noting that the program improperly excludes valid "B" Permit groundfish fishing history in the initial allocation process. The commenter submitted multiple exhibits in support of their comments.

Response. NMFS has reviewed the comments and the supporting exhibits. The commenter's position is that the prior permit owner's assignment in 2004 of all fishing history to the current vessel/permit owner included the groundfish "B" Permit fishing history from 1994, 1995 and 1996, and therefore the program improperly excludes valid "B" Permit groundfish fishing history in the initial allocation process. Further, the comment notes that nothing in Amendment 20 or 21 precludes inclusion of that "B" Permit history in the total catch history owned by the current permit owner. NMFS disagrees, for the following reasons.

Amendment 20 specifies that the initial allocation will be made to the current owner of groundfish limited entry permits. These permits have been in place since 1994, as part of the implementation of Amendment 6, the groundfish limited entry program. Limited entry permits with "A" and "B" endorsements were implemented as part of the groundfish limited entry program (57 FR 54001–01, November 16, 1992). The program established permits with "A" endorsements, which were transferable, for trawl vessels that met specific minimum landing requirements. It also established permits with "B" endorsements, which were not transferable, and which expired upon transfer to a different owner, or at the end of 1996 (whichever occurred first). These "B" endorsements were intended for vessels that had some low level of activity in the fishery prior to August 1, 1988, and under the current owner, but did not meet the landing requirements for vessels receiving "A" endorsements. The "B" endorsements provided a three-year adjustment period during which the vessel owners could either make arrangements to stay in the fishery through the purchase of an existing "A" endorsed permit or stop participating in the limited entry fishery. NMFS accordingly removed the "B" endorsement provisions from the regulation after the "B" endorsements had expired; in addition to the "A" endorsement, the only endorsements on limited entry permits are now gear endorsements (trawl, longline, pot or trap) and size endorsements (*see* 66 FR 29729, June 1, 2001, and 50 CFR 660.333).

Consistent with this background, the current limited entry permits are "A" endorsed only and have no relationship to "B" endorsed permits, which expired at the end of 1996. The current limited entry permits in the trawl fishery with trawl endorsements originally, under Amendment 6, were called limited entry permits with "A" endorsements. When the "B" permits expired, NMFS revised the regulations to refer to limited entry permits with trawl endorsements. These are the limited entry permits referred to in the trawl rationalization program and they and their landings history, are distinct from the permits with "B" endorsements that are no longer in existence.

NMFS recognizes that the supporting exhibits submitted by the commenter show that for purposes of the American Fisheries Act (AFA), the NMFS, Alaska Region, approved the request that the F/V Pacific Challenger be named as a replacement vessel for the F/V Amber Dawn. However, this decision for the AFA fisheries is separate from and has no effect on the relation to the Pacific Coast Groundfish permits and the trawl rationalization fishery.

c. Allocation of Bycatch/Overfished Species IFQ

Comment 31. Some commenters stated that the program has been compromised by a Council recommendation to not allocate overfished species in the same manner as all other species, but to instead use a method based on a constrained fleet outside of the time frame which the rest of the program is based. Commenters state that during the years used for the overfished species allocation, responsible operators made efforts to minimize bycatch of overfished species. They further state that this punishes those who attempted to fish sustainably and rewards those who maximized their landings in a manner contrary to the conservation goals of the Magnuson-Stevens Act.

Response. The Council considered and rejected the option of allocating overfished species for nonwhiting trips using the same method as for other nonwhiting IFQ species as not appropriate under the circumstances. In particular, the relative weighting approach, by which landings for a year are measured as a percent of all landings for the year and species, would have given a particularly high amount of credit for pounds caught during the rebuilding period. Additionally, QS would have been allocated to those who targeted some of the overfished species in the mid-1990s (before they were declared overfished) rather than to those who need such QS to access current target species. Accordingly, the Council rejected the approach of using the same allocation formula for overfished species as for nonwhiting target species based on the desire to not reward bycatch during the rebuilding period and in order to provide QS to those who would need it to cover incidental catch taken with their target species QS allocation.

Regarding the comment that overfished species years selected were arbitrary, the Council's methodology for allocating overfished species is

significantly different than the methodology for allocating target catch. The 1994–2003 period is still used to determine the target species allocation, and the harvest patterns from the 2003–2006 logbooks are used to determine the amount of overfished species an entity would need to take its target species. In this fashion, more recent information for the fishery is used without rewarding post control date increases in effort. The 1994–2003 harvest patterns were not used to determine a target species QS recipients need for overfished species QS. This is because of the substantial changes in fishing patterns which were induced by the determination that some species were overfished and the implementation of the RCAs and because the RCAs will remain in place after the trawl rationalization system is put into place. Therefore the Council considered that an estimate of likely patterns of activity should be based on a period of time when the RCAs were in place. The RCAs were not in place for most of the 1994–2003 period but were in place for 2003–2006, further supporting the conclusion to use this period for the allocation of overfished species.

Comment 32. One comment expressed concern over the impact of the allocation formulas on Fort Bragg fishermen.

Response. After the adoption of its final preferred alternative, the Council heard public comment with regard to concerns of the owners of Fort Bragg trawl vessels over the initial allocation of QS for constraining overfished species. The Council considered such testimony and subsequently revised its initial final preferred alternative so that all permits would receive an allocation of canary rockfish from the equal division of the pool of QS associated with the catch history of the buyback permits. The Council declined to revise the FPA for constraining overfished species other than canary.

Comment 33. A comment stated that establishing IFQs for overfished species will not solve problems of overfishing. IFQs will be transferrable and distributed freely in the initial allocation to those who are deemed to have the greatest need due to catch history. IFQs are presumed to incentivize responsible fishing due to the cost of purchasing additional quota. Because the value of IFQs is likely to skyrocket due to high demand for a scarce resource, this system favors larger operations with greater access to capital.

Response. The Council recommended its preferred alternative in response to the identified need for bycatch control and the need for conservation through its focus on individual accountability for catch and bycatch. At present, total mortality for all species is measured and controlled by monitoring total landings and sampling 20 percent of the trawl trips to estimate bycatch rates (discard rates) that are then applied to landings to develop an estimate of total catch and mortality. With this approach, there is substantially less certainty about total catch and mortality than there are total landings. Further, while agencies are able to regulate total landings in the nonwhiting trawl fishery through two-month cumulative limit periods and influence bycatch rates with catch area restrictions and gear restrictions, they face difficulties in managing for total catch in the nonwhiting portion of the trawl fishery. The fishery is a mixed stock fishery. When, despite best regulatory efforts, a fisherman encounters amounts of certain species that are in excess of the two-month cumulative landing limits, they may continue to fish for other target species, discarding the species for which they have reached their limit. The current monitoring system was designed to provide fleetwide total catch estimates over the course of a year. It was not intended as a tool for managing individual vessel discards in the nonwhiting trawl fishery or for providing for individual accountability.

With 100-percent observer coverage, NMFS and the Council will be able to better monitor total mortality of all groundfish species. Better mortality estimates will improve both stock assessments and the ability to keep catch below the harvest limits developed based on those assessments, substantially contributing to conservation goals. Additionally, rationalization, based on a system that relies on transferable quotas, enhances the incentive to avoid bycatch. Without transferable quota, the incentive is to reduce bycatch only to the point where all targeted species can be harvested. With transferable quotas, fishermen who can lower bycatch rates even further have a potential opportunity to sell their unused quota to others, thus benefitting from reducing their bycatch rate to a level lower than what was necessary for them to take their own available target harvest.

Finally, this is a forward-looking management program. It is expected to improve the economics of the overall trawl fishery. Economic analysis of the fishery indicates that the average nonwhiting shoreside fisherman is either breaking even or losing money (not fully covering its capital costs). Fishing businesses that don't receive an initial allocation may participate either by acquiring QP each year from quota shareholders or acquiring long-term security through the purchase of QS. Those fishing businesses that do not choose to acquire QS will have to compete each year in the market for QP. Their ability to purchase QP will depend on their ability to be more efficient than other fishing businesses, and thereby more able to offer a higher price for the QP. Fishing businesses that choose to do so will be able to increase the security of their investments by acquiring QS.

Comments on Quota Ownership and Transfer

Comment 34. Commenters expressed concern that the average fisherman will not be able to afford to participate and that this will lead to increased consolidation and leave many ports no longer viable.

Response. NMFS recognizes the likelihood of increased consolidation and negative impacts on some communities. The RIR/IRFA and FEIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery" analyze these impacts and consider them in the context of other costs and benefits expected to result from this program. Based on these analyses, the program is expected to achieve net benefits to the nation.

It is recognized that fleet consolidation will have an impact on communities; however, other measures are provided to mitigate impacts on communities (see Section 10.1.5 of the FEIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery"). Under an IFQ program, communities will have opportunities to plan and control their destiny through the acquisition of QS, if they so desire. Furthermore, the Council may use part or all of the 10 percent quota set aside in the AMP to mitigate impacts on communities. The Council will also be considering a trailing amendment to allow community fishing associations to acquire quota, potentially in excess of control limits.

While this rule and amendments may have negative impacts on certain communities and participants, viewing the fishery as a whole, the rule and amendments are expected to improve the economics of the overall trawl fishery.

The Council recognizes that for new entrants, the cost of acquiring individual quota will add to the expense of entering the fishery. An increase in profits (before taking into account the cost of the quota and normal profits after taking into account the cost of the quota) and stability is expected to

compensate for the increase in costs. Under status quo management, the value of a new entrant's capital investment would be at greater risk because of the potential erosion of fishing opportunity through the increased effort of others. With respect to the capital badly needed for infrastructure and vessel improvements, this is a condition that has occurred under status quo management. There is no reason to believe that continuation of status quo would improve the situation; however, under IFQs, greater economic stability may facilitate a safer fleet with a stronger infrastructure. Section A–2.2.2.d of Appendix A to the EIS identifies ways in which the Council considered the needs of new entrants.

With respect to new entrants working their way up from the bottom, the QS system provides an opportunity for individuals such as crew members to accumulate capital. For example, crew members might invest in some QS, which is highly divisible, and sell their QP to the vessel each year, creating a stream of income which may be accumulated to allow them to purchase more QS and eventually a vessel.

Comment 35. Commenters stated that there should be greater restrictions on ownership and transfer, such as requirements for an owner on board, maximum lease percentages, and control at the community level. Some commenters also stated that captains and crew can be disadvantaged when employed on vessels with leased quota as opposed to when fishing on vessels run by quota owners. One commenter stated that the need to recoup the price of the quota lease makes it more difficult for vessels fishing leased quota to be profitable and provides an example from the Canadian halibut fishery.

Response. As noted above, with respect to new entrants working their way up from the bottom, the QS system provides an opportunity for individuals such as crew members to accumulate capital. For example, crew members might invest in some QS, which is highly divisible, and sell their QP to the vessel each year, creating a stream of income. In addition, the AMP may potentially be used for aiding new entrants into the fishery; the Council will be addressing the AMP program during the first two years of the rationalization program.

The Council considered requiring an owner on board, but rejected that alternative due to: The impracticality of such a provision in a multispecies fishery which would rely heavily on quota trading to match quota mix to catch mix; the substantial increase in tracking and monitoring costs that such a provision would entail; and the fact that the owner-operator mode of organization is less dominant in the trawl fleet than in other, smaller boat, fisheries.

The Council recommended accumulation limits that reflect the current level of concentration in the fleet, as reflected by the harvest activity of individual permits. After consideration of a variety of approaches, the Council recommended control at levels more constraining than necessary to address concerns related to the effective functioning of QS markets. This was done in order to achieve certain objectives related to the distribution of QS ownership.

Accumulation limits for IFQ fisheries range widely depending on the needs and circumstances of any particular fishery. The U.S. surf clam and Wreckfish IFQ programs have no limits and rely on antitrust laws to ensure excessive control does not occur. Limits in the New Zealand system range from 10 to 40 percent, and limits in Iceland's IFQ system run from 12 to 35 percent. Nova Scotia has a limit of 2 percent. Limits in the halibut and sablefish IFQ fisheries in Alaska are set at 0.5 and 1.0 percent. The method used by the Council to develop the QS control limits for this program considered experiences with these approaches in other programs and is explained in the FEIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery."

The Council's recommended limits are intended to facilitate fleet consolidation and increase efficiency.

Comment 36: Two commenters supported substantially rewriting the ownership and control rules in proposed § 660.140(d)(4)(iii).

Response: The specific comments are summarized and addressed below.

a. Under proposed § 660.140(d)(4)(iii)(B), "any person who serves in an executive or management capacity of a corporate entity that may own quota shares is considered to have control, even though that person may have not actual control over the use of the company's quota shares." A similar situation exists with (iii)(F), where there is implied control as a coincidental circumstance of employment with a particular entity.

The commenters provided an example where the Vice President of Human Resources of Company X would be considered to have control even though she has no control over fishing activities, and such Vice President is also a member of a family corporation that owns a boat that has quota shares. The commenters ask who would be required to divest shares in excess of the accumulation limits, if the total of the "two completely separate and distinct quota share holding exceeds the accumulation limits, or whether the Vice President would be required to resign her position.

NMFS does not agree that § 660.140(d)(4)(iii)(B) needs revision. The commenters did not provide sufficient facts to enable NMFS to determine whether the Vice President's position provides her the type and scope of authority described in that section of the regulations. It did not provide sufficient information to determine her share of the family corporation to determine how much of that corporation's quota share she has attributed to her for ownership purposes. It also does not describe the amount of control she has within the family corporation or to determine whether she should be attributed with control over the entire family share. A determination of whether this person would exceed any control limit would be based on a variety of factors, including the details of the Vice President's position with Company X, the share of the family corporation she has, and her position in the structure of the family corporation. As to divestiture when a limit is exceeded, the parties involved would need to make the decision on how to divest or otherwise come into compliance with the limits.

b. Proposed § 660.140(d)(4)(iii)(D) and (E) "could eliminate the ability of a quota share/quota pound owner to obtain necessary financing for fishing operations. Under these sub-clauses, a bank or other financial institution would be unable to provide loans using quota shares/pounds as collateral, a common practice in limited access fisheries. A quota share brokerage would be unable to take title or otherwise encumber quota shares/pounds beyond the accumulation limits, even if a fisherman requested the broker do so."

NMFS does not intend that these sections apply to banks or financial institutions, unless the financial documents specify control beyond normal business agreements. NMFS has modified the regulations accordingly. As for quota share brokerages, each transaction must comply with the accumulation or control limits; however, compliance does not prevent brokerage transactions. Compliance would be based on the facts of the transactions.

c. Proposed § 660.140(d)(4)(iii)(D) and (E), "along with sub-clause (iii)(H), could prevent the formation of

cooperative entities among fishermen to maximize efficiencies, reduce observer costs, and increase revenues—all activities that are assumed to be benefits and expected outcomes of Amendment 20."

In response, NMFS notes that participants in any cooperative arrangement need to comply with the accumulation limits; it will be important that the terms of the cooperative arrangement, or any other arrangement, be carefully drafted and implemented such that the accumulation limits are not exceeded. The Council has stated its intent to consider a type of cooperative arrangement for communities (community fishing associations or CFAs) in the future as a trailing amendment—proponents of CFAs have suggested the need for modifications to the accumulation limits under certain circumstances.

NMFS acknowledges that participants in the fishery may be concerned about whether potential actions would comply with the accumulation limits. It is the responsibility of the participants to comply with the regulations; if participants have questions about potential actions, NMFS encourages those participants to provide the agency with specific facts and questions prior to entering into agreements or taking action in order to understand NMFS's interpretation of the potential facts in relation to the regulation.

Comment 37. Commenters stated that factors such as the cost of quota, unrestricted leasing, and no owner-on-board requirement will increase involvement of those not currently involved in fishing to the detriment of fishing families and communities.

Response. This issue, as well as eligibility-to-own rules, and other relevant issues will be reviewed during the 5-year review. The proposed program components rule includes a comprehensive mandatory economic data collection program that is specifically designed to provide socioeconomic data that will assist the Council in their scheduled 5-year review of the program. NMFS has published a final rule (75 FR 4684, January 29, 2010) to collect information needed to track ownership patterns. This issue, as well as eligibility-to-own rules, and other relevant issues will be reviewed during the 5-year review.

Comment 38. A commenter expressed concern that the cost of quota shares will lead to dominance by larger scale participants resulting in a loss of political voice by smaller scale fishermen affecting the Council's ability to change or revoke catch shares in the future.

Response. The Council will conduct a comprehensive review no later than five years after the implementation of the program to determine whether the program has achieved the goals and objectives of Amendment 20. Based on this review, which will be during the public Council process, the Council may recommend a variety of actions, including dissolution of the program, revocation of all or part of the quota shares, or other fundamental changes to the program.

Comment 39. Several commenters objected to the ownership and transfer provisions for the following reasons: Concerns over consolidation that may leave ports no longer viable; negative effects on captains and crew when employed on vessels with leased quota; concerns about loss of opportunity to comment in the process; auctions and rent caps should have been considered; costs of quota and unrestricted leasing will increase involvement of those currently not participating; and the need for owner on board requirements.

Response. With respect to the concern that excessive consolidation will leave some ports no longer viable, and that this is inconsistent with MSA national standards, as stated in the FEIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery," Chapter 10, page 672, National Standard 8 states that "Conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to: (1) Provide for the sustained participation of such communities; and (2) To the extent practicable, minimize adverse economic impacts on such communities."

Chapter 4.14 of the analysis describes anticipated impacts on communities and acknowledges a possibly profound impact on communities that depend on trawling. This is due to the nature of rationalization which results in fewer fishery participants and likely geographic shifts. The goal of attaining a sustainable fishery as a whole requires some impacts to individual communities. However, the Council also recommended measures that should mitigate these impacts. For example, the program would allow communities to purchase quota or permits to keep some of the fishery in the community. In addition, the AMP is intended for use in ameliorating impacts on communities.

In addition, fishing community participation is addressed in the FEIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery," on page 676. Appendix A provides additional discussion of the Council's consideration of communities at Section A–2.1.1.a, and lists alternative means by which Amendment 20 addresses community needs, including:

- Maintenance of a split between the at-sea and shoreside trawl sectors.
- Broad eligibility for ownership.
- A temporary moratorium on the transfer of QS to ease the adjustment period and allow for adaptive response.
- Specification of vessel and control limits to spread QS among more owners and potentially more communities.
- Inclusion of a community advisory committee as a formal part of the program performance review process.
- The Adaptive Management set-aside.

In conclusion, NMFS believes that potential impacts to Pacific coast communities as a result of trawl rationalization were well analyzed, and the rationalization program minimizes these impacts to the extent practicable.

With respect to the concern that vessel leasing arrangements can adversely impact the captains and crew participating under a quota share program, NMFS notes that captains and crew have the option of selecting employment opportunities under the trawl rationalization program that best suits their individual needs, including selection based on their understanding of the terms associated with their employment. In addition, the accumulation limits envisioned under this program place serious constraints on the abilities of vessel owners to accumulate quota through leasing arrangements.

With respect to the comment that there was a lack of opportunity to comment on the QS ownership and transfer options, NMFS does not agree that there was a lack of opportunity to comment on the specifics of this program. The reader is referred to the response to comment 18 above where the public input process is described in detail.

With respect to the suggestions regarding the auction concept and rent caps suggested by one commenter, or "cap-rent-recycle model alternative," NMFS's response was addressed in the response to comments on the draft EIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery," and is repeated here. This alternative would have government capture resource rents to be used for

public purposes. The use of fixed-term QS that would be auctioned off periodically is one method to achieve such "rent capture." The Council considered fixed terms and auctions but rejected this mechanism from further detailed study. In doing so, the Council considered the analysis contained in Appendix F of the EIS and the critique of the analysis presented by their SSC. The Council rejected inclusion of fixed-term QS and auctions in the range of alternatives, because (1) auctioning quota at the outset of the program could make it more difficult for the groundfish trawl fleet to successfully transition to IFQ/co-op management, and (2) exclusion of auctions from the range of alternatives does not imply that access privileges have been irrevocably distributed.

NMFS and the Council intend to give further consideration of auctioning harvest privileges during the 5-year program review.

With respect to the comment that unrestricted leasing could be problematic, NMFS agrees with this perspective, and in Appendix A of the FEIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery," on pages A–284 to A–307, there is a lengthy discussion of the vessel limits and QS control limits recommended by the Council. Accumulation limits are described generally on page A–284, "This provision restricts the amount of QS and QP that may be held. Three types of accumulation limits are included, control limits, vessel limits, and an unused QP limit for vessels. The control limit would apply to QS; the vessel limit would cap the total amount of QP that may be registered to a single vessel during the year, and would cover both the vessels' used and unused QP. Under this limit, a vessel could not have more QPs registered for the vessel than a predetermined percentage of the QP pool. The unused QP limit for vessels would cap the amount of unused QP in a vessel's account." From page A–285, "There is a tension between allowing a sufficient accumulation to improve the efficiencies of harvesting activities and preventing levels of accumulation that could result in a variety of adverse economic and social effects." NMFS believes that the accumulation limits established for Amendment 20 represent a reasonable balance of interests.

The owner-on-board provision was addressed in the response to comments on the draft EIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery," and is repeated here. "An owner-operator or owner-on-board provision was considered but rejected. In Section A–11 of Appendix A, three reasons are identified for rejection of the provisions: First, the impracticality of such a provision in a multispecies fishery which would rely heavily on quota trading to match quota mix to catch mix; second, the substantial increase in tracking and monitoring costs that such a provision would entail; and third, the owner-operator mode of organization is less dominant in the trawl fleet than in other, smaller boat, fisheries."

Comments on Community Impacts, Involvement, and CFAs

Comment 40. A commenter expressed concern that the cost of quota shares will lead to dominance by larger scale participants resulting in a loss of political voice by certain communities and negative impacts on community infrastructure.

Response. As stated in responses to comments 39, and 65–67, the underlying analyses consider a wide variety of community impacts, including impacts related to consolidation. However, the Council process is an open public process and communities will continue to be able to participate regardless of the amount of QS located within a community.

Comment 41. Several commenters stated that there should be an initial allocation to communities and that the Council should have worked with communities. Some commenters provided additional specific input on this point such as that the crabbers in San Francisco are forming a CFA and would benefit from an initial allocation. One commenter stated that CFAs should receive 25 percent at time of initial allocation. Another suggested providing CFA an initial allocation out the adaptive management program, from quota from the "bought out draggers", or from increases in fish populations due to rebuilding.

Response. The Council conducted extensive outreach to communities beginning very early in the development of Amendments 20 and 21. The results of this outreach effort and community concerns thereby raised was summarized in Appendix H to the Council's 2005 scoping report (*see* pp. 108–112). The Trawl Individual Quota Committee (TIQC) also discussed community-related issues at length; as with all Council committees, their meetings were open to the public and opportunities for public comments from non-committee members were provided. Another example of community outreach may be found in the 2004 Environmental Defense report submitted to the Council summarizing the results of a survey of community stakeholders and their concerns over the development of the trawl rationalization program.

In June 2005, the Council directed the analytical team in consultation with the Council's SSC to draft a range of alternatives for community involvement in the trawl rationalization program. Then in November 2005, the Council devoted substantial time to the consideration of options to address community impacts, including the distribution of QS to communities. DEIS Appendix A, pp. A–41 to A–42, summarizes results of the process, noting the difficulty in identifying an appropriate representative body within the community that would hold QS. As described there, at that time community leaders did not express interest in receiving an initial allocation of QS because of the administrative and political costs of managing such an allocation. Furthermore, communities (through whatever organizational mechanism) have not been precluded from acquiring groundfish limited entry trawl permits, which would make them eligible for the initial allocation of QS associated with a permit. Additionally, the Council's preferred alternative includes a very broad definition of who may own QS so communities are not precluded from acquiring QS once the program is implemented. Appendix A of the 2005 Council's scoping report also contains an analysis of community measures and effects in the context of the use of regional area restrictions.

Although the Council considered incorporating provisions for CFAs into the alternatives early in the development process, no strong recommendation or advocacy was voiced by members of the public or representatives on the TIQC, which was intended to represent a cross section of interests for the development of recommendations on structuring the trawl rationalization program. Proposals for including provisions for CFAs in the program emerged later on, when the Council was at the point of adopting a preferred alternative in November 2008, in part tied to the issue of how to deal with QS holding in excess of accumulation limits. Further refinement of the preferred alternative, which occurred at Council meetings in 2009, included additional consideration of CFA provisions. Specifically, at the April 2009 Council meeting, Agenda Item F.4 addressed CFAs, and it was at this time that the Council concluded that it would be more appropriate for CFA provisions to be implemented through a trailing action. However, the moratorium on the transfer of QS during

the first two years of the program, combined with provisions to allow divestiture of QS over accumulation limits during years 3 and 4 of the program, were designed to facilitate the transfer of QS to CFAs. The moratorium is in part intended to slow the movement of QS holdings out of communities during a time when the trailing action for CFAs can be developed and implemented in a considered fashion. Recommendations for how to structure the CFA provisions in a trailing action are welcome and should be brought forward as that proposal is developed. The Council is likely to begin developing CFA provisions in 2010 so that they could be in place before the QS divestiture period begins.

Comment 42. Several commenters stated that it is important that CFAs be formed at the start of the process, rather than after the initial issuance. They stated that the proposed rule would hinder development of CFAs. One commenter stated that having to purchase quota will make it too expensive for communities, without a public subsidy, to acquire what was once a public resource.

Response. See response to comment 41 above with respect to the timing issue. See the discussion in section 13(a), below, about perceptions regarding the privatization of a public resource.

Comment 43. One commenter stated that the development of coops for nonwhiting shoreside would help communities, but the rule seems to preclude this.

Response. This rule does nothing to preclude the formation of coops as long as they are consistent with accumulation and control limits. However, other authorities may apply, including but limited to the Fishermen's Collective Marketing Act, 15 U.S.C. 12.

Comment 44. Some commenters stated that the proposed rule and amendments would have negative impacts on community infrastructure. Specific examples of negative impacts, projected to be devastating, were provided for several communities including Humboldt Bay, and Port Orford. One commenter stated that the Council refused to evaluate impacts to Port Orford.

Response. See response to comments 39, 40 and 65–67. Impacts on a broad range of communities are assessed and acknowledged.

Comment 45. Some commenters objected to the disparate impacts on some communities versus others.

Response. See response to comments 39, 40 and 65–67. Impacts on a broad range of communities are assessed and acknowledged.

Comment 46. Some commenters stated that as a result of consolidation there will be fewer active fishing ports.

Response. See response to comments 39, 40 and 65–67. Impacts on a broad range of communities are assessed and acknowledged.

Comments on Adaptive Management

Comment 47. Two comments were received regarding the AMP: One felt the AMP "should be used to mitigate 'one-off' transition impacts including the one-time resolution of proven stranded capital issues. It should then be held, to provide an incentive pool for conservation results and for further transitions as required to improve the program;" and the other general comment was "too little too late."

Response. The comments on how the AMP should be used can be seen as entirely consistent with the intent of the Council and NMFS in designing the program. Beginning in year 3, the AMP set-aside of 10 percent of the nonwhiting QS in the shoreside non whiting sector will be used to address specific objectives, identified on page 402 of Appendix A of the FEIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery." The objectives are: "Community stability, processor stability, conservation, unintended/unforeseen consequences of IFQ management, and facilitating new entrants." The objective of an incentive pool for conservation results was identified by NMFS as a high priority for use of the AMP in future years.

Regarding the "too little too late" comment, for the first two years of the program, the 10 percent AMP is allocated to the shoreside nonwhiting sector to ease the transition to an IFQ system. The Council and NMFS will be evaluating the changes that will occur after implementation, and will be in a position to react as necessary to address impacts under the objectives already identified. NMFS believes this is the proper way to proceed with the AMP component of the program, and is not too little or too late.

Comments on Participation by and Effect on Nontrawl Fisheries

Comment 48. Comments on participation by and effect on non-trawl fisheries as a result of this rule included: Concerns with spillover effects in non-trawl fisheries; impacts on fixed gear fleet; impacts on crab and shrimp fisheries; more equitable intersector allocation to allow fixed gear to harvest trawl quota; and lack of conservation associated with gear switching provisions.

Response. The potential spillover effects on other fisheries associated with the trawl rationalization program are specifically addressed in the FEIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery" in Chapter 4, Sections 4.8.2 and 4.8.3 on pages 402–409. The potential effects due to rationalization include fleet consolidation, harvest timing flexibility, bycatch, and gear switching. All of these potential effects were identified and analyzed, to the extent possible, without the knowledge of observed or actual impacts. These potential impacts were highlighted for the purpose of monitoring behavioral changes in the fishery, understanding their impacts, and reacting through the Council process to minimize impacts. These matters will also be evaluated through the 5 year comprehensive review of the trawl rationalization program.

With regard to intersector allocations and allowing fixed gear to harvest trawl quota, it should be noted that trawlers who have entered the fishery since 1994 have had to buy trawl permits to access trawl quota, thus in this respect other vessels would be on an even footing with trawl vessels. This issue of requiring a trawl permit and quota to harvest trawl quota with fixed gear is addressed in Chapter 10, page 661 of the FEIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery." On average there are about 120 trawl vessels that participate in the fishery each year; however, there are about 168 permits. This indicates some opportunity for nontrawl vessels to acquire trawl permits and use trawl IFQ. Further, it is expected that there will be consolidation in the trawl fleet, increasing the number of trawl permits potentially available for use by nontrawl vessels. Thus, despite the limited scope the IFQ system will allow for some use of trawl IFQ by nontrawl vessels.

Regarding the comment about lack of conservation associated with gear switching provisions, this issue of fishing with more environmentally friendly gear can be evaluated through time. All fishing associated with trawl IFQ will be subject to 100 percent observer requirements, including trawl IFQ that is harvested with fixed gear. Given this, there will be documentation of impacts associated with target catch, bycatch of overfished species, and non-target species. This documentation will provide first hand opportunities for assessing the impacts of differential gear types on all groundfish species in a quantitative manner.

Comments on Other Effects

Comment 49. Some commenters stated that there will be negative impacts on processors, that small processors will be driven out of business due to consolidation, and that processors will not be able to make up losses from lost trawl revenues, and that shortened seasons will further affect them. Some commenters stated that the proposed rule and amendments will change the nature of the fishery, and eliminate the "mom and pop" businesses, and cause loss of fishing heritage.

Response. This response builds on the response to Comment 19. The processing sector is organized with a few very large operations and their subsidiaries, along with a number of small and mid-sized firms. Based on available information, the processing sector for nonwhiting trawl groundfish is characterized by a relatively small number of processing companies processing most of the harvest. The three largest companies handle approximately 80 percent of the nonwhiting trawl landings, while the fourth through sixth largest companies handle just over 10 percent of the landings. For 2008, purchases of limited entry trawl groundfish by first receiver. In 2008, 75 first receivers purchased limited entry trawl groundfish. There were 36 small purchasers (less than $150,000), 26 medium purchasers (purchases equal to or greater than $150,000 but less than $1,000,000), and 13 large purchasers (purchases equal to or greater than $1.0 million). When the trawl rationalization program is implemented, to continue buying limited entry trawl groundfish, these purchasers will have to obtain a processor site license that includes requirements to submit electronic fish tickets, provide a catch monitoring plan, and schedule a catch monitor. Given the costs associated with these reporting requirements, it is expected that many of the 36 small purchasers will cease buying fish altogether or obtain their fish through other processors that have invested in a site license.

It is expected that the TIQ will lead to consolidation and this may affect small processors, particularly if they are in disadvantaged ports. Chapter 4 of the FEIS analyzed the effects on processors from various perspectives: The distribution of landings across west coast ports may change as a result of fleet consolidation, industry agglomeration, and the comparative advantage of ports (a function of bycatch rates in the waters constituting the operational area for the port, differences in infrastructure, and other factors). In particular, the Council analysis indicated that processors associated with disadvantaged communities may see trawl groundfish volumes decline.

The analysis highlights that those processors receiving landings from Central California or Neah Bay may see a reduction in trawl caught groundfish if the market is able to redirect activity toward more efficient and advantaged ports. However, in addition to increased landings that are expected to result from the TIQ program, small processors and disadvantaged communities may benefit from the control limits, vessel limits, and adaptive management policies. Control limits will limit the ability of large processors to obtain shares of the fisheries while the adaptive management processes will allow the Council to consider the impacts on small processors, and disadvantaged communities when allocating the adaptive management quota (10 percent of the total non-whiting trawl quotas). Although vessel accumulation limits tend to lower economic efficiency and restrict profitability for the average vessel, they could help retain vessels in communities because more vessels would remain.

Another process by which small processors and disadvantaged communities may benefit from will be the future establishment of regulations and policies that allow CFAs to be formed. Some of the potential benefits of CFAs include: Ensuring access to the fishery resource in a particular area or community to benefit the local fishing economy; enabling the formation of risk pools and sharing monitoring and other costs; ensuring that fish delivered to a local area will benefit local processors and businesses; providing a local source of QSs for new entrants and others wanting to increase their participation in the fishery; increasing local accountability and responsibility for the resource; and benefiting other providers and users of local fishery infrastructure. The development of CFAs could have a positive impact on the culture of fishing communities. Although little research has been done on the effect of CFAs on culture, it seems likely that CFAs could strengthen a community's cultural associations with fishing by contributing to a unique sense of identity, increasing accountability for both natural and cultural resources, and building and strengthening connections among community members.

Comments on the RIR/IRFA

Comment 50. One commenter stated that the summary of the initial regulatory flexibility analysis (IRFA) contained in the preamble makes erroneous assumptions regarding costs and benefits. Benefits to harvesters are in part predicated on the idea that somehow raw fish prices can increase if harvesters have enough time available to suspend their fishing activity and hold fish processors hostage ("The extended period would give harvesters greater latitude to hold out for better prices compared to the no action alternative." 75 FR 33022). The commenter noted that the idea that fishermen going on strike to force higher prices of a commodity that has substantial substitutability in the marketplace was unreasonable and referred the preparers of the IRFA to review reports in local and trade press regarding the groundfish trawl vessel tie-up that occurred in March and April of 2007 and its aftermath to see where their assumptions are erroneous. Similarly, the commenter objected to the following in the summary of the IRFA: "Even though processors may have to pay fishermen higher ex-vessel prices, processors may see cost savings under the preferred alternative to the degree that rationalization allows greater control over the timing and location of landings." The commenter noted that if the preferred alternative is going to allow fishermen to control timing through their ability to hold out for better prices, how can it also allow processors to control timing?

Response. There are two versions of the IRFA. The first version of the IRFA was a preliminary analysis that was developed for the DEISs (DEIS IRFAs): Amendment 20—Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery, which would create the structure and management details of the trawl fishery rationalization program; and Amendment 21—Allocation of Harvest Opportunity Between Sectors of the Pacific Coast Groundfish Fishery, which would allocate the groundfish stocks between trawl and non-trawl fisheries. The second version of the IRFA was developed to support the proposed rule (75 FR 32994, June 10, 2010) associated with this final rule (PR IRFA) and is a combination and update of the DEIS IRFAs. NMFS has reviewed the summary of the PR IRFA contained in the preamble to the proposed rule and concludes that the summary statements are inconsistent with Chapter 4 of the Amendment 20 DEIS and with that DEIS IRFA.

The main analysis of the Amendment 20 DEIS IRFA included the following correct statement, which was not included in the PR IRFA: "Groundfish compete in regional, national, and global markets where many products are

substitutable. Therefore, west coast groundfish producers (harvesters and buyers/processors) have little ability to influence price based on supply. In general, the ability to influence price is not expected to change under the proposed action. However, rationalization of the fishery could allow quality improvement and the development of new product forms/markets that could increase prices for certain species of fish currently caught. As noted above as an example, the whiting fishery operates as a derby fishery (especially in relation to bycatch species limits rather than the target species) causing the fishery to close due to imposed limits rather than availability of fish or market conditions. Whiting attain a larger size later in the year, commanding a higher unit price. Nonwhiting harvesters currently operate under 2-month cumulative landing limits, which allow greater flexibility in terms of harvest timing between 2-month periods but less flexibility within periods (because any difference between actual limits and the period limit cannot be carried over to the next period). In contrast, under the IFQ program harvesters will have control over harvest timing over the whole calendar year. However, in terms of any influence on price, this increased flexibility is unlikely to have a noticeable effect. The degree to which harvesters versus processors are able to capture profits due to increases in price depends on their relative bargaining power * * *." Bargaining power is a concept related to the abilities of parties in a given situation to exert influence over each other. Fishermen and processors negotiate the prices that are paid to the fishermen for delivering their fish to the processor. One way for fishermen to exert influence on the prices they receive for their fish is to delay the delivery of fish until the processor provides the desired price. Under the IFQ system, fishermen have the ability to choose when they can deliver their fish. Under the current system, the fishermen are given two month landing limits and these limits are designed to achieve a year-round fishery and to address the seasonality of the market. Given that the current system is already designed to address the seasonality of the market, the influence of fishermen to raise market prices based on the timing of deliveries relative to the current timing of deliveries is not expected to be great.

Chapter 4 of the FEIS (*http://www.pcouncil.org/groundfish/fishery-management-plan/fmp-amendment-20/#EIS*) provides the following analyses concerning the issue of a fishermen's strike: "In order to foster the year-round goal of this fishery, regulations are created with the intention of spreading the harvest throughout the year. These management tools evolved into two-month catch limits, which effectively act as a two-month nontransferable quota for vessels in the fishery. Because of this two-month quota system, Olympic conditions do not exist in this fishery, and large pulses of harvest over a short time generally do not occur, except in cases where prolonged episodes of poor weather have restricted harvest opportunities. The two-month limit structure and elimination of Olympic fishery conditions make it possible for harvesters in this sector to collectively negotiate over ex-vessel prices with processors compared to harvesters in the whiting fishery. However, the ability for these negotiations to occur appears to be somewhat limited by the length of the two-month period. If harvesters strike for more than 60 days, they risk foregoing the harvest available to them during that two-month period. While managers may increase opportunities later in the year to make up for lost harvest, history has shown that often this is not possible because of time-sensitive interactions with rebuilding stocks and the fact that protecting rebuilding stocks often leads to a reduction in harvest opportunity for healthy stocks. This means that, while harvesters have a greater likelihood of collectively negotiating higher prices in the nonwhiting fishery, the ability to do so may break down quickly as the end of a two-month limit approaches.

A review of relevant articles indicates that 100 fishermen did undergo a six week strike from March 1, 2007 to April 12, 2007, seeking an agreement with processors for increased prices for petrale sole and dover sole and that the strike was unsuccessful. Within these articles the following factors were mentioned: Prestrike glut due to high effort and trip limits; loss of income to fishermen; differences between fishing groups; differences between processors; that the major products were sold in fresh markets; competition with frozen product; increased quotas for dover sole and petrale sole; effects of the bimonthly trip limits; processor fleets versus fishermen's association fleet; independent fishermen; destabilized prices; major decrease in prices, because of the strike—loss of market share to tilapia; and the inability of the largest groundfish fishermen's association and two of the largest processors to come to an agreement.

Therefore, in response to this comment, the FRFA will contain this comment and response and NMFS will make the summary consistent with main body of analysis by redrafting the summary to reflect the following statement: "Nonwhiting harvesters currently operate under 2-month cumulative landing limits, which allow greater flexibility in terms of harvest timing between 2-month periods but less flexibility within periods (because any difference between actual limits and the period limit cannot be carried over to the next period). In contrast, under the IFQ program harvesters will have control over harvest timing over the whole calendar year. However, in terms of any influence on price, this increased flexibility is unlikely to have a noticeable effect."

Comments on Policies and Legal Standards

Comment 51. One commenter stated that Amendment 20 fails to meet the goals and objectives for the program established for it by the Council which are to: create and implement a capacity rationalization plan that increases net economic benefits, creates individual economic stability, provides for full utilization of the trawl sector allocation, considers environmental impacts, and achieves individual accountability of catch and bycatch. The commenter further states that Amendment 20 fails to meet at least four of the eight specific objectives identified by the Council: It does not provide for a viable, profitable and efficient groundfish fishery in northern California; it does not increase operational flexibility for the shoreside non-whiting sector (in fact the opposite is true); it does not "minimize adverse effects from an IFQ program on fishing communities and other fisheries to the extent practical;" and it will destroy fishing related employment in Fort Bragg, rather than "promot[ing] measurable economic and employment benefits through the seafood catching, processing, distribution elements and support sectors of the industry."

Response. The analyses included in the FEIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery" fully disclose anticipated impacts and recognize that catch share programs can have disparate impacts on different segments of the fishery. Thus, while negative impacts will occur in some areas, NMFS believes that Amendment 20 will result in a fishery that is more sustainable as a whole and that will provide maximum benefits to the nation.

a. Public Trust and Privatization

Comment 52. Some comments expressed concern that the trawl IQ program gives a public resource to individual fishermen and fishing corporations in perpetuity.

Response. The Amendments do not change the fundamental nature of the Pacific groundfish fishery. Fishery resources continue to be public resources managed under the MSA and fish are not considered to be private property until they are harvested. The MSA authorizes the implementation of limited access programs such as the trawl IQ program. Under this program, fishermen will need to acquire QS, through initial allocation or subsequent transfer, before harvesting fish. IQs are Federal fishing permits that may be transferred to qualified individuals or entities. They also may be revoked, limited or modified. NMFS and the Council will monitor the programs established by Amendments 20 and 21, and can amend the programs if they are not in the public interest.

Comment 53. A comment expressed concern that QS will be treated as assets to be traded, pledged as collateral, and held by third parties with no interest in fishing.

Response. QS are federal fishing permits that may be revoked, limited or modified. After the first 2 years of program implementation, transfers of QS would be allowed. While criteria for initial issuance limit recipients to owners of LE trawl permits, after the first 2 years, transfers could be made to a broader group. Generally, anyone eligible to own a U.S.-documented fishing vessel could acquire QS and QP in increments as small as one pound. As long as the regulatory requirements are met, this rule does not limit private arrangements for use or transfer of QS.

Comment 54: Some commenters expressed concern that the American public is not compensated for the privatization of a public resource.

Response: The Council intends to develop a trailing amendment that will provide for a program of fees to recover the agency costs of management, data collection and analysis, and enforcement activities, within limits established by the MSA. In addition, the Council considered an auction system to collect royalties for the initial allocation of QS, as required by the MSA. The Council concluded that the collection of resource rents without a phase-in would be disruptive to the fishery. Therefore, the Council deferred further deliberations on royalties until the first 5-year review of the program. As the trawl rationalization program matures in the future, the Council may provide for a greater return to the American public.

Comment 55: Commenters opposed the future use of public funds to compensate permittees, or to assist new entrants in buying QS from those who received it at no cost to themselves.

Response: These comments address future actions and are beyond the scope of this final rule. The regulations at 50 CFR 660.25(h)(2)(iii) state that the permits do not confer a right to compensation to the permit owner if a permit is revoked, limited or modified. In addition, the regulations at 50 CFR 660.24(h)(2)(iii) state that the permits do not create any right, title or interest in fish before the fish is harvested by the holder. Courts have found that a fishing ban and a revocation of a fishing permit do not constitute a taking under the 5th Amendment to the U.S. Constitution. (*See Conti* v. *United States,* 291 F.3d 1334 (U.S. Ct. App. 2002); *American Pelagic Fishing Company* v. *United States,* 379 F.3d 1363 (U.S. Ct. App. 2004.) The Council will continue to monitor the fishery and will solicit public comments on future amendments as necessary.

b. Magnuson-Stevens Act

Comment 56. Several commenters made general statements that the proposed rule and amendments appear inconsistent with the Magnuson-Stevens Act, National Standards 2, 7, 8, and 9 of the MSA, and/or other applicable laws.

Response. NMFS disagrees for the reasons described in this document, and specifically in the responses to comments 57 through 78.

Comment 57. One commenter stated that, because allocations are not fair and equitable, they do not achieve OY. Specifically, the commenter states that inequitable allocations of overfished incidental catch species will result in leaving sustainable stocks in the water, undermining the ability to achieve optimum yield.

Response. National Standard 1 requires that: "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery * * *" MSA section 301(a)(1). The MSA defines OY to mean: "The amount of fish which—will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems; is prescribed on the basis of the "maximum sustainable yield" (MSY) from the fishery, as reduced by any relevant social, economic, or ecological factor; and in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery. MSA section 3(28); See also 50 CFR 600.310(e)(3). Thus, National Standard 1 does not require that FMPs provide for 100 percent harvest of all healthy stocks.

As described in the preamble to the proposed rule, Amendment 20 is intended to ameliorate the existing problem of overfished species constraining the harvest of healthier stocks. *See* response to comment 61 addressing the claims that the allocations are not fair and equitable.

Comment 58. One commenter stated that logbook data used to develop the allocations of overfished species is not the "best available data" because the years selected skew the results.

Response. The Council's selection of years on which to base the allocations of overfished species was a policy decision. See responses to comments 29 and 31 for more information on the rationale for that policy decision. The data used to inform that recommendation and the development of the allocations complied with National Standard 2.

The Council considered and rejected the option of allocating overfished species for nonwhiting trips using the same method as for other nonwhiting IFQ species as not appropriate under the circumstances. In particular, the relative weighting approach, by which landings for a year are measured as a percent of all landings for the year and species, would have given a particularly high amount of credit for pounds caught during the rebuilding period. Additionally, QS would have been allocated to those who targeted some of the overfished species in the mid-1990s (before they were declared overfished) rather than to those who need such QS to access current target species. Accordingly, the Council rejected the approach of using the same allocation formula for overfished species as for nonwhiting target species based on the desire to not reward bycatch during the rebuilding period and in order to provide QS to those who would need it to cover incidental catch taken with their target species QS allocation.

Comment 59. Some commenters stated that the proposed rule and amendments do not comply with National Standard 2 because some relevant case studies were not considered.

Response. Chapter 4.3.2 of the EIS provides descriptions of case studies and lessons learned from IFQ programs around the world. The Council and the

agency considered a broad range of case studies that focused on IQ programs in other parts of the United States or the world. *See* also the response to comment 68 below.

Comment 60. The comment stated that the choice of 1994–2003 as the qualifying years does not reflect the "best scientific information available," as required by 16 U.S.C. 1851(a)(2), because it ignores the dramatic changes that began taking place in the whiting fishery starting in 2001, and which have been especially significant after 2003.

Response. Generally speaking, NMFs disagrees that impermissibly dated or stale information was used for this action. The Council and NMFS have used the best information available at each step of the process in implementing the trawl rationalization program. The Council and NMFS analyzed and considered data including past and present participation, historical dependence of various sectors on the groundfish resource, economic impacts of the action on various sectors, cultural and social framework of the various sectors, impacts on other fisheries, and other relevant considerations.

As discussed in detail above, see response to comment 29, the Council is required to consider and balance several factors, including current harvests and historic harvests, when making initial allocation decisions. Although the Council did examine present participation levels, the Council gave greater weight to historic participation in determining the initial allocation.

Comment 61. Commenters stated that the allocation of overfished species QS violates National Standard 4 because some permit holders received up to 0.67 metric tons of Canary Rockfish while others "in effect received zero." Further, this "failure to equitably allocate QS for overfished incidental catch species" will prevent the fishery from achieving optimum yield. Because the plan will benefit the offshore whiting fleet primarily based in Washington and Oregon while harming the non-whiting shore based trawlers in Fort Bragg, California, the plan discriminates against citizens of different states. The commenter stated that "participants along the entire coast should bear equally" the burdens of protecting overfished stocks. Finally, the allocation of QS of healthy stocks violates National Standard 4 because it benefits "boats that only fish off the lower west coast on a part time basis," while harming full time fishermen from Oregon.

Response. National Standard 4 requires that conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such a manner that no particular individual, cooperation, or other entity acquires an excessive share of such privileges.

The National Standard 4 guidelines at § 600.325(c)(3)(i)(B) state that: "An allocation of fishing privileges may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. An allocation need not preserve the status quo in the fishery to qualify as fair and equitable, if a restructuring of fishing privileges would maximize overall benefits. The Council should make an initial estimate of the relative benefits and hardships imposed by the allocation, and compare its consequences with those of alternative allocation schemes, including the status quo."

Therefore, the Councils are given wide latitude to determine what is equitable within a particular fishery and to create the appropriate management measures to accomplish the goals of an FMP.

With respect to the allocation of overfished species in particular, see the response to comments 29 and 31. Generally, the adoption of any limited access privilege program has the potential to benefit certain fishermen, while disadvantaging others. The Council analyzed the positive and negative consequences of its decisions, and in Amendment 20 it chose to allocate QS in a manner that emphasizes historical participation in the Groundfish fishery. The underlying analyses adequately estimate the relative benefits and hardships imposed by the allocation, and the recommended measures comply with National Standard 4.

The trawl rationalization program was developed through the Council process, which facilitates substantial participation by state representatives. Generally, state proposals are brought forward when alternatives are crafted and integrated to the degree practicable. Decisions about catch allocation between different sectors or gear groups are also part of this participatory process, and emphasis is placed on equitable division while ensuring conservation goals. The Council determined that none of the alternatives considered, including the final plan, would discriminate against residents of different states. The rationalization program was structured to provide fair and equitable allocations of both target species and overfished species to participants.

Comment 62. One commenter indicated that the amendments violate National Standard 5's requirement that management measures may not have economic allocation as the sole purpose.

Response. As described in the preamble to the proposed rule at 75 FR 32996, Amendments 20 and 21 are intended to achieve multiple objectives beyond economic allocation. Amendment 20 is intended to: Create and implement a capacity rationalization plan that increases net economic benefits, creates individual economic stability, provides for full utilization of the trawl sector allocation, considers environmental impacts, and achieves individual accountability of catch and bycatch. The Council further identified eight specific objectives to support achievement of the goal:

1. Provide a mechanism for total catch accounting.
2. Provide for a viable, profitable, and efficient groundfish fishery.
3. Promote practices that reduce bycatch and discard mortality, and minimize ecological impacts.
4. Increase operational flexibility.
5. Minimize adverse effects from an IFQ program on fishing communities and other fisheries to the extent practical.
6. Promote measurable economic and employment benefits through the seafood catching, processing, distribution elements, and support sectors of the industry.
7. Provide quality product for the consumer.
8. Increase safety in the fishery.

Because OY on healthy stocks is constrained by rebuilding needs of co-occurring overfished stocks, Amendment 20 is intended to implement an approach that will support attainment of OY while improving bycatch avoidance and supporting rebuilding.

The purposes of Amendment 21 are to: Simplify or streamline future decisions by establishing allocations of specified groundfish stocks and stock complexes within the Pacific Coast Groundfish FMP; support rationalization of the LE trawl fishery (Amendment 20) by providing more certainty to the affected sectors and reducing the risk that these sectors would be closed because of other non-trawl sectors exceeding their allocation; facilitate individuals' ability to make long-range planning decisions based on the allocation of harvest privileges; support overall total catch accounting of

groundfish species by the group within the trawl sector; and limit the bycatch of Pacific halibut in future LE trawl fisheries.

Comment 63. One commenter stated that the proposed rule and amendments violate national standard 7 because they do not reduce costs compared to the status quo.

Response. National Standard 7 requires that "Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication." MSA section 301(a)(7). This is not a simple question of whether proposed measures will be more expensive than the status quo. The supporting analyses show that the costs imposed by the proposed rule and amendments are necessary and justified in order to achieve the anticipated benefits.

Comment 64. Some commenters stated that the proposed rule and amendments do not minimize impacts on fishing communities to the extent practicable. One commenter stated further that the impacts on small communities such as Fort Bragg have not been sufficiently analyzed and the approach of providing for mitigation measures through a future action violates NS 8.

Response. See responses to comments 39, 40, and 65–67.

Comment 65. Some commenters stated that the analysis of the impacts of consolidation on communities is inadequate and provides examples of impacts experienced in the Bering Sea/Aleutian Islands crab fishery and the British Columbia halibut fishery.

Response. NMFS and the Council have analyzed the likely effects of consolidation on communities. The Executive Summary of the FEIS, on pages xix and xx, lists the following expectations: "Fishing communities would be differentially affected due to the fleet and processor consolidation. Some communities would likely benefit and others would be harmed. Fleet and processor consolidation could result in the concentration of vessels and commercial infrastructure in fewer ports, disadvantaging communities that lose vessels and infrastructure. Limits on the amount of QSs an entity can control would reduce ownership consolidation and would increase the number and types of businesses involved in the fishery, contributing to diversity and stability. Isolated communities, where there are few alternative employment opportunities, could be adversely affected by the loss of fishing-related jobs. Processors would likely consolidate and possibly move, affecting processor labor and municipal revenue. Fishing, in all its diversity, is culturally important to coastal communities. As a consequence, communities experiencing a decline in fishing activity due to trawl rationalization would be adversely affected. Family fishing businesses would have to deal with the implications of the asset value associated with IFQs (or co-op shares). This can complicate fishery entry and exit, leading to intra-family strife. Tourism could be adversely affected in communities that lose a working waterfront to the degree it is important to the tourist identity of the community. Nontrawl communities could be affected by rationalization through increased competition, gear conflicts, impacts on the support sector, infrastructure impacts, and competition in the marketplace."

NMFS and the Council have considered the case studies cited in section 4.3.2.1 of the FEIS.

National Standard 8 requires consideration of impacts on communities, but recognizes the higher priority of National Standard 1. Specifically, National Standard 8 states that "Conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to: (1) Provide for the sustained participation of such communities; and (2) To the extent practicable, minimize adverse economic impacts on such communities."

Chapter 4.14 of the analysis describes anticipated impacts on communities and acknowledges a possibly profound impact on communities that depend on trawling. This is due to the nature of rationalization which results in fewer fishery participants and likely geographic shifts. The goal of attaining a sustainable fishery as a whole requires some impacts to individual communities. However, the Council also recommended measures that should mitigate these impacts.

For example, the program would allow communities to purchase quota or permits to keep some of the fishery in the community. In addition, the AMP is intended for use in ameliorating impacts on communities.

Comment 66. Some commenters stated that captains and crew are an integral component to "aggregate community benefits," and more data and analysis are needed on impacts to captains and crew in order to accurately evaluate the impacts of these amendments.

Response. NMFS and the Council considered effects on captains and crew in chapter 4.7 of the FEIS. While more data would be beneficial, the analysis uses the best available information.

Comment 67. One commenter stated that, with respect to leased quota, National Standard 8 requires broader control at the community level and with restrictions on leasing as well as owner-on-board requirements.

Response. National Standard 8 requires that: "Conservation and management measures shall, consistent with the conservation requirements of this chapter (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of paragraph (2)(N.S. 2) in order to: (A) Provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities." MSA section 301(a)(8).

The adaptive management program is intended to minimize adverse impacts on communities.

Appendix A provides additional discussion of the Council's consideration of communities at Section A–2.1.1.a, and lists alternative means by which Amendment 20 addresses community needs, including:

- Maintenance of a split between the at-sea and shoreside trawl sectors.
- Broad eligibility for ownership.
- A temporary moratorium on the transfer of QS to ease the adjustment period and allow for adaptive response.
- Specification of vessel and control limits to spread QS among more owners and potentially more communities.
- Inclusion of a community advisory committee as a formal part of the program performance review process.
- The Adaptive Management set-aside.

While initial allocations of quota would be limited based on qualifying criteria, after the first two years, the proposed program would allow both ownership of privileges by communities and acquisition by entry level participants. In addition, parties, including communities, desiring to receive initial issuance would be able to purchase limited entry permits such as The Nature Conservancy has done and receive initial issuance. Appendix A Sections A–2.2.2.d and A–2.2.3 describe entry level opportunities and transfer provisions.

Comment 68. Some commenters stated that the proposed rule and

amendments will not reduce bycatch, which is one of the objectives of National Standard 9. Specifically, one stated that allowing lessees to fish will reduce incentive to avoid bycatch and undermine achievement of bycatch reduction goals. Another stated that catch shares could increase bycatch.

Response. There is a requirement that when a fisher runs out of quota, he must stop fishing regardless of whether he leases or owns. Chapter 4.17.2.2 of the EIS for Amendment 20 provides information indicating that the proposed trawl rationalization program would be expected to be more effective at reducing bycatch than the status quo. Based on the information in the record, NMFS believes that the proposed rule and amendments will achieve reductions in bycatch.

The study by Redstone Strategy Group and Environmental Defense (2007) analyzing pre- and post-implementation performance of 10 LAPPs, including all seven U.S. programs, cites interviews with fishery participants and other sources showing that QS value "transformed the mindset of fishermen, who developed a real stake in the outcome of their fishing practices" (p. 7). Other studies and reviews support the proposition that individual accountability fostered by IFQs (or the small group collective responsibility of the whiting co-ops) helps to reduce bycatch. "Sharing the Fish," a report on IFQs requested by Congress from the NRC (1999), includes bycatch reduction as part of the rationale for implementing IFQs, noting that harvesters can more carefully choose their time and area of fishing, which may "reduce bycatch of non-target species since operations can be moved to target more favorable harvesting conditions, or it might allow the opportunity to develop practices that could reduce bycatch" (p. 35). The aforementioned report by Redstone Strategy Group and Environmental Defense (2007) found that "nearly all the fisheries experienced decreases in their respective discard rates" when the LAPP was implemented.

Comment 69. One commenter stated that catch shares are not necessary to reduce bycatch and that TAC could be used as a stand-alone tool to reduce bycatch.

Response. The proposed rule and amendments offer multiple tools for addressing bycatch. The multiple tools employed are intended to increase the overall effectiveness. See also response to comment 68.

Comment 70. Some commenters stated that the proposed rule and amendments will help reduce bycatch and will address bycatch problems that the current system cannot solve.

Response. NMFS agrees.

Comment 71. One commenter stated that the proposed rule and amendments violate the MSA's LAPP provisions because they do not include owner-on-board requirements, restrictions on leasing, a 10-year sunset, and prohibitions on compensating for revoked permits.

Response. The regulations at 50 CFR 660.25(h)(2)(iii) state that the permits do not confer a right to compensation to the permit owner if a permit is revoked, limited, or modified. In addition, certain provisions of section 303A of the MSA, such as the permit characteristics in section 303A(f) apply to all LAPPs and do not need to be repeated in fishery management plans or implementing regulations. The Council and NMFS have provided for transferability of limited access privileges as required by 303A(c)(7). The Council considered, but did not include, an owner-on-board requirement. The MSA does not mandate such requirements.

Comment 72. One commenter stated that the proposed rule and amendments do not comply with 303A(a)(1) and (c)(1) of the MSA, which requires LAPPs to "promote" not "consider" conservation. The commenter interprets the preamble to the proposed rule as to indicate that NMFS intends the action to achieve economic benefits while only considering, not promoting, conservation.

Response. The preamble describes the Council's goals for Amendment 20 as follows: "Create and implement a capacity rationalization plan that increases net economic benefits, creates individual economic stability, provides for full utilization of the trawl sector allocation, considers environmental impacts, and achieves individual accountability of catch and bycatch. The Council further identified eight specific objectives to support achievement of the goal:

1. Provide a mechanism for total catch accounting.
2. Provide for a viable, profitable, and efficient groundfish fishery.
3. Promote practices that reduce bycatch and discard mortality, and minimize ecological impacts.
4. Increase operational flexibility.
5. Minimize adverse effects from an IFQ program on fishing communities and other fisheries to the extent practical.
6. Promote measurable economic and employment benefits through the seafood catching, processing, distribution elements, and support sectors of the industry.
7. Provide quality product for the consumer.
8. Increase safety in the fishery.

Because OY on healthy stocks is constrained by rebuilding needs of co-occurring overfished stocks, Amendment 20 is intended to implement an approach that will support attainment of OY while improving bycatch avoidance and supporting rebuilding."

Read in complete context, the Council's goals and objectives comply with the MSA. Furthermore, the effects of the actions are anticipated to promote both efficiency and conservation.

Comment 74. One commenter stated that Congress required the Council to develop criteria for qualifying communities to participate including initial allocation.

Response. Section 303A(c)(5) of the MSA requires that a Council consider the current and historical participation of fishing communities when establishing procedures to ensure fair and equitable initial allocations. In addition, the Council must consider the basic cultural and social framework of the fishery. The Council has complied with these requirements. Section 303A(c)(3) addresses eligibility of fishing communities, but does not require that a Council develop criteria for eligible communities to receive initial allocations of limited access privileges. The Council intends to address eligibility of fishing communities in future FMP amendments.

Comment 75. One commenter questioned NMFS's compliance with the Secretarial review provisions of the MSA at 304(b)(1).

Response. NMFS has complied with section 304 of the MSA which requires that upon transmittal of an FMP amendment by the Council NMFS shall: (A) Immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, the other provisions of this chapter, and any other applicable law; and (B) immediately publish in the **Federal Register** a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published, which was accomplished on May 12, 2010 (75 FR 26702).

For regulations, the MSA requires that, upon transmittal of proposed regulations to implement an FMP or amendment, NMFS must "immediately initiate an evaluation of the proposed regulations to determine whether they

are consistent with the fishery management plan, plan amendment, this chapter and other applicable law," and within 15 days of initiating that evaluation, make a determination, and (A) if that determination is affirmative, the Secretary shall publish such regulations in the **Federal Register**, with such technical changes as may be necessary for clarity and an explanation of those changes, for a public comment period of 15 to 60 days (75 FR 32994, June 10, 2010 had a comment period of 33 days); or (B) if that determination is negative, the Secretary shall notify the Council in writing of the inconsistencies and provide recommendations on revisions that would make the proposed regulations consistent with the fishery management plan, plan amendment, this chapter, and other applicable law.

Comment 76. One commenter stated that because of the expense of participation, capital will be redirected away from facilities, infrastructure and vessel improvements. As a result safety and efficiency will be sacrificed.

Response. NMFS and the Council recognize that for new entrants, the cost of acquiring individual quota will add to the expense of entering the fishery. An increase in profits (before taking into account the cost of the quota and normal profits after taking into account the cost of the quota) and stability is expected to compensate for the increase in costs. Under status quo management, the value of a new entrant's capital investment would be at greater risk because of the potential erosion of fishing opportunity through the increased effort of others. With respect to the capital badly needed for infrastructure and vessel improvements, this is a condition that has occurred under status quo management. There is no reason to believe that continuation of status quo would improve the situation; however, under IFQs, greater economic stability may facilitate a safer fleet with a stronger infrastructure.

Comment 77: Multiple commenters suggested that NMFS should "remand" the proposal to the Council and require the Council to develop and submit a specific management alternative. For example, one suggestion was to direct the Council to revise the proposal to consist of a whiting IFQ program for all three sectors and develop program for nonwhiting shoreside groundfish in the future such as cap and rent, and owner on board.

Response. The MSA expressly vests the Council with responsibility for developing and identifying which management measures to recommend through its open public process. It is not appropriate for NMFS to dictate the policy recommendations that are not produced through the MSA Council system.

Comment 78. One commenter stated that the regulations as deemed do not reflect Council intent.

Response. NMFS disagrees. NMFS and the Council conducted an extensive and public deeming process that included public Council meetings and public committee meetings.

c. Other Applicable Law

Comment 79. The EIS should have analyzed other alternatives, including existing catch share programs worldwide, and their full range of impacts.

Response. CEQ regulations at 40 CFR 1502.14 require agencies to "rigorously explore and objectively evaluate all reasonable alternatives." The Council engaged in an open scoping process to determine the scope of issues to be addressed and to identify the significant issues related to the action. In addition, other suggested alternatives were addressed in the response to comments in the FEIS. NMFS and the Council considered many other programs as described in section 4.3.2.1 of the EIS. However, neither NEPA nor the MSA requires that the Council, through the EIS, analyze all existing catch share programs worldwide.

Comment 80. A Supplemental EIS is needed because portions of the program related to observer coverage, monitoring, and other conservation-related measures are not included in this rulemaking.

Response. NMFS disagrees. The Council considered and the FEIS analyzed alternatives relative to those specific issues. NMFS, consistent with Council intent, is implementing regulations through two rulemakings; the proposed rule for program components was published on August 31, 2010 (75 FR 53380) and will be implemented prior to the January 1, 2011 implementation date.

Comments on Intersector Allocations

Comment 81. Some commenters raised concerns regarding the allocations to the trawl sector. Commenters argue that Groundfish are being allocated away from the fixed gear fleet to the trawl fleet, diminishing the value of fixed gear permits and impermissibly discriminating against fixed gear permit holders. Others argue that the trawl fishery is responsible for overfished conditions, but open access and fixed gear fishermen are being penalized.

Response. NMFS does not agree that the regulations punish the non-trawl sectors, or privilege the trawl sector. Most of the species subject to trawl/non-trawl allocations in this action are trawl dominant (sector dominance for a species is defined in the Amendment 21 EIS as average landings during the 1995 to 2005 period to the sector at least 90 percent of total directed non-treaty landings; see Amendment 21 FEIS Table 4–17) based on the sector catch histories used in Amendment 21 analyses. The action largely limits the trawl allocation of many of the Amendment 21 species to percentages less than the historical trawl catch shares to the benefit of the non-trawl sectors. For instance, the proposed action limits the maximum trawl allocation of any Amendment 21 species to 95 percent of the directed harvest when historical trawl catch shares for many of these species have been higher than 95 percent. Amendment 21 species' allocations that tend to favor non-trawl sectors (i.e., non-trawl sector allocations greater than observed in the 1995 to 2005 historical catch) include Pacific cod, Pacific ocean perch, chilipepper rockfish south of 40°10′ N lat., splitnose rockfish south of 40°10′ N lat., shortspine thornyhead north of 34°27′ N lat., longspine thornyhead north of 34°27′ N lat., darkblotched rockfish, Dover sole, English sole, petrale sole, arrowtooth flounder, starry flounder, and species in the Other Flatfish complex. All other Amendment 21 species' allocations under the proposed action are generally favorable to non-trawl sectors in that the highest non-trawl sector catch percentages analyzed were proposed to be allocated to the non-trawl sectors. The only exception to this is lingcod where a more favorable trawl allocation was adopted as the final action. The rationale for a higher trawl allocation of lingcod is that, unlike the non-trawl sectors that predominantly use hook-and-line gear to target groundfish, the trawl sectors are not as constrained by management measures designed to foster yelloweye rockfish rebuilding. This is because the mandatory use of trawls with small-diameter footropes (*i.e.,* at least 8 inches) shoreward of the RCA effectively keeps bottom trawls out of the high relief habitats where yelloweye occur. A higher trawl allocation of lingcod would minimize stranding of harvestable yields of lingcod that would otherwise be allocated to non-trawl sectors and unavailable for harvest due to yelloweye rebuilding constraints.

Thus, the inter-sector allocation does not provide more bottom trawl opportunity than status quo management measures and allocations.

In addition, the trawl rationalization allows limited entry trawl permit holders to switch from trawl to fixed gears to fish their quotas, which, in turn, would reduce trawl impacts. It also allows nontrawl vessels to harvest the allocation to the trawl sector if they acquire a trawl permit and IFQ. These facts lead to the conclusion that potential adverse impacts from trawl gear could be expected to be lower under the proposed action than under status quo management or under any of the other alternatives analyzed.

Moreover, the allocations are consistent with the current distribution of fishing opportunity among Groundfish sectors. Even if the fixed gear sector had the capacity and desire to catch significantly greater amounts of Groundfish, which is questionable, those factors are not, in and of themselves, criteria for determining allocations. Allocations are necessary precisely because more than one group has some level of "capacity and desire," which engenders potential conflicts over resources access that must be resolved through allocation.

Comment 82. One commenter felt that the allocation of sablefish to the limited entry tier system unfairly impacts open access fishermen.

Response. This comment is not specifically related to the actions contemplated under Amendments 20 and 21. Under the FEIS "Allocation of Harvest Opportunity Between Sectors of the Pacific Coast Groundfish Fishery, the Council recommended a sector split between the trawl and non-trawl sectors of the groundfish fishery. The Council did not consider, as part of this process, allocations of sablefish between the limited entry fixed gear and directed open access fisheries of the non-trawl sector.

Comment 83. Trawl gear does more damage to fishery resources than fixed gear, but the program will favor the trawl sector. Gear switching is not a sufficient incentive for quota owners to give up trawling in favor of less damaging gear because gear switching will only enable trawlers to fill in off-season by temporarily using fixed gear to take huge hauls out of the fixed gear fishing grounds.

Response. NMFS disagrees with the commenter's characterization of the trawl fleet. That said, the FEIS identifies and discloses the potential adverse impacts of trawl gear cited by this commenter. To the degree that these impacts may exist, they are not increased under trawl rationalization and may be reduced because it allows more opportunities for use of fixed gear to harvest the trawl allocation. The Council actions under Amendment 20 provide an opportunity for the transition of harvest away from the trawl sector and its action under Amendment 21 limits the trawl fleet allocation to the lower end of its recent harvest share. Furthermore, the allocations provided to trawlers in Amendment 21 are not permanent and may be changed in the future as it is determined to be appropriate. Additionally, trawl rationalization is expected to decrease total trawling hours required to take a given amount of harvest. Amendment 20 allows some movement of harvest toward the nontrawl gear through gear switching and the transfer of IFQ to the nontrawl fleet. For the time being, that movement is constrained by the number of trawl permits available and the dictates of the market place, combined with any incentives or subsidies that may be created.

Given that formal allocations of trawl-dominant and other important trawl target species have been judged in the scoping process to be important to support trawl rationalization, the proposed action under Amendment 21, by indirectly supporting trawl rationalization, should reduce species impacts by monitoring 100 percent of the total catch of IFQ species and reducing potential habitat impacts through rationalized fleet consolidation relative to status quo allocations and management measures.

While there are no formal incentives to encourage gear switching, the existing provision alone may have a mitigating effect compared to status quo, since trawl-endorsed permits are currently prohibited from using other gear types to fish against their bimonthly limits. Any vessel switching gear types with less habitat impacts would represent a reduction in impacts compared to existing, ongoing habitat impacts due to trawl fishing under status quo. Under the license limitation program, trawl vessels are already allowed to use fixed gear to take the trawl allocation, albeit they must do so under the open access regulations, which have much lower limits. Fixed gear endorsements give a vessel access to the fixed gear allocation. Allowing trawl vessels to gear switch (or other vessels to acquire a trawl permit and IFQ) does not give trawl permitted vessels access to the fixed gear quota; it merely allows the vessel to use nontrawl gear to take the trawl IFQ.

Comment 84. One commenter felt the halibut bycatch rates should be based on all landed flatfish using 1994–2003 as opposed to using petrale sole and arrowtooth flounder harvests in 2003–2006 to determine bycatch rates, so targets match better with bycatch.

Response. Under the FEIS "Allocation of Harvest Opportunity Between Sectors of the Pacific Coast Groundfish Fishery," the Council recommended to allocate 15 percent of the Area 2A (i.e. all waters off Washington, Oregon, and California) total constant exploitation yield (total harvest expressed in terms of legal-sized halibut, since the primary commercial target halibut fishery, using gear other than trawl, can only retain and land legal-sized halibut) halibut to the limited entry trawl sector, not to exceed 130,000 pounds for the first four years of the program and not to exceed 100,000 pounds for years five and beyond. The method for the initial allocation of halibut is similar to that used for overfished species (Appendix C of the EIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery." The Council decided to base initial allocation of IBQ on the different rates of bycatch in different areas or in association with various target species (*e.g.* arrowtooth flounder and Petrale sole). Halibut cannot be allocated based on individual vessel records because halibut mortality is estimated based on fleet averages. The 130,000 pounds recommended by the Council represents an approximate reduction of 50 percent from the total bycatch estimate provided by the Northwest Fisheries Science Center for the most recent year estimated (2007) and is contained in Agenda Item E.1.b, Supplemental NMFS Report, September, 2008. Pacific halibut IBQ would function in a manner similar to IFQ for other species, except that retention and landing of halibut would be prohibited, and only pounds of dead halibut would be counted against the IBQ. Discard at sea of Pacific halibut would be required; before discard occurred, observers would estimate the halibut bycatch mortality on that vessel (average mortality rates would be applied based on the condition of the halibut in a particular tow) to provide greater individual accountability and incentives for harvesters to control halibut mortality.

Under any of the allocation alternatives suggested by the Council, halibut IBQ as part of the trawl rationalization program will be constraining, and this was specifically the intent in designing the methods selected. Because the limit recommended by the Council is lower than the bycatch observed, it was unclear how such a stringent limit might affect the fishery. As stated under the EIS "Allocation of Harvest Opportunity Between Sectors of the Pacific Coast Groundfish Fishery" on

Page 36, "It may turn out that the socioeconomic impacts are too great under these stringent limits, and the Council may ultimately decide to increase the total catch limit. Conversely, the trawl industry may adjust well to these lower limits, and the realized bycatch of Pacific halibut will be lower than the prescribed limits. In that case, the Council may want to adjust the future total catch limit downward from 100,000 pounds to provide more benefits to Area 2A directed halibut fisheries. In either case, the Council preferred the flexibility of deciding future total catch limits of Pacific halibut in the biennial specifications and management measures process.

Items NMFS Requested Comment on in the Proposed Rule

In addition to the comments received above, NMFS specifically requested comment on several items upon which no comments were received. Where NMFS has made changes to the proposed rule where comments were specifically requested, these specific requests are identified in the section on "changes from the proposed rule."

Changes From the Proposed Rule

A. All Trawl Programs

I. Definitions

In the proposed rule (75 FR 32994, June 10, 2010), NMFS specifically requested comment on revised definitions. No comments were received on the definitions in the proposed rule. However, based on further review and as the logical extension of what was proposed, NMFS is making some changes to the definitions as follows. The definition of "ownership interest" at § 660.11 is revised for the limited entry trawl fishery to reflect that ownership interest information will also be collected from owners of vessel accounts because ownership of vessel accounts may be tied to control of QS or IBQ. In addition, the definition of "mutual agreement exception" at § 660.111 is revised to reflect that a processor obligation applies to a MS/CV-endorsed permit rather than the vessel registered to that permit, and that it is the catch history assignment of that permit that is obligated to the mothership processor.

II. Ownership Issues

Language was added to § 660.25(b)(4)(iv)(A) to cross-reference the language in the specific trawl rationalization programs that states the owner of a limited entry trawl permit may not change during the application process for a QS permit, an MS/CV endorsement, or a C/P endorsement, as specified at §§ 660.140(d)(8)(viii), 660.150(g)(6)(vii), and 660.160(d)(7)(vi), respectively.

NMFS is also revising the provisions for determination of ownership interest based on further review of the proposed regulation. In reviewing provisions on calculating ownership interest, NMFS has identified two ownership structures where the ownership of the permit may not be clear for the purpose of determining compliance with accumulation limits: (1) Joint ownership, and (2) ownership by a trust. A joint ownership situation exists where more than one person claims an interest indivisible from that of another person, such that the total ownership interest is greater than 100 percent. In these situations, NMFS would credit each owner with the full percent claimed, even though the sum of all ownership interests would exceed 100 percent. NMFS believes that for some owners, the benefits of joint tenancy may be greater than the parties' concern for accumulation limits, particularly if they are more interested in estate planning than accumulation of privileges, and that if the parties to a joint tenancy don't want to avoid individual accountability for the entire ownership interest, they would have the option of restructuring. With a trust, generally, a trustee holds title to the property granted by the trustor on behalf of the beneficiaries of the trust. Because a trust vests the legal title to the property in the trustee, under the proposed rule NMFS would credit ownership to the trustee. If there is more than one trustee (*i.e.,* "co-trustees"), NMFS would consider each trustee to have 100 percent ownership of the trust property. In the preamble to the program components proposed rule (75 FR 53380, August 31, 2010), NMFS requests additional comment on any other ownership structures that may affect accumulation limits; NMFS may add provisions for additional ownership structures as a result. This final rule also includes provisions that NMFS may ask for additional information it believes to be necessary for determination of compliance with accumulation limits.

Some additional modifications have been made to the accumulation limits language. For the Shorebased IFQ Program, as described in the responses to comments, above, NMFS does not intend that control rules would apply to banks and other financial institutions that rely on QS or IBQ as collateral for loans, unless the financial documents specify control beyond normal business agreements. Accordingly, based on further agency consideration and in response to public comment received, NMFS further clarified the application of the control rules for QS or IBQ at § 660.140(d)(4). In addition, in the MS Coop Program, NMFS further clarified the ownership language at §§ 660.150(f)(3)(ii) and 660.150(g)(3)(i)(A) for MS permits and MS/CV endorsements, respectively.

III. Allocations

In § 660.55, Allocations, paragraph (h) on sablefish allocations north of 36° N. lat., is corrected to specify that the remainder of the sablefish quota after deductions for the tribal fishery is available to the nontribal fishery (both commercial and recreational), not just to the nontribal commercial fishery as had been stated in the proposed rule. In addition, sablefish allocations between the commercial limited entry and open access fisheries are specified in regulation consistent with the FMP, instead of just referencing the FMP.

In § 660.55(a) language has been added to implement Amendment 21 stating that a formal allocation may be suspended when a species is overfished. The proposed rule only contained the prior language from the existing FMP regarding suspension of limited entry/open access allocations for overfished species. There are additional minor edits in this section, consistent with the partial disapproval of a minor section of Amendment 21 to indicate that the Amendment 21 allocations did not override the limited entry/open access allocations. These limited entry/open access allocations have not been implemented recently because the constraints of the rebuilding plans have overridden the ability to achieve these allocations. The allocations are directly suspended for the overfished species themselves, and the access to healthy stocks in various places in the EEZ has been limited by the need to significantly reduce fishing mortality on overfished species.

IV. Application and Appeals Process

No comments were received on the application and appeals process specified in the proposed regulations. Based on further agency consideration of the proposed regulations, NMFS has modified the regulations as described here. The proposed regulations specified in several places that NMFS would "extract" landings data from PacFIN, in the case of calculating shoreside landings history, or NORPAC, in the case of calculating at-sea harvest history, on July 1, 2010. NMFS extended the date for allowing the public to correct NORPAC data until August 1,

2010, as announced on June 22, 2010; this final regulation is modified accordingly.

In addition, NMFS is clarifying that the initial allocation calculations will be based on the relevant "PacFIN dataset on July 1, 2010," and as appropriate, the relevant "NORPAC dataset on August 1, 2010." NMFS has removed the term "extracted" from the regulations in order to be more specific. As explained above, NMFS has determined that the July 1, 2010, dataset in PacFIN and the August 1, 2010, dataset in NORPAC as corrected through the public process and in conjunction with the relevant data base QA/QC processes, constitute the best scientific information available.

NMFS is also clarifying the specified basis for appeal of the agency's Initial Administrative Determination (IAD) by replacing the words "extracted' or extraction" with more specific terms. The proposed regulations state in several places that items not subject to appeal include, but are not limited to, the accuracy of the permit landings data in "the data set extracted from PacFIN" or, as appropriate, "extracted from NORPAC." The proposed bases for appeal of the IAD are "errors in NMFS' extraction, aggregation, or expansion of data, including: (1) Errors in NMFS' extraction of landings data from PacFIN; (2) errors in NMFS' extraction of state logbook data from PacFIN; (3) errors in NMFS' application of the QS allocation formula; (4) errors in identification of permit owner, permit combinations, or vessel registration as listed on NMFS permit database; and (5) errors in identification of ownership information for the first receiver or the processor that first processed the fish." In addition, NMFS is adding another item for appeal, "NMFS' use or application of ownership interest information."

In order to be more specific and accurate, the final regulations specify that items not subject to appeal include, but are not limited to, the accuracy of data in the relevant "PacFIN dataset on July 1, 2010," and as appropriate, the relevant "NORPAC dataset on August 1, 2010." Similarly, the bases for appeal are revised to read: "Errors in NMFS' use or application of data, including: (1) Errors in NMFS' use or application of landings data from PacFIN; (2) errors in NMFS' use or application of state logbook data from PacFIN; (3) errors in NMFS' application of the QS allocation formula; (4) errors in identification of permit owner, permit combinations, or vessel registration as listed on NMFS permit database; (5) errors in identification of ownership information for the first receiver or the processor that first processed the fish; and (6) errors in NMFS' use or application of ownership interest information."

As mentioned in the preamble to the proposed rule and described in more detail in a NMFS report for the March 2010 Council meeting, because of the timing of this application process for an initial issuance of a permit, endorsement, or QS under the trawl rationalization program, the owner of a limited entry trawl permit may not change during the application process for the initial issuance of a QS permit, an MS/CV-endorsed permit, or a C/P-endorsed permit, as specified at §§ 660.140(d)(8)(viii), 660.150(g)(6)(vii), and 660.160(d)(7)(vi), respectively. In other words, the limited entry trawl permit owner may not transfer his or her permit to another owner once the application process has started until the application process is complete. This is necessary for administration of the agency process of considering applications and making the IAD. The proposed rule stated that the application process would begin on the date of publication of this final rule. NMFS received no comment on this provision. However, based on further agency consideration of the proposed regulations, NMFS has changed the start of the application period during which permits could not be transferred. In this final rule, NMFS establishes that the start date for the application period will begin either 30 days after the publication of this final rule, or when the agency receives an application for initial issuance of a QS permit, an MS/CV-endorsed permit, or a C/P-endorsed permit, whichever date occurs first. NMFS is making this change to allow permit owners an opportunity to transfer their permits after receiving pre-filled applications from NMFS indicating anticipated issuance of QS or endorsements based on PacFIN and/or NORPAC data, as described above. NMFS believes this change is consistent with the Council intent to provide an opportunity for entry level participants to obtain a qualifying trawl limited entry permit prior to initial issuance with reasonable certainty of anticipated QS that would be issued on the basis of that permit. Further, for permit owners that have qualifying history that would exceed control limits, this change will provide an opportunity to divest permits prior to calculation of QS and any redistribution of QS under § 660.140(d)(4)(v). Accordingly, NMFS is changing the language to state, "NMFS will not review or approve any request for a change in limited entry trawl permit owner at any time after either November 1, 2010 or the date upon which the application is received by NMFS, whichever occurs first, until a final decision is made by the Regional Administrator on behalf of the Secretary of Commerce * * *" Limited entry trawl permits may be transferred after the application process is complete, once the permit owner has received a final decision (*i.e.,* the QS, permit, or endorsement has been issued and the appeals process has been completed).

NMFS recognizes that during the application process it may receive multiple applications for QS that reflect identical ownership. NMFS intends to issue a single QS permit for each individual owner, thus where multiple applications are received for the same person (*e.g.,* where the same person owns several qualifying permits), NMFS will issue a single QS permit that combines the amounts of all QS or IBQ derived from all limited entry permits for that unique owner, subject to accumulation limits and divestiture provisions. Because QS and IBQ ownership is subject to accumulation limits and because QS and IBQ will be highly divisible, NMFS does not believe there is any need to issue more than one QS permit for each unique owner and is taking this implementation approach to reduce redundancy, minimize costs, and improve efficiency in the administration of the program. The proposed rule set forth accumulation limits and divestiture provisions, and the program components proposed rule sets forth divisibility of QS and IBQ. No regulation change is made in this final rule regarding NMFS approach to combining QS or IBQ amounts from multiple applications for the same unique owner, because none is needed. NMFS highlights this in this preamble to clarify the initial issuance process for QS permits.

V. Application Deadline

The application deadline for the initial issuance of QS permits, MS permits, MS/CV endorsements, and C/P endorsements has been changed from what was described in the proposed rule. The proposed rule stated that applications would be due no later than 60 days after date of publication of the final rule in the **Federal Register**. However, this final rule specifies that applications are due no later than November 1, 2010. NMFS has determined that the November 1 deadline provides applicants with sufficient time to submit applications, while still providing the agency with sufficient time to process the applications. The agency intends that pre-filled applications will be available to current permit owners in mid-to-late

September, and the agency will hold a series of informational meetings with the public during the month of September to address, among other things, the application process. Therefore, with this final rule, NMFS is setting a specific deadline date for all applications of November 1, 2010. Applications must be complete and received by NMFS, or postmarked, no later than November 1, 2010.

VI. Changes To Reflect Recent NMFS Actions

Some changes are made in this final rule to update the regulations to reflect inseason actions that have been implemented at 50 CFR part 660 since the proposed rule (75 FR 32994, June 10, 2010) was published. Section 660.231(b)(3)(iv) of this final rule is updated to incorporate changes to the retention of Pacific halibut in the fixed gear sablefish fishery from an inseason action published May 4, 2010 (75 FR 23615). Section 660.131(b)(5)(i) of this final rule is updated to incorporate changes to the bycatch limits for Pacific whiting fisheries from a final rule published May 4, 2010 (75 FR 23620) [the 2010 tribal allocation was already reflected the June 10th proposed rule].

VII. Whiting Closure and Reapportionment Authority

The existing regulations at § 660.323(c) allow for closure of the individual sectors when each sector's allocation is reached or projected to be reached, and reapportionment of unused whiting to another sector before the end of the year. Under the Trawl Rationalization program whiting sectors will not be closed because the achievement of the individual quotas or coop allocations will close the fisheries, and whiting will not be reapportioned between sectors. In 2010, however, this closure and reapportionment ability is still in effect. In the reorganization of the existing regulations in the proposed rule this provision would have been inadvertently overwritten. Therefore, the closure and reapportionment authority for whiting is being renumbered and included in this final rule at § 660.131(b)(6). NMFS intends to remove this section in the program components final rule, which establishes the management measures specific to the groundfish management in 2011 and beyond under trawl rationalization.

VIII. Minor Edits

NMFS has made some minor edits to the regulations to make terminology more consistent (*e.g.,* references to shorebased IFQ fishery are edited to read Shorebased IFQ Program) and to correct typographical errors and technical errors (*e.g.,* "Other fish" are not an IFQ species and are thus removed from the QS accumulation limit table). In addition, Table 2d of Part 660, Subpart C (2012 At-sea Whiting Fishery Set-asides) is removed and Table 1d of Part 660, Subpart C is relabeled, "At-Sea Whiting Fishery Annual Set-Asides, 2011 and 2012" to cover annual set-asides for both 2011 and 2012.

B. Shorebased IFQ Program

I. General

Some general changes are made to regulatory language in this final rule. Where appropriate, the terms "QS" and "QP" have been revised to read "QS and IBQ" and "QP or IBQ pounds," respectively. Pacific halibut is listed as an IFQ species. However, Pacific halibut has an individual bycatch quota (IBQ) which is distinct from QS for groundfish species listed under the groundfish FMP. This change is to make it clear that Pacific halibut IBQ or IBQ pounds are distinct and may be managed differently than QS or QP. This distinction in the regulations was highlighted by NMFS at the Council's June 2010 meeting.

II. Accumulation Limits

In the proposed rule (75 FR 32994, June 10, 2010), NMFS specifically requested comment on how NMFS would calculate aggregate nonwhiting QS for compliance with accumulation limits. NMFS received no comment on this issue. Consistent with the Council motion, NMFS will calculate aggregate nonwhiting QS using the 2010 OYS. To determine the shoreside trawl allocation for the purpose of determining compliance with the control limit during initial issuance, NMFS will apply the Amendment 21 allocation percentages to the 2010 OYs for species that are allocated by Amendment 21, and where applicable, will deduct the Amendment 21 preliminary set-asides for the at-sea sectors for these species. To determine the shoreside trawl allocations for species not allocated by Amendment 21, NMFS will apply a percentage based on the Northwest Fisheries Science Center (NWFSC) final report on 2010 estimated total fishing mortality of groundfish by sector, or the most recent final report available if the final report for 2010 is not available. The regulations at § 660.140(d)(4)(i)(B) have been revised to reflect this clarification.

NMFS also specifically requested comment in the proposed rule (75 FR 32994, June 10, 2010) on the method (order) of calculating control limits for divestiture purposes. NMFS received no comments on this issue. Based on further review of the record and in order to result in an initial issuance of QS that more closely reflects the weighting of nonwhiting species in the permit's history, NMFS will calculate aggregate limits first, when determining compliance with control rules. Regulations at § 660.140(d)(4)(v) in this final rule have been revised to reflect this clarification.

III. Initial Issuance Allocation Formulas

In the proposed rule (75 FR 32994, June 10, 2010), NMFS specifically requested comment on the use of data other than PacFIN in cases where species in PacFIN do not match IFQ species. For example, unspecified rockfish in PacFIN do not match an IFQ species group. As described above, the information contained in the PacFIN database represents the best scientific information available, and NMFS believes that an analysis to match groundfish species in PacFIN that do not exactly match an IFQ species using state landing receipts and logbook information (instead of PacFIN) would be impracticable, extremely time consuming, and likely to result in inaccurate information. NMFS received no comments on this issue. Thus, in this final rule, NMFS has removed the regulatory language from the proposed rule at § 660.140(d)(8)(iii)(A)(*2*) that read, "For species that do not match IFQ species categories after applying standard PacFIN species composition algorithms, NMFS will assign species to an IFQ species category based on other information from state landing receipts or logbook information in PacFIN." NMFS will use data from PacFIN that matches IFQ species/species groupings and will not make assumptions for unspecified groundfish.

An additional change to the proposed rule on the initial issuance allocation formulas for QS and IBQ is a step added at §§ 660.140(d)(8)(iii)(G) and 660.140(d)(8)(iv)(I) to clarify that NMFS will redistribute any QS or IBQ in excess of accumulation limits for permits transferred after November 8, 2008, or not registered with NMFS by November 30, 2008, as specified at § 660.140(d)(4)(v).

For the initial issuance calculation, the Council motion requires that bycatch rates be calculated for 8 geographic areas for overfished species and 4 geographic areas for Pacific halibut. These include zones stratified by latitude and depth. Bycatch rates included in the proposed rule were

estimates used for example purposes. Subsequently, NWFSC has completed its calculation of bycatch rates based on West Coast Groundfish Observer Program (WCGOP) data, and the finalized bycatch rates are included in this final rule at § 660.140(d)(8).

In calculating the bycatch rates, to determine depth stratification, the NWFSC evaluated models to determine an appropriate break to isolate data as either shoreward or seaward of the Rockfish Conservation Areas (RCAs). The NWFSC concluded that the 115 fathom break was an appropriate means of stratifying the data shoreward and seaward of the RCA, as had been previously requested by the Council for Pacific halibut bycatch ratios. NMFS has revised the final rule to reflect the use of 115 fathoms as the division between shoreward and seaward geographical areas for the purpose of calculating QS for Group 2 and Group 3 species.

Estimated bycatch rates in the proposed rule were truncated to the eighth decimal place, however, the bycatch rates published in the final rule are the rates calculated by the NWFSC truncated to the ninth decimal place. NMFS decided to extend the published rates to the ninth decimal place in order to assure accuracy of calculations to one-tenth of one pound, consistent with standard rounding rules discussed in the regulations.

C. At-Sea Coop Programs

I. MS Coop Program

In the MS Coop Program, eligibility requirements for ownership of an MS permit has been clarified. MS permits, as a new type of limited entry permit, are subject to eligibility requirements for all limited entry permits at § 660.25(b)(1)(ii), which states: "Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12113(a) may be issued or may hold a limited entry permit." The proposed rule at § 660.150(f)(1)(i) stated: "To acquire an MS permit a person must be eligible to own and control a U.S. fishing vessel with a fishery endorsement pursuant to 46 U.S.C. 12113 (general fishery endorsement requirements and 75 percent citizenship requirement for entities) and must be: A United States citizen; a permanent resident alien; or a corporation, partnership or other entity established under the laws of the United States or any State." The language in § 660.150 had been adopted by the Council with regards to eligibility to own QS or IBQ in the Shorebased IFQ Program, and had been inadvertently repeated in the provisions for the MS Coop Program. Accordingly, the provision included in the proposed rule has been removed from this final rule.

Another change from the proposed rule for the MS Coop Program in this final rule is the removal of all references to "control" at § 660.150. The Council motion for the MS Coop Program, as reflected in Appendix E to the FMP, did not identify any ownership rules or control limits for either MS/CV-endorsed permits or MS permits. At its June 2010 meeting, the Council clarified that for the purpose of accumulation limits, ownership of MS/CV-endorsed permits and MS permits is subject to the individual and collective rule.

NMFS is also changing the divestiture provisions for MS/CV-endorsed permits from that described in the proposed rule. Upon further review of the regulation comparing the MS/CV-endorsed permit and the QS permit divestiture provisions and after consideration of oral comments submitted to the Council at its June 2010 meeting, NMFS is revising the divestiture provisions for the MS/CV-endorsed permits to provide additional time for owners of MS/CV-endorsed permits to come into compliance with accumulation limits. The divestiture provision for QS permits allows 2 years for a permit owner to come in to compliance with the requirement. As drafted in the proposed rule, the divestiture provision for owners of MS/CV-endorsed permits would only allow these individuals a couple of months, at most, to come in to compliance with the provision. NMFS believes that a longer time for divestiture would be appropriate for owners of MS/CV-endorsed permits. Applying a similar time frame for divestiture in the MS Coop Program as the divestiture provision for the Shorebased IFQ Program is a logical extension from what was proposed, and is consistent, NMFS believes, with the Council's intent in Amendment 20. One difference that will remain between the two divestiture provisions is that the QS permits must divest between years 3 and 4 after implementation of the program, which is after the 2 year moratorium on the transfer of QS. In Amendment 20, the MS/CV-endorsed permits are not subject to a 2 year moratorium on transfers. Thus, NMFS is revising the divestiture provision at § 660.150(g)(3)(i)(D) to allow MS/CV-endorsed permit owners 2 years after implementation of the program to divest of excess ownership in MS/CV-endorsed permit(s).

II. C/P Coop Program

There are no substantive changes to the C/P Coop Program from the proposed rule.

Classification

The Administrator, Northwest Region, NMFS, determined that FMP Amendments 20 and 21, as implemented in part through this final rule, are necessary for the conservation and management of the Pacific coast groundfish fishery and that they are consistent with the MSA and other applicable laws.

NMFS and the Council prepared final environmental impact statements (EISs) for Amendment 20 and for Amendment 21 to the Pacific Coast Groundfish FMP. A notice of availability was published on June 25, 2010 (75 FR 36386). In partially approving FMP Amendments 20 and 21 on August 9, 2010, NMFS issued a Record of Decision (ROD) for each amendment identifying the selected alternatives. Copies of the RODs are available from NMFS (*see* **ADDRESSES**).

This final rule has been determined to be significant for purposes of Executive Order 12866.

The preamble to the proposed rule (75 FR 32994, June 10, 2010) included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here. NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA) prepared a FRFA in support of this rule. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS's responses to those comments. A copy of the FRFA is available from NMFS (*see* **ADDRESSES**) and a summary of the FRFA follows:

The Council has prepared two EIS documents: Amendment 20—Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery, which would create the structure and management details of the trawl fishery rationalization program; and Amendment 21—Allocation of Harvest Opportunity Between Sectors of the Pacific Coast Groundfish Fishery, which would allocate the groundfish stocks between trawl and non-trawl fisheries. The two draft EIS's prepared by the Council provide economic analyses of the Council's preferred alternatives and draft RIR and IRFAs (DEIS IRFAs). The DEIS IRFAs were updated and combined into a single RIR/IRFA for use with the "initial issuance" proposed rule that was published on June 10, 2010 (75 FR 32994) (PR IRFA). The PR IRFA

reviewed and summarized the benefits and costs, and the economic effects of the Council's recommendations as presented in the two EIS's.

Although other alternatives were examined in the EISs, the FRFA focuses on the two key alternatives—the No-Action Alternative and the Preferred Alternative. The EISs include an economic analysis of the impacts of all the alternatives and the PR IRFA and the FRFA incorporates this analysis. For the Amendment 20 EIS, the alternatives ranged from status quo (no action), to IFQ for all trawl sectors, IFQ for the non-whiting sector and coops for all whiting sectors, and IFQ for the shorebased sector and coops for the at-sea sectors (preferred). Various elements were part of each of these alternatives and varied among them, including initial qualifications and allocations, accumulation limits, grandfathering, processor shares, species covered, number of sectors, adaptive management, area management, and carryover provisions. The preferred alternative is a blending of components from the other alternatives analyzed in the EIS. For the Amendment 21 EIS, alternatives were provided for 6 decision points: (1) Limited entry trawl allocations for Amendment 21 species, (2) shoreside trawl sector allocations, (3) trawl sector allocations of trawl-dominant overfished species, (4) at-sea whiting trawl sector set-asides, (5) Pacific halibut total bycatch limits, and (6) formal allocations in the FMP. For most of these decision points, the alternatives within them were crafted around approximately maintaining historical catch levels by the sectors or, in some cases, increasing opportunity for the non-trawl sector.

By focusing on the two key alternatives in the PR IRFA and in the FRFA (no action and preferred), it encompasses parts of the other alternatives and informs the reader of these regulations. The analysis of the no action alternative describes what is likely to occur in the absence of the action. It provides a benchmark against which the incremental effects of the action can be compared. Under the no action alternative, the current, primary management tool used to control the Pacific coast groundfish trawl catch includes a system of two month cumulative landing limits for most species and season closures for Pacific whiting. This management program would continue under the no action alternative. Only long-term, fixed allocations for Pacific whiting and sablefish north of 36° N. lat. would exist. All other groundfish species would not be formally allocated between the trawl and non-trawl sectors. Allocating the available harvest of groundfish species and species complexes would occur in the Council process of deciding biennial harvest specifications and management measures and, as such, would be considered short term allocations.

The analysis of the preferred alternative describes what is likely to occur as a result of the action. Alternative 4b was the Council's preferred alternative for rationalizing the west coast groundfish limited entry trawl fishery. The Council's preferred alternative establishes IFQs for both shoreside sectors of the trawl fishery and allows them to trade IFQs between one another, effectively combining both shoreside sectors, whiting and non-whiting, into one. Under the preferred alternative, shoreside processors are allocated 20 percent of the shoreside IFQ for whiting. Under the preferred alternative, shoreside processors would not receive IFQ for nonwhiting species that have been landed with whiting. Furthermore, a subset of species is covered with IFQs in the shoreside fishery and with allocations in the at-sea fishery, rather than all species in the Council's ABC/OY table for groundfish. Those species which are not covered with IFQs or allocations are excluded because the incidental catch of those species is small relative to management targets and the inclusion of those species may have negative economic implications with little to no benefit to management. The mothership sector is managed with harvest cooperatives (coops), and each catcher vessel wanting to participate in a coop must declare a mothership to which it will deliver in the upcoming year. The catcher-processor sector is managed with a limited entry system designed to facilitate the continuation of the voluntary cooperative in that sector. In the event that the voluntary cooperative breaks apart, each permit is allocated an equal number of QS, and the catcher-processor sector becomes an IFQ fishery.

Other provisions of Alternative 4b include initial allocation that allocates bycatch species based on a bycatch rate (in the nonwhiting portion of the fishery) and on a pro rata distribution for the whiting portion of the fishery. The initial allocation of IFQ to the shoreside sectors divides the buyback portion of catch history equally for some IFQ species and is based on the years 1994 to 2003, where the two worst years are dropped. This equal division only applies to non-overfished species and canary rockfish. The other overfished species would be allocated based on current permits' landing history alone. In the mothership sector, the best 8 out of 10 years are used between 1994 and 2003 for calculating catch history.

The need for a change from status quo is identified in the problem statement. After reviewing the status quo situation and both the beneficial and adverse impacts of the trawl rationalization alternatives (as described in detail in Chapter 2, Chapter 4, and the appendices to the Amendment 20 EIS), the Council's judgment was that the advantages of its final preferred alternative for trawl rationalization, Alternative 4b, outweighed the disadvantages in comparison to continuation with status quo management, the other trawl rationalization alternatives that were considered, and other proposals for modification of status quo (*e.g.,* providing longer cumulative limit periods). There are two primary drivers in the problem statement that guided this process: the first is the need to account for, control, and reduce bycatch, and the second is the need to provide for an economically sustainable fishery for the benefit of industry participants and fishery dependent communities. These needs are both reflected in the goal for this action: Create and implement a capacity rationalization plan that increases net economic benefits, creates individual economic stability, provides for full utilization of the trawl sector allocation, considers environmental impacts, and achieves individual accountability of catch and bycatch. There are no significant alternatives to this action that accomplish the stated objectives of applicable statutes and that minimize any of the significant economic impact of the rule on small entities. As discussed below, the action includes provisions that would have a beneficial impact on small entities.

As described in the RIR/IRFA, NMFS developed the following estimates of the number of small entities to which this rule would apply. NMFS makes the following conclusions based primarily on analyses associated with fish ticket data and limited entry permit data, available employment data provided by processors, information on the charterboat and tribal fleets, and available industry responses industry to on-going survey on ownership. Entities were analyzed as to whether they were only affected by the Amendment 21 allocation processes (non-trawl), or if they were affected by both Amendment 20 and 21 (trawl).

The non-trawl businesses are associated with the following fleets: limited entry fixed gear (approximately

150 companies), open access groundfish (1,100), charterboats (465), and the tribal fleet (four tribes with 66 vessels). Available information on average revenue per vessel suggests that all the entities in this group can be considered small. For the trawl sector, there are 177 permit holders. Nine limited entry trawl permits are associated with the catcher-processing vessels which are considered "large" companies. Of the remaining 168 limited entry permits, 25 limited entry trawl permits are either owned or closely associated with a "large" shore-based processing company or with a non-profit organization who considers itself a "large" organization. Nine other permit owners indicated that they were large "companies." Almost all of these companies are associated with the shorebased and mothership whiting fisheries. The remaining 134 limited entry trawl permits are projected to be held by "small" companies. Three of the six mothership processors are "large" companies. Within the 14 shorebased whiting first receivers/processors, there are four "large" companies. Including the shorebased whiting first receivers, in 2008, there were 75 first receivers that purchased limited entry trawl groundfish. There were 36 small purchasers (less than $150,000); 26 medium purchasers (purchases equal to or greater than $150,000 but less than $1,000,000); and 13 large purchasers (purchases equal to or greater than $1.0 million). Because of the costs of obtaining a "processor site license", procuring and scheduling a catch monitor, and installing and using the electronic fish ticket software, these "small" purchasers will likely opt out of buying groundfish, or make arrangements to purchase fish from another company that has obtained a processing site license.

NMFS received one comment specific to the RIR/IRFA. This comment concerned the potential benefits to harvesters concerning price negotiations with processors from the perspective of moving from 2-month cumulative landings limits to IFQs. This comment is summarized above as Comment 50. NMFS responded that the summary of the IRFA contained in the preamble of the proposed rule was inconsistent with Chapter 4 of the DEIS and with the draft RIR/IRFA that was included with the DEIS, NMFS will correct the summary appropriately. The full response to this comment is described above in the response to Comment 50.

Although not specifically addressed to RIR/IRFA, comments were received that relate to the impacts on small businesses. In particular, concerns were raised about "negative impacts on smaller boats, deckhands, and smaller boats (Comment 19), "program costs to fishermen, including the costs of entering the fishery and the costs of observers and monitoring are too high" (Comments 22 and 24), "observer rules need to change for trawl and small boats to reflect the vastly different bycatch which occurs when mistakes are made." (Comment 23); "impact of the allocation formulas on Fort Bragg fishermen (Comment 32); "concern that average fishermen will not be able to afford to participate and that this will lead to increased consolidation and leave many ports no longer viable" (Comment 34); and "negative impacts on processors, that small processors will be driven out of business due to consolidation * * * will eliminate the "mom and pop businesses" (Comment 49).

NMFS has responded to these comments above in detail and these responses will not be repeated here. However, as discussed in the response to Comments 19 (small harvesters) and 49 (small processors) the overall general nature of these responses is the following. In terms of impacts on small businesses, the trawl rationalization program is intended to increase net economic benefits, create economic stability, provide full utilization of the trawl sector allocation, consider environmental impacts, and promote conservation through individual accountability for catch and bycatch. The allocations of quota under the new program do not differ significantly from status quo allocations made biennially in terms of total allocations. However, instead of fleetwide quotas, there will now be individual allocations of quota shares and quota pounds to permit owners. Allocations of overfished species constrain all groundfish fishermen, for both large and small operations. In some cases, smaller operators may be constrained to a greater extent. This was recognized in development of the program, and operators are encouraged to work together cooperatively, through mechanisms like combining and sharing quota amounts. The program provides for leasing of additional quota as needed to facilitate operations. The proposed action includes provisions that would have a beneficial impact on small entities. It would create a management program under which most recent participants in the Pacific Coast groundfish limited entry trawl fishery (many of which are small entities) would be eligible to continue participating in the fishery and under which the fishery itself would experience an increase in economic profitability. Small entities choosing to exit the fishery should receive financial compensation from selling their permit or share of the resource. To prevent a particular individual, corporation, or other entity from acquiring an excessive share of the total harvest privileges in the program, accumulation limits would restrict the amount of harvest privileges that can be held, acquired, or used by individuals and vessels. In addition, for the shoreside sector of the fishery, an AMP was created to mitigate any adverse impacts, including impacts on small entities and communities that might result from the proposed action.

It is expected that the TIQ will lead to consolidation and this may affect small processors, particularly if they are in disadvantaged ports. Chapter 4 of the FEIS analyzed the effects on processors from various perspectives: The distribution of landings across west coast ports may change as a result of fleet consolidation, industry agglomeration, and the comparative advantage of ports (a function of bycatch rates in the waters constituting the operational area for the port, differences in infrastructure, and other factors). In particular, the Council analysis indicated that processors associated with disadvantaged communities may see trawl groundfish volumes decline. The analysis highlights that those processors receiving landings from Central California or Neah Bay may see a reduction in trawl caught groundfish if the market is able to redirect activity toward more efficient and advantaged ports. However, in addition to increased landings that are expected to result from the TIQ program, small processors and disadvantaged communities may benefit from the control limits, vessel limits, and adaptive management policies. Control limits will limit the ability of large processors to obtain shares of the fisheries while the adaptive management processes will allow the Council to consider the impacts on small processors, and disadvantaged communities when allocating the adaptive management quota (10 percent of the total non-whiting trawl quotas). Although vessel accumulation limits tend to lower economic efficiency and restrict profitability for the average vessel, they could help retain vessels in communities because more vessels would remain.

Another process by which small processors and disadvantaged communities may benefit from will be the future establishment of regulations and policies that allow CFAs to be formed. Some of the potential benefits of CFAs include: ensuring access to the fishery resource in a particular area or

community to benefit the local fishing economy; enabling the formation of risk pools and sharing monitoring and other costs; ensuring that fish delivered to a local area will benefit local processors and businesses; providing a local source of QSs for new entrants and others wanting to increase their participation in the fishery; increasing local accountability and responsibility for the resource; and benefiting other providers and users of local fishery infrastructure. The development of CFAs could have a positive impact on the culture of fishing communities. Although little research has been done on the effect of CFAs on culture, it seems likely that CFAs could strengthen a community's cultural associations with fishing by contributing to a unique sense of identity, increasing accountability for both natural and cultural resources, and building and strengthening connections among community members.

In summary, as stated in the RIR/IRFA, the major impacts of this rule appear to be on three groups: Shoreside processors which are a mix of large and small processors; and shore-based trawlers which are also a mix of large and small companies. The non-whiting shore-based trawlers are currently operating at a loss or at best are "breaking even." The new rationalization program would lead to profitability, but only with a reduction of about 50 percent of the fleet. This program would lead to major changes in the fishery. To help mitigate against these changes, as discussed above, the agency has announced its intent, subject to available Federal funding, that participants would initially be responsible for 10 percent of the cost of hiring observers and catch monitors. The industry proportion of the costs of hiring observers and catch monitors would be increased every year so that by 2014, once the fishery has transitioned to the rationalization program, the industry would be responsible for 100 percent of the cost of hiring the observers and catch monitors. NMFS believes that an incrementally reduced subsidy to industry funding would enhance the observer and catch monitor program's stability, ensure 100 percent observer and catch monitor coverage, and facilitate the industries' successful transition to the new quota system. In addition, to help mitigate against the negative impacts of this program, the Council has adopted an Adaptive Management Program where starting in year 3 of the program, 10 percent of non-whiting QS would be set aside every year to address community impacts and industry transition needs. After reviewing the initial effects of ITQ programs in other parts of the world, the council had placed a short term QS trading prohibition so that fishermen can learn from their experiences and not make premature sales of their QS. The Council is also envisioning future regulatory processes that would allow community fisheries associations to be established to help aid communities and fishermen.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. Copies of this final rule are available from the Northwest Regional Office, and the small entity compliance guide will be sent to the following: (1) "Pre-qualified" limited entry trawl permit owners, (2) "pre-qualified" shorebased processors of Pacific whiting, (3) Pacific whiting license owners, (4) owners of vessels registered to limited entry trawl permits, and (5) members of the groundfish public notice e-mail list. The guide and this final rule are also available on the NMFS Northwest Region Web site (*http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Trawl-Program/index.cfm*) and upon request.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB) under control number 0648–0611. Public reporting burden for the QS Initial Issuance/QS Permit Application is estimated to average 6 hours per response (180 responses). Public reporting burden for the MS Permit Application is estimated to average 1 hour per response (6 responses). Public reporting burden for the MS/CV Endorsement Application is estimated to average 2 hours per response (30 responses). Public reporting burden for the C/P Endorsement Application is estimated to average 30 minutes per response (10 responses). Public reporting burden for the Ownership Interest form is estimated to average 30 minutes per response (216 responses). Public reporting burden for the Appeals is estimated to average 6 hours per response (100 responses). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. No comments were received on the PRA during the proposed rule comment period. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (*see* **ADDRESSES**) and by e-mail to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the Pacific Coast groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the FMP for the Pacific Coast groundfish fishery was not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS reinitiated a formal section 7 consultation under the ESA in 2005 for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999, Biological Opinion had defined an 11,000 Chinook incidental take threshold for the Pacific whiting fishery. During the 2005 Pacific whiting season, the 11,000 fish Chinook incidental take threshold was exceeded, triggering reinitiation. Also in 2005, new data from the West Coast Groundfish Observer Program became available, allowing NMFS to complete an analysis

of salmon take in the bottom trawl fishery.

NMFS prepared a Supplemental Biological Opinion dated March 11, 2006, which addressed salmon take in both the Pacific whiting midwater trawl and groundfish bottom trawl fisheries. In its 2006 Supplemental Biological Opinion, NMFS concluded that catch rates of salmon in the 2005 whiting fishery were consistent with expectations considered during prior consultations. Chinook bycatch has averaged about 7,300 fish over the last 15 years and has only occasionally exceeded the reinitiation trigger of 11,000 fish.

Since 1999, annual Chinook bycatch has averaged about 8,450 fish. The Chinook ESUs most likely affected by the whiting fishery has generally improved in status since the 1999 section 7 consultation. Although these species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior "no jeopardy" conclusion with respect to the fishery. For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish FMP is not likely to jeopardize the continued existence of any of the affected ESUs.

Lower Columbia River coho (70 FR 37160, June 28, 2005) were recently listed and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead. The Southern Distinct Population Segment (DPS) of green sturgeon (71 FR 17757, April 7, 2006) and the southern DPS of Pacific eulachon (75 FR 13012, March 18, 2010) were also recently listed as threatened under the ESA. As a consequence, NMFS has reinitiated its Section 7 consultation on the Groundfish FMP.

After reviewing the available information, NMFS concluded that, consistent with Sections 7(a)(2) and 7(d) of the ESA, the implementation of this final rule would not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

Amendments 20 and 21 to the FMP were developed after meaningful consultation and collaboration, through the Council process, with the tribal representative on the Council. The Amendments have no direct effect on tribes; the reorganization of the groundfish regulations includes regulations that address tribal fishing; these sections were deemed by the Council as "necessary or appropriate" to implement the FMP as amended.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: September 13, 2010.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 15 CFR Chapter IX and 50 CFR Chapter VI are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1(b), in the table under the entry "50 CFR":

■ a. Remove the entries and corresponding OMB numbers for 660.303, 660.305, 660.322, 660.323, 660.333, and 660.337.

■ b. Add new entries and corresponding OMB numbers for 660.20, 660.25, 660.113, 660.219, and 660.319.

The additions read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
660.20	–0355
660.25	–0203
660.113	–0271
660.219	–0352
660.319	–0352
* * * * *	

50 CFR Chapter VI

PART 660—FISHERIES OFF WEST COAST STATES

■ 3. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 7001 *et seq.*

■ 4. Add subparts C through F to read as follows:

Subpart C—West Coast Groundfish Fisheries

Sec.

Subpart C—West Coast Groundfish Fisheries

§ 660.10 Purpose and scope.

(a) Subparts C through G of this part implement the Pacific Coast Groundfish Fishery Management Plan (PCGFMP) developed by the Pacific Fishery Management Council. Subparts C through G govern fishing vessels of the U.S. in the EEZ off the coasts of Washington, Oregon, and California. All weights are in round weight or round-weight equivalents, unless specified otherwise.

(b) Any person fishing subject to subparts C through G of this part is bound by the international boundaries described in this section, notwithstanding any dispute or negotiation between the U.S. and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are established or recognized by the U.S.

§ 660.11 General definitions.

These definitions are specific to the fisheries covered in subparts C through G of this part.

Active sampling unit means the portion of the groundfish fleet in which an observer coverage plan is being applied.

Address of Record means the business address a person has provided to NMFS for NMFS use in providing notice of agency actions and other business with that person.

Allocation. (*See* § 600.10 of this chapter)

Base permit, with respect to a limited entry permit stacking program, means a limited entry permit described at § 660.25(b)(3)(i), subpart C registered for use with a vessel that meets the permit length endorsement requirements appropriate to that vessel, as described at § 660.25(b)(3)(iii), subpart C.

Biennial fishing period means a 24-month period beginning at 0001 local time on January 1 and ending at 2400 local time on December 31 of the subsequent year.

B_{MSY} means the biomass level that produces maximum sustainable yield (MSY), as stated in the PCGFMP at Section 4.2.

Calendar day means the day beginning at 0001 hours local time and continuing for 24 consecutive hours.

Calendar year. (*see* "fishing year")

Catch, take, harvest. (*See* § 600.10 of this chapter)

Catch monitor means an individual that is certified by NMFS, is deployed to a first receiver, and whose primary duties include: monitoring and verification of the sorting of fish relative to federal requirements defined in § 660.60, subpart C; documentation of the weighing of fish relative to the requirements of § 660.13, subpart C; and verification of first receivers reporting relative to the requirements defined in § 660.113, subpart D.

Change in partnership or corporation means the addition of a new shareholder or partner to the corporate or partnership membership. This definition of a "change" will apply to any person added to the corporate or partnership membership since November 1, 2000, including any family member of an existing shareholder or partner. A change in membership is not considered to have occurred if a member dies or becomes legally incapacitated and a trustee is appointed to act on his behalf, nor if the ownership of shares among existing members changes, nor if a member leaves the corporation or partnership and is not replaced. Changes in the ownership of publicly held stock will not be deemed changes in ownership of the corporation.

Closure or closed means, when referring to closure of a fishery or a closed fishery, that taking and retaining, possessing, or landing the particular species or species group covered by the fishing closure is prohibited. Unless otherwise announced in the **Federal Register** or authorized in this subpart, offloading must begin before the closure time.

Commercial fishing means:

(1) Fishing by a person who possesses a commercial fishing license or is required by law to possess such license issued by one of the states or the Federal Government as a prerequisite to taking, landing and/or sale of fish; or

(2) Fishing that results in or can be reasonably expected to result in sale, barter, trade or other disposition of fish for other than personal consumption.

Commercial harvest guideline or commercial quota means the fishery harvest guideline minus the estimated recreational catch. Limited entry and open access allocations are derived from the commercial harvest guideline or quota.

Conservation area(s) means either a Groundfish Conservation Area (GCA),

an Essential Fish Habitat Conservation Area (EFHCA), or both.

(1) *Groundfish Conservation Area or GCA* means a geographic area defined by coordinates expressed in degrees latitude and longitude, wherein fishing by a particular gear type or types may be prohibited. GCAs are created and enforced for the purpose of contributing to the rebuilding of overfished West Coast groundfish species. Regulations at § 660.70, Subpart C define coordinates for these polygonal GCAs: Yelloweye Rockfish Conservation Areas, Cowcod Conservation Areas, waters encircling the Farallon Islands, and waters encircling the Cordell Banks. GCAs also include Rockfish Conservation Areas or RCAs, which are areas closed to fishing by particular gear types, bounded by lines approximating particular depth contours. RCA boundaries may and do change seasonally according to the conservation needs of the different overfished species. Regulations at §§ 660.70 through 660.74, subpart C define RCA boundary lines with latitude/longitude coordinates; regulations at Tables 1 (North) and 1 (South) of subpart D, Tables 2 (North) and 2 (South) of subpart E, and Tables 3 (North) and 3 (South) of subpart F set RCA seasonal boundaries. Fishing prohibitions associated with GCAs are in addition to those associated with EFH Conservation Areas.

(2) *Essential Fish Habitat Conservation Area or EFHCA* means a geographic area defined by coordinates expressed in degrees latitude and longitude, wherein fishing by a particular gear type or types may be prohibited. EFHCAs are created and enforced for the purpose of contributing to the protection of West Coast groundfish essential fish habitat. Regulations at §§ 660.75, through 660.79, Subpart C define EFHCA boundary lines with latitude/longitude coordinates. Fishing prohibitions associated with EFHCAs, which are found at § 660.12, subpart C, are in addition to those associated with GCAs.

Continuous transiting or transit through means that a fishing vessel crosses a groundfish conservation area or EFH conservation area on a constant heading, along a continuous straight line course, while making way by means of a source of power at all times, other than drifting by means of the prevailing water current or weather conditions.

Corporation means a legal, business entity, including incorporated (INC) and limited liability corporations (LLC).

Council means the Pacific Fishery Management Council, including its Groundfish Management Team (GMT), Scientific and Statistical Committee (SSC), Groundfish Advisory Subpanel (GAP), and any other advisory body established by the Council.

Date of landing means the date on which the transfer of fish or offloading of fish from any vessel to a processor or other first receiver begins.

Direct financial interest means any source of income to or capital investment or other interest held by an individual, partnership, or corporation or an individual's spouse, immediate family member or parent that could be influenced by performance or non-performance of observer or catch monitor duties.

Electronic fish ticket means a software program or data files meeting data export specifications approved by NMFS that is used to send landing data to the Pacific States Marine Fisheries Commission. Electronic fish tickets are used to collect information similar to the information required in state fish receiving tickets or landing receipts, but do not replace or change any state requirements.

Electronic Monitoring System or EMS means a data collection tool that uses a software operating system connected to an assortment of electronic components, including video recorders, to create a collection of data on vessel activities.

Endorsement means an additional specification affixed to the limited entry permit that further restricts fishery participation or further specifies a harvest privilege, and is non-severable from a limited entry permit.

Entity. (*See* "Person")

Essential Fish Habitat or EFH. (*See* § 600.10 of this chapter)

First Receiver means a person who receives, purchases, or takes custody, control, or possession of catch onshore directly from a vessel.

Fish. (*See* § 600.10 of this chapter)

Fishery (*See* § 600.10 of this chapter)

Fishery harvest guideline means the harvest guideline or quota after subtracting from the OY any allocation for the Pacific Coast treaty Indian tribes, projected research catch, deductions for fishing mortality in non-groundfish fisheries, as necessary, and set-asides for EFPs.

Fishery management area means the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nm offshore, and bounded on the north by the Provisional International Boundary between the U.S. and Canada, and bounded on the south by the International Boundary between the U.S. and Mexico. The inner boundary of the fishery management area is a line coterminous with the seaward boundaries of the States of Washington, Oregon, and California (the "3–mile limit"). The outer boundary of the fishery management area is a line drawn in such a manner that each point on it is 200 nm from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the U.S. and Canada or Mexico. All groundfish possessed between 0–200 nm offshore or landed in Washington, Oregon, or California are presumed to have been taken and retained from the EEZ, unless otherwise demonstrated by the person in possession of those fish.

Fishing. (See § 600.10 of this chapter)

Fishing gear includes the following types of gear and equipment:

(1) *Bottom contact gear* means fishing gear designed or modified to make contact with the bottom. This includes, but is not limited to, beam trawl, bottom trawl, dredge, fixed gear, set net, demersal seine, dinglebar gear, and other gear (including experimental gear) designed or modified to make contact with the bottom. Gear used to harvest bottom dwelling organisms (e.g. by hand, rakes, and knives) are also considered bottom contact gear for purposes of this subpart.

(2) *Demersal seine* means a net designed to encircle fish on the seabed. The demersal seine is characterized by having its net bounded by lead-weighted ropes that are not encircled with bobbins or rollers. Demersal seine gear is fished without the use of steel cables or otter boards (trawl doors). Scottish and Danish Seines are demersal seines. Purse seines, as defined at § 600.10 of this chapter, are not demersal seines. Demersal seine gear is included in the definition of bottom trawl gear in paragraph (11)(i) of this definition.

(3) *Dredge gear* means a gear consisting of a metal frame attached to a holding bag constructed of metal rings or mesh. As the metal frame is dragged upon or above the seabed, fish are pushed up and over the frame, then into the mouth of the holding bag.

(4) *Entangling nets* include the following types of net gear:

(i) *Gillnet.* (*See* § 600.10 of this chapter)

(ii) *Set net* means a stationary, buoyed, and anchored gillnet or trammel net.

(iii) *Trammel net* means a gillnet made with two or more walls joined to a common float line.

(5) *Fixed gear (anchored nontrawl gear)* means the following gear types: longline, trap or pot, set net, and stationary hook-and-line (including commercial vertical hook-and-line) gears.

(6) *Hook-and-line* means one or more hooks attached to one or more lines. It may be stationary (commercial vertical hook-and-line) or mobile (troll).

(i) *Bottom longline* means a stationary, buoyed, and anchored groundline with hooks attached, so as to fish along the seabed. It does not include pelagic hook-and-line or troll gear.

(ii) *Commercial vertical hook-and-line* means commercial fishing with hook-and-line gear that involves a single line anchored at the bottom and buoyed at the surface so as to fish vertically.

(iii) *Dinglebar gear* means one or more lines retrieved and set with a troll gurdy or hand troll gurdy, with a terminally attached weight from which one or more leaders with one or more lures or baited hooks are pulled through the water while a vessel is making way.

(iv) *Troll gear* means a lure or jig towed behind a vessel via a fishing line. Troll gear is used in commercial and recreational fisheries.

(7) *Mesh size* means the opening between opposing knots. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot, regardless of twine size.

(8) *Nontrawl gear* means all legal commercial groundfish gear other than trawl gear.

(9) *Spear* means a sharp, pointed, or barbed instrument on a shaft.

(10) *Trap or pot* See § 600.10 of this chapter, definition of "trap". These terms are used as interchangeable synonyms.

(11) *Trawl gear* means a cone or funnel-shaped net that is towed through the water, and can include a pair trawl that towed simultaneously by two boats. For the purpose of this definition, trawl gear includes groundfish and non-groundfish trawl. See definitions for groundfish trawl and non-groundfish trawls (previously called "exempted trawl").

(i) *Bottom trawl* means a trawl in which the otter boards or the footrope of the net are in contact with the seabed. It includes demersal seine gear, and pair trawls fished on the bottom. Any trawl not meeting the requirements for a midwater trawl in § 660.130(b), subpart D is a bottom trawl.

(A) *Beam trawl gear* means a type of trawl gear in which a beam is used to hold the trawl open during fishing. Otter boards or doors are not used.

(B) *Large footrope trawl gear* means a bottom trawl gear with a footrope diameter larger than 8 inches (20 cm,) and no larger than 19 inches (48 cm) including any rollers, bobbins, or other material encircling or tied along the length of the footrope.

(C) *Small footrope trawl gear* means a bottom trawl gear with a footrope diameter of 8 inches (20 cm) or smaller, including any rollers, bobbins, or other material encircling or tied along the length of the footrope. Selective flatfish trawl gear that meets the gear component requirements in § 660.130(b), subpart D is a type of small footrope trawl gear.

(ii) *Midwater (pelagic or off-bottom)* trawl means a trawl in which the otter boards and footrope of the net remain above the seabed. It includes pair trawls if fished in midwater. A midwater trawl has no rollers or bobbins on any part of the net or its component wires, ropes, and chains. For additional midwater trawl gear requirements and restrictions, *see* § 660.130(b), subpart D.

(iii) *Trawl gear components* include:

(A) *Breastline* means a rope or cable that connects the end of the headrope and the end of the trawl fishing line along the edge of the trawl web closest to the towing point.

(B) *Chafing gear* means webbing or other material attached to the codend of a trawl net to protect the codend from wear.

(C) *Codend.* (*See* § 600.10 of this chapter)

(D) *Double-bar mesh* means webbing comprised of two lengths of twine tied into a single knot.

(E) *Double-walled codend* means a codend constructed of two walls (layers) of webbing.

(F) *Footrope* means a chain, rope, or wire attached to the bottom front end of the trawl webbing forming the leading edge of the bottom panel of the trawl net, and attached to the fishing line.

(G) *Headrope* means a chain, rope, or wire attached to the trawl webbing forming the leading edge of the top panel of the trawl net.

(H) *Rollers or bobbins* means devices made of wood, steel, rubber, plastic, or other hard material that encircle the trawl footrope. These devices are commonly used to either bounce or pivot over seabed obstructions, in order to prevent the trawl footrope and net from snagging on the seabed.

(I) *Single-walled codend* means a codend constructed of a single wall of webbing knitted with single or double-bar mesh.

(J) *Trawl fishing line* means a length of chain, rope, or wire rope in the bottom front end of a trawl net to which the webbing or lead ropes are attached.

(K) *Trawl riblines* means a heavy rope or line that runs down the sides, top, or underside of a trawl net from the mouth of the net to the terminal end of the codend to strengthen the net during fishing.

Fishing or Calendar year means the year beginning at 0001 local time on January 1 and ending at 2400 local time on December 31 of the same year. There are two fishing years in each biennial fishing period.

Fishing trip means a period of time between landings when fishing is conducted.

Fishing vessel. (*See* § 600.10 of this chapter)

Grandfathered or first generation, when referring to a limited entry sablefish-endorsed permit owner, means those permit owners who owned a sablefish-endorsed limited entry permit prior to November 1, 2000, and are, therefore, exempt from certain requirements of the sablefish permit stacking program within the parameters of the regulations at § 660.25(b), subpart C and § 660.231, subpart E.

Groundfish means species managed by the PCGFMP, specifically:

(1) Sharks: Leopard shark, *Triakis semifasciata;* soupfin shark, *Galeorhinus zyopterus;* spiny dogfish, *Squalus acanthias.*

(2) Skates: Big skate, *Raja binoculata;* California skate, *R. inornata;* longnose skate, *R. rhina.*

(3) Ratfish: Ratfish, *Hydrolagus colliei.*

(4) Morids: Finescale codling, *Antimora microlepis.*

(5) Grenadiers: Pacific rattail, *Coryphaenoides acrolepis.*

(6) Roundfish: Cabezon, *Scorpaenichthys marmoratus;* kelp greenling, *Hexagrammos decagrammus;* lingcod, *Ophiodon elongatus;* Pacific cod, *Gadus macrocephalus;* Pacific whiting, *Merluccius productus;* sablefish, *Anoplopoma fimbria.*

(7) Rockfish: In addition to the species below, longspine thornyhead, *S. altivelis,* and shortspine thornyhead, *S. alascanus,* "rockfish" managed under the PCGFMP include all genera and species of the family *Scorpaenidae* that occur off Washington, Oregon, and California, even if not listed below. The *Scorpaenidae* genera are *Sebastes, Scorpaena, Scorpaenodes,* and *Sebastolobus.* Where species below are listed both in a major category (nearshore, shelf, slope) and as an area-specific listing (north or south of 40°10' N. lat.) those species are considered "minor" in the geographic area listed.

(i) Nearshore rockfish includes black rockfish, Sebastes melanops and the following minor nearshore rockfish species:

(A) North of 40°10′ N. lat.: Black and yellow rockfish, *S. chrysomelas;* blue rockfish, *S. mystinus;* brown rockfish, *S.*

auriculatus; calico rockfish, *S. dalli;* China rockfish, *S. nebulosus;* copper rockfish, *S. caurinus;* gopher rockfish, *S. carnatus;* grass rockfish, *S. rastrelliger;* kelp rockfish, *S. atrovirens;* olive rockfish, *S. serranoides;* quillback rockfish, *S. maliger;* treefish,. *S. serriceps*.

(B) South of 40°10′ N. lat., nearshore rockfish are divided into three management categories:

(*1*) *Shallow nearshore rockfish* consists of black and yellow rockfish, *S. chrysomelas;* China rockfish, *S. nebulosus;* gopher rockfish, *S. carnatus;* grass rockfish, *S. rastrelliger;* kelp rockfish, *S. atrovirens.*

(*2*) Deeper nearshore rockfish consists of black rockfish, *S. melanops;* blue rockfish, *S. mystinus;* brown rockfish, *S. auriculatus;* calico rockfish, *S. dalli;* copper rockfish, *S. caurinus;* olive rockfish, *S. serranoides;* quillback rockfish, *S. maliger;* treefish, *S. serriceps*.

(*3*) *California scorpionfish, Scorpaena guttata.*

(ii) *Shelf rockfish* includes bocaccio, *Sebastes paucispinis;* canary rockfish, *S. pinniger;* chilipepper, *S. goodei;* cowcod, *S. levis;* shortbelly rockfish, *S. jordani;* widow rockfish, *S. entomelas;* yelloweye rockfish, *S. ruberrimus;* yellowtail rockfish, *S. flavidus* and the following minor shelf rockfish species:

(A) *North of 40°10′ N. lat.:* Bronzespotted rockfish, *S. gilli;* bocaccio, *S. paucispinis;* chameleon rockfish, *S. phillipsi;* chilipepper, *S. goodei;* cowcod, *S. levis;* dusky rockfish, *S. ciliatus;* dwarf-red, *S. rufianus;* flag rockfish, *S. rubrivinctus;* freckled, *S. lentiginosus;* greenblotched rockfish, *S. rosenblatti;* greenspotted rockfish, *S. chlorostictus;* greenstriped rockfish, *S. elongatus;* halfbanded rockfish, *S. semicinctus;* harlequin rockfish, *S. variegatus;* honeycomb rockfish, *S. umbrosus;* Mexican rockfish, *S. macdonaldi;* pink rockfish, *S. eos;* pinkrose rockfish, *S. simulator;* pygmy rockfish, *S. wilsoni;* redstripe rockfish, *S. proriger;* rosethorn rockfish, *S. helvomaculatus;* rosy rockfish, *S. rosaceus;* silvergray rockfish, *S. brevispinis;* speckled rockfish, *S. ovalis;* squarespot rockfish, *S. hopkinsi;* starry rockfish, *S. constellatus;* stripetail rockfish, *S. saxicola;* swordspine rockfish, *S. ensifer;* tiger rockfish, *S. nigrocinctus;* vermilion rockfish, *S. miniatus.*

(B) South of 40°10′ N. lat.: Bronzespotted rockfish, *S. gilli;* chameleon rockfish, *S. phillipsi;* dusky rockfish, *S. ciliatus;* dwarf-red rockfish, *S. rufianus;* flag rockfish, *S. rubrivinctus;* freckled, *S. lentiginosus;* greenblotched rockfish, *S. rosenblatti;* greenspotted rockfish, *S. chlorostictus;* greenstriped rockfish, *S. elongatus;* halfbanded rockfish, *S. semicinctus;* harlequin rockfish, *S. variegatus;* honeycomb rockfish, *S. umbrosus;* Mexican rockfish, *S. macdonaldi;* pink rockfish, *S. eos;* pinkrose rockfish, *S. simulator;* pygmy rockfish, *S. wilsoni;* redstripe rockfish, *S. proriger;* rosethorn rockfish, *S. helvomaculatus;* rosy rockfish, *S. rosaceus;* silvergray rockfish, S. brevispinis; speckled rockfish, *S. ovalis;* squarespot rockfish, *S. hopkinsi;* starry rockfish, *S. constellatus;* stripetail rockfish, *S. saxicola;* swordspine rockfish, *S. ensifer;* tiger rockfish, *S. nigrocinctus;* vermilion rockfish, *S. miniatus;* yellowtail rockfish, *S. flavidus.*

(iii) Slope rockfish includes darkblotched rockfish, *S. crameri;* Pacific ocean perch, *S. alutus;* splitnose rockfish, *S. diploproa;* and the following minor slope rockfish species:

(A) North of 40°10′ N. lat.: Aurora rockfish, *Sebastes aurora;* bank rockfish, *S. rufus;* blackgill rockfish, *S. melanostomus;* redbanded rockfish, *S. babcocki;* rougheye rockfish, *S. aleutianus;* sharpchin rockfish, *S. zacentrus;* shortraker rockfish, *S. borealis;* splitnose rockfish, *S. diploproa;* yellowmouth rockfish, *S. reedi.*

(B) South of 40°10′ N. lat.: Aurora rockfish, *Sebastes aurora;* bank rockfish, *S. rufus;* blackgill rockfish, *S. melanostomus;* Pacific ocean perch, *S. alutus;* redbanded rockfish, *S. babcocki;* rougheye rockfish, *S. aleutianus;* sharpchin rockfish, *S. zacentrus;* shortraker rockfish, *S. borealis;* yellowmouth rockfish, *S. reedi.*

(8) Flatfish: Arrowtooth flounder (arrowtooth turbot), *Atheresthes stomias;* butter sole, *Isopsetta isolepis;* curlfin sole, *Pleuronichthys decurrens;* Dover sole, *Microstomus pacificus;* English sole, *Parophrys vetulus;* flathead sole, *Hippoglossoides elassodon;* Pacific sanddab, *Citharichthys sordidus;* petrale sole, *Eopsetta jordani;* rex sole, *Glyptocephalus zachirus;* rock sole, *Lepidopsetta bilineata;* sand sole, *Psettichthys melanostictus;* starry flounder, *Platichthys stellatus.* Where regulations of subparts C through G of this part refer to landings limits for "other flatfish," those limits apply to all flatfish cumulatively taken except for those flatfish species specifically listed in Tables 1a and 2a of this subpart. (*i.e.,* "other flatfish" includes butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.)

(9) "Other fish": Where regulations of subparts C through G of this part refer to landings limits for "other fish," those limits apply to all groundfish listed here in paragraphs (1) through (8) of this definition except for the following: Those groundfish species specifically listed in Tables 1a and 2a of this subpart with an ABC for that area (generally north and/or south of 40°10′ N. lat.); and Pacific cod and spiny dogfish coastwide. (*i.e.,* "other fish" may include all sharks (except spiny dogfish), skates, ratfish, morids, grenadiers, and kelp greenling listed in this section, as well as cabezon in the north.)

(10) "DTS complex": Where regulations of subparts C through G of this part refer to "DTS complex" species, that group of species includes Dover sole, shortspine thornyhead, longspine thornyhead, and sablefish.

Groundfish trawl means trawl gear that is used under the authority of a valid limited entry permit issued under subparts C and D of this part endorsed for trawl gear and which meets the gear requirements specified in subpart D of this part. It does not include any type of trawl gear listed as non-groundfish trawl gear (previously called "exempted gear").

Harvest guideline means a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not require closure of a fishery.

Incidental catch or incidental species means groundfish species caught while fishing for the primary purpose of catching a different species.

Initial Administrative Determination (IAD) means a formal, written determination made by NMFS on an application or permit request, that is subject to an appeal within NMFS.

Land or landing means to begin transfer of fish, offloading fish, or to offload fish from any vessel. Once transfer of fish begins, all fish aboard the vessel are counted as part of the landing.

Legal fish means fish legally taken and retained, possessed, or landed in accordance with the provisions of 50 CFR part 660, subparts C through G, the Magnuson-Stevens Act, any document issued under part 660, and any other regulation promulgated or permit issued under the Magnuson-Stevens Act.

Length overall or LOA (with respect to a vessel) means the length overall set forth in the Certificate of Documentation (CG–1270) issued by the USCG for a documented vessel, or in a registration certificate issued by a state or the USCG for an undocumented vessel; for vessels that do not have the LOA stated in an official document, the LOA is the LOA as determined by the USCG or by a marine surveyor in accordance with the USCG method for measuring LOA.

License owner means a person who is the owner of record with NMFS, SFD, Permits Office of a License issued under § 660.140, subpart D.

Limited entry fishery means the fishery composed of vessels registered for use with limited entry permits.

Limited entry gear means longline, trap (or pot), or groundfish trawl gear used under the authority of a valid limited entry permit affixed with an endorsement for that gear.

Limited entry permit means:

(1) The Federal permit required to fish in the limited entry "A"-endorsed fishery, and includes any gear, size, or species endorsements affixed to the permit, or

(2) The Federal permit required to receive and process fish as a mothership processor.

Maximum Sustainable Yield or MSY. (*See* § 600.310 of this chapter)

Mobile transceiver unit means a vessel monitoring system or VMS device, as set forth at § 660.14, subpart C installed on board a vessel that is used for vessel monitoring and transmitting the vessel's position as required by subpart C.

Non-groundfish fishery means any fishing using non-groundfish trawl gear or nontrawl gear when targeting salmon, HMS, CPS, crab, prawn, or any other species not managed under the PCGFMP. Non-groundfish fishery is sometimes referred to as the incidental open access fishery in which groundfish could be encountered with the gear used, regardless of whether groundfish is retained.

Non-groundfish trawl (previously "exempted" trawl) means any trawl gear other than the Pacific Coast groundfish trawl gear that is authorized for use with a valid groundfish limited entry permit endorsed for trawl gear. Non-groundfish trawl gear includes trawl gear used to fish for pink shrimp, ridgeback prawn, California halibut south of Pt. Arena, and sea cucumbers south of Pt. Arena.

Nontrawl fishery means

(1) For the purpose of allocations at § 660.55, subpart C, nontrawl fishery means the limited entry fixed gear fishery, the open access fishery, and the recreational fishery.

(2) For the purposes of all other management measures in subparts C through G of this part, nontrawl fishery means fishing with any legal limited entry fixed gear or open access non-trawl groundfish gear other than trawl gear (groundfish trawl gear and non-groundfish trawl gear), but does not include the recreational fishery.

North-South management area means the management areas defined in paragraph (1) of this definition, or defined and bounded by one or more or the commonly used geographic coordinates set out in paragraph (2) of this definition for the purposes of implementing different management measures in separate geographic areas of the U.S. West Coast.

(1) *Management areas.*

(i) *Vancouver.*

(A) The northeastern boundary is that part of a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia (at 48°35.73′ N. lat., 124°43.00′ W. long.) south of the International Boundary between the U.S. and Canada (at 48°29.62′ N. lat., 124°43.55′ W. long.), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(B) The northern and northwestern boundary is a line connecting the following coordinates in the order listed, which is the provisional international boundary of the EEZ as shown on NOAA/NOS Charts 18480 and 18007:

Point	N. Lat.	W. Long.
1	48°29.62′	124°43.55′
2	48°30.18′	124°47.22′
3	48°30.37′	124°50.35′
4	48°30.23′	124°54.87′
5	48°29.95′	124°59.23′
6	48°29.73′	125°00.10′
7	48°28.15′	125°05.78′
8	48°27.17′	125°08.42′
9	48°26.78′	125°09.20′
10	48°20.27′	125°22.80′
11	48°18.37′	125°29.97′
12	48°11.08′	125°53.80′
13	47°49.25′	126°40.95′
14	47°36.78′	127°11.97′
15	47°22.00′	127°41.38′
16	46°42.08′	128°51.93′
17	46°31.78′	129°07.65′

(C) The southern limit is 47°30′ N. lat.

(ii) *Columbia.*

(A) The northern limit is 47°30′ N. lat.

(B) The southern limit is 43°00′ N. lat.

(iii) *Eureka.*

(A) The northern limit is 43°00′ N. lat.

(B) The southern limit is 40°30′ N. lat.

(iv) *Monterey.*

(A) The northern limit is 40°30′ N. lat.

(B) The southern limit is 36°00′ N. lat.

(v) *Conception.*

(A) The northern limit is 36°00′ N. lat.

(B) The southern limit is the U.S.-Mexico International Boundary, which is a line connecting the following coordinates in the order listed:

Point	N. lat.	W. long.
1	32°35.37′	117°27.82′
2	32°37.62′	117°49.52′
3	31°07.97′	118°36.30′
4	30°32.52′	121°51.97′

(2) *Commonly used geographic coordinates.*

(i) Cape Alava, WA—48°10.00′ N. lat.

(ii) Queets River, WA—47°31.70′ N. lat.

(iii) Pt. Chehalis, WA—46°53.30′ N. lat.

(iv) Leadbetter Point, WA—46°38.17′ N. lat.

(v) Washington/Oregon border—46°16.00′ N. lat.

(vi) Cape Falcon, OR—45°46.00′ N. lat.

(vii) Cape Lookout, OR—45°20.25′ N. lat.

(viii) Cascade Head, OR—45°03.83′ N. lat.

(ix) Heceta Head, OR—44°08.30′ N. lat.

(x) Cape Arago, OR—43°20.83′ N. lat.

(xi) Cape Blanco, OR—42°50.00′ N. lat.

(xii) Humbug Mountain—42°40.50′ N. lat.

(xiii) Marck Arch, OR—42°13.67′ N. lat.

(xiv) Oregon/California border—42°00.00′ N. lat.

(xv) Cape Mendocino, CA—40°30.00′ N. lat.

(xvi) North/South management line—40°10.00′ N. lat.

(xvii) Point Arena, CA—38°57.50′ N. lat.

(xviii) Point San Pedro, CA—37°35.67′ N. lat.

(xix) Pigeon Point, CA—37°11.00′ N. lat.

(xx) Ano Nuevo, CA—37°07.00′ N. lat.

(xxi) Point Lopez, CA—36°00.00′ N. lat.

(xxii) Point Conception, CA—34°27.00′ N. lat. [Note: Regulations that apply to waters north of 34°27.00′ N. lat. are applicable only west of 120°28.00′ W. long.; regulations that apply to waters south of 34°27.00′ N. lat. also apply to all waters both east of 120°28.00′ W. long. and north of 34°27.00′ N. lat.]

Observer. (*See* § 600.10 of this chapter—U.S. Observer or Observer)

Observer Program or Observer Program Office means the West Coast Groundfish Observer Program (WCGOP) Office of the Northwest Fishery Science Center, National Marine Fisheries Service, Seattle, Washington.

Office of Law Enforcement or OLE refers to the National Marine Fisheries Service, Office of Law Enforcement, Northwest Division.

Open access fishery means the fishery composed of commercial vessels using open access gear fished pursuant to the harvest guidelines, quotas, and other management measures governing the harvest of open access allocations (detailed in § 660.55 and Tables 1c and 2c of subpart C of this part) or governing the fishing activities of open access

vessels (detailed in subpart F of this part). Any commercial vessel that is not registered to a limited entry permit and which takes and retains, possesses or lands groundfish is a participant in the open access groundfish fishery.

Open access gear means all types of fishing gear except:

(1) *Longline or trap (or pot) gear* fished by a vessel that has a limited entry permit affixed with a gear endorsement for that gear.

(2) *Groundfish trawl.*

Operate a vessel means any use of a vessel, including, but not limited to, fishing or drifting by means of the prevailing water current or weather conditions.

Operator. (*See* § 600.10)

Optimum yield or OY means the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and, taking into account the protection of marine ecosystems, is prescribed as such on the basis of the MSY from the fishery, as reduced by any relevant economic, social, or ecological factor; and, in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the MSY in such fishery. OY may be expressed numerically (as a harvest guideline, quota, or other specification) or non-numerically.

Overage means the amount of fish harvested by a vessel in excess of:

(1) The applicable trip limit for any fishery to which a trip limit applies;

(2) The amount authorized by the applicable permit for trawl fisheries at subpart D of this part;

(3) The amount authorized by the applicable sablefish-endorsed permits for fixed gear sablefish fisheries at subpart E of this part.

Ownership interest means participation in ownership of a corporation, partnership, or other entity:

(1) For sablefish-endorsed permits, ownership interest means participation in ownership of a corporation, partnership, or other entity that owns a sablefish-endorsed permit. Ownership interest does not mean owning stock in a publicly owned corporation.

(2) For the limited entry trawl fishery in subpart D of this part, ownership interest means participation in ownership of a corporation, partnership, or other entity that owns a QS permit, vessel account, MS permit, or an MS/CV-endorsed limited entry permit.

Pacific Coast Groundfish Fishery Management Plan or PCGFMP means the Fishery Management Plan for the Washington, Oregon, and California Groundfish Fishery developed by the Pacific Fishery Management Council and approved by the Secretary on January 4, 1982, and as it may be subsequently amended.

Partnership is two or more individuals, partnerships, or corporations, or combinations thereof, who have ownership interest in a permit, including married couples and legally recognized trusts and partnerships, such as limited partnerships (LP), general partnerships (GP), and limited liability partnerships (LLP).

Permit holder means a vessel owner as identified on the USCG form 1270 or state motor vehicle licensing document and as registered on a limited entry permit issued under Subparts C through E of this part.

Permit owner means a person who is the owner of record with NMFS, SFD, Permits Office of a limited entry permit. For first receiver site licenses, see definition for "license owner."

Person, as it applies to limited entry and open access fisheries conducted under 50 CFR part 660, Subparts C through G, means any individual, corporation, partnership, association or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, or local government, or any entity of any such government that is eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a).

Processing or to process means the preparation or packaging of groundfish to render it suitable for human consumption, retail sale, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting unless additional preparation is done. (Also see an exception to certain requirements at § 660.131(a), subpart D pertaining to Pacific whiting shoreside vessels 75-ft (23-m) or less LOA that, in addition to heading and gutting, remove the tails and freeze catch at sea.)

(1) At-sea processing means processing that takes place on a vessel or other platform that floats and is capable of being moved from one location to another, whether shorebased or on the water.

(2) Shorebased processing or processing means processing that takes place at a facility that is permanently fixed to land. (Also see the definition for shoreside processing at § 660.140, subpart D which defines shoreside processing for the purposes of qualifying for a Shorebased IFQ Program QS permit.)

Processor means person, vessel, or facility that engages in processing; or receives live groundfish directly from a fishing vessel for retail sale without further processing. (Also see the definition for processors at § 660.140, subpart D which defines processor for the purposes of qualifying for a Shorebased IFQ Program QS permit.)

Prohibited species means those species and species groups whose retention is prohibited unless authorized by provisions of this section or other applicable law. The following are prohibited species: Any species of salmonid, Pacific halibut, Dungeness crab caught seaward of Washington or Oregon, and groundfish species or species groups under the PCGFMP for which quotas have been achieved and/or the fishery closed.

Quota means a specified numerical harvest objective, the attainment (or expected attainment) of which causes closure of the fishery for that species or species group.

Recreational fishing means fishing with authorized recreational fishing gear for personal use only, and not for sale or barter.

Regional Administrator means the Administrator, Northwest Region, NMFS.

Reserve means a portion of the harvest guideline or quota set aside at the beginning of the fishing year or biennial fishing period to allow for uncertainties in preseason estimates.

Round weight. (*See* § 600.10 of this chapter). Round weight does not include ice, water, or slime.

Sale or sell. (*See* § 600.10 of this chapter)

Scientific research activity. (*See* § 600.10 of this chapter)

Secretary. (*See* § 600.10 of this chapter)

Specification is a numerical or descriptive designation of a management objective, including but not limited to: Acceptable biological catch; optimum yield; harvest guideline; quota; limited entry or open access allocation; a set-aside or allocation for a recreational or treaty Indian fishery; an apportionment of the above to an area, gear, season, fishery, or other subdivision.

Spouse means a person who is legally married to another person as recognized by state law (*i.e.,* one's wife or husband).

Stacking is the practice of registering more than one limited entry permit for use with a single vessel (*See* § 660.25(b)(4)(iii), subpart C).

Sustainable Fisheries Division or SFD means the Chief, Sustainable Fisheries Division, Northwest Regional Office, NMFS, or a designee.

Target fishing means fishing for the primary purpose of catching a particular species or species group (the target species).

Tax-exempt organization means an organization that received a determination letter from the Internal Revenue Service recognizing tax exemption under 26 CFR part 1 (§§ 1.501 to 1.640).

Totally lost means the vessel being replaced no longer exists *in specie,* or is absolutely and irretrievably sunk or otherwise beyond the possible control of the owner, or the costs of repair (including recovery) would exceed the value of the vessel after repairs.

Trawl fishery means

(1) For the purpose of allocations at § 660.55, subpart C, trawl fishery means the groundfish limited entry trawl fishery.

(2) For the purposes of all other management measures in subparts C through G of this part, trawl fishery means any fishery using trawl gear as defined under the definition of fishing gear in this section.

Trip. (*See* § 600.10 of this chapter)

Trip limits. Trip limits are used in the commercial fishery to specify the maximum amount of a fish species or species group that may legally be taken and retained, possessed, or landed, per vessel, per fishing trip, or cumulatively per unit of time, or the number of landings that may be made from a vessel in a given period of time, as follows:

(1) A per trip limit is the total allowable amount of a groundfish species or species group, by weight, or by percentage of weight of legal fish on board, that may be taken and retained, possessed, or landed per vessel from a single fishing trip.

(2) A daily trip limit is the maximum amount of a groundfish species or species group that may be taken and retained, possessed, or landed per vessel in 24 consecutive hours, starting at 0001 hours local time. Only one landing of groundfish may be made in that 24-hour period. Daily trip limits may not be accumulated during multiple day trips.

(3) A weekly trip limit is the maximum amount of a groundfish species or species group that may be taken and retained, possessed, or landed per vessel in 7 consecutive days, starting at 0001 hours local time on Sunday and ending at 2400 hours local time on Saturday. Weekly trip limits may not be accumulated during multiple week trips. If a calendar week falls within two different months or two different cumulative limit periods, a vessel is not entitled to two separate weekly limits during that week.

(4) A cumulative trip limit is the maximum amount of a groundfish species or species group that may be taken and retained, possessed, or landed per vessel in a specified period of time without a limit on the number of landings or trips, unless otherwise specified. The cumulative trip limit periods for limited entry and open access fisheries, which start at 0001 hours local time and end at 2400 hours local time, are as follows, unless otherwise specified:

(i) The 2-month or "major" cumulative limit periods are: January 1–February 28/29, March 1–April 30, May 1–June 30, July 1–August 31, September 1–October 31, and, November 1–December 31.

(ii) One month means the first day through the last day of the calendar month.

(iii) One week means 7 consecutive days, Sunday through Saturday.

Vessel manager means a person or group of persons whom the vessel owner has given authority to oversee all or a portion of groundfish fishing activities aboard the vessel.

Vessel monitoring system or VMS means a vessel monitoring system or mobile transceiver unit as set forth in § 660.14, subpart C and approved by NMFS for use on vessels that take (directly or incidentally) species managed under the PCGFMP, as required by this subpart.

Vessel of the United States or U.S. vessel. (*See* § 600.10)

Vessel owner or owner of a vessel, as used in subparts C through G of this part, means a person identified as the current owner in the Certificate of Documentation (CG–1270) issued by the USCG for a documented vessel, or in a registration certificate issued by a state or the USCG for an undocumented vessel.

§ 660.12 General groundfish prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to:

(a) *General.* (1) Retain any prohibited species (defined in § 660.11, subpart C and restricted in § 660.60(e), subpart C) caught by means of fishing gear authorized under this subpart, unless authorized by part 600 or part 300 of this chapter. Prohibited species must be returned to the sea as soon as practicable with a minimum of injury when caught and brought on board.

(2) Falsify or fail to affix and maintain vessel and gear markings as required by § 660.20 or § 660.219, subpart E or § 660.319, subpart F.

(3) Fish for groundfish in violation of any terms or conditions attached to an EFP under § 600.745 of this chapter or § 660.30, subpart C of this part.

(4) Fish for groundfish using gear not authorized in subparts C through G of this part or in violation of any terms or conditions attached to an EFP under § 660.30, subpart C of this part or part 600 of this chapter.

(5) Take and retain, possess, or land more groundfish than specified under § 660.50, § 660.55, § 660.60 of subpart C, or subpart D through G of this part, or under an EFP issued under § 660.30, subpart C of this part, or part 600 of this chapter.

(6) Take, retain, possess, or land more than a single cumulative limit of a particular species, per vessel, per applicable cumulative limit period, except for sablefish taken in the primary limited entry, fixed gear sablefish season from a vessel authorized to fish in that season, as described at § 660.231, subpart E.

(7) Take and retain, possess, or land groundfish in excess of the landing limit for the open access fishery without having a valid limited entry permit for the vessel affixed with a gear endorsement for the gear used to catch the fish.

(8) Fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY applied; except as specified at § 660.131, subpart C for vessels participating in the Pacific whiting at-sea sectors.

(9) When requested or required by an authorized officer, refuse to present fishing gear for inspection, refuse to present fish subject to such persons control for inspection; or interfere with a fishing gear or marine animal or plant life inspection.

(10) Transfer fish to another vessel at sea unless a vessel is participating in the primary Pacific whiting fishery as part of the mothership or catcher/processor sectors.

(11) Fish with dredge gear (defined in § 660.11, subpart C) anywhere within EFH within the EEZ. For the purposes of regulation, EFH within the EEZ is described at § 660.75, subpart C.

(12) Fish with beam trawl gear (defined in § 660.11, subpart C) anywhere within EFH within the EEZ. For the purposes of regulation, EFH within the EEZ is described at § 660.75, subpart C.

(13) During times or in areas where at-sea processing is prohibited, take and

retain or receive Pacific whiting, except as cargo or fish waste, on a vessel in the fishery management area that already has processed Pacific whiting on board. An exception to this prohibition is provided if the fish are received within the tribal U&A from a member of a Pacific Coast treaty Indian tribe fishing under § 660.50, subpart C.

(b) *Reporting and Recordkeeping.* (1) Falsify or fail to make and/or file, retain or make available any and all reports of groundfish landings, containing all data, and in the exact manner, required by the applicable State law, as specified in § 660.13, subpart C, provided that person is required to do so by the applicable state law.

(2) Fail to retain on board a vessel from which groundfish is landed, and provide to an authorized officer upon request, copies of any and all reports of groundfish landings, or receipts containing all data, and made in the exact manner required by the applicable state law throughout the cumulative limit period during which such landings occurred and for 15 days thereafter.

(c) *Limited entry fisheries.* (1) Carry on board a vessel, or deploy, limited entry gear when the limited entry fishery for that gear is closed, except that a vessel may carry on board limited entry groundfish trawl gear as provided in § 660.112(a)(1), subpart D.

(2) [Reserved]

(d) *Limited entry permits.*

(1) If a limited entry permit is registered for use with a vessel, fail to carry that permit onboard the vessel registered for use with the permit. A photocopy of the permit may not substitute for the original permit itself.

(2) Make a false statement on an application for issuance, renewal, transfer, vessel registration, replacement of a limited entry permit, or a declaration of ownership interest in a limited entry permit.

(e) *Groundfish observer program.* (1) Forcibly assault, resist, oppose, impede, intimidate, harass, sexually harass, bribe, or interfere with an observer.

(2) Interfere with or bias the sampling procedure employed by an observer including either mechanically or manually sorting or discarding catch before sampling.

(3) Tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the observer.

(4) Harass an observer by conduct that:

(i) Has sexual connotations,

(ii) Has the purpose or effect of interfering with the observer's work performance, and/or

(iii) Otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(5) Fish for, land, or process fish without observer coverage when a vessel is required to carry an observer under subparts C through G of this part.

(6) Require, pressure, coerce, or threaten an observer to perform duties normally performed by crew members, including, but not limited to, cooking, washing dishes, standing watch, vessel maintenance, assisting with the setting or retrieval of gear, or any duties associated with the processing of fish, from sorting the catch to the storage of the finished product.

(7) Fail to provide departure or cease fishing reports specified at § 660.116, subpart D, § 660.216, subpart E, or § 660.316, subpart F.

(8) Fail to meet the vessel responsibilities specified at § 660.116, subpart D, § 660.216, subpart E, or § 660.316, subpart F.

(f) *Vessel Monitoring Systems.* (1) Use any vessel required to operate and maintain a VMS unit under § 660.14(b) unless that vessel carries a NMFS OLE type-approved mobile transceiver unit and complies with all the requirements described at § 660.14(c).

(2) Fail to install, activate, repair or replace a mobile transceiver unit prior to leaving port as specified at § 660.14.

(3) Fail to operate and maintain a mobile transceiver unit on board the vessel at all times as specified at § 660.14.

(4) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VMS, mobile transceiver unit, or VMS signal required to be installed on or transmitted by a vessel as specified at § 660.14.

(5) Fail to contact NMFS OLE or follow NMFS OLE instructions when automatic position reporting has been interrupted as specified at § 660.14.

(6) Register the same VMS transceiver unit to more than one vessel at the same time.

(7) Falsify any VMS activation report or VMS exemption report that is authorized or required, as specified at § 660.14.

(8) Falsify any declaration report that is required, as specified at § 660.13.

§ 660.13 Recordkeeping and reporting.

(a) This subpart recognizes that catch and effort data necessary for implementing the PCGFMP are collected by the States of Washington, Oregon, and California under existing state data collection requirements.

(b) Any person who is required to do so by the applicable state law must make and/or file, retain, or make available any and all reports (*i.e.,* logbooks, state landing receipts, etc.) of groundfish harvests and landings containing all data, and in the exact manner, required by the applicable state law.

(c) Any person landing groundfish must retain on board the vessel from which groundfish is landed, and provide to an authorized officer upon request, copies of any and all reports of groundfish landings containing all data, and in the exact manner, required by the applicable state law throughout the cumulative limit period during which a landing occurred and for 15 days thereafter.

(d) *Declaration reporting requirements*—(1) *Declaration reports for vessels registered to limited entry permits.* The operator of any vessel registered to a limited entry permit must provide NMFS OLE with a declaration report, as specified at paragraph (d)(5)(iv) of this section, before the vessel leaves port on a trip in which the vessel is used to fish in U.S. ocean waters between 0 and 200 nm offshore of Washington, Oregon, or California.

(2) *Declaration reports for all vessels using non-groundfish trawl gear.* The operator of any vessel that is not registered to a limited entry permit and which uses non-groundfish trawl gear to fish in the EEZ (3–200 nm offshore), must provide NMFS OLE with a declaration report, as specified at paragraph (d)(5)(iv) of this section, before the vessel leaves port to fish in the EEZ.

(3) *Declaration reports for open access vessels using non trawl gear (all types of open access gear other than non-groundfish trawl gear).* The operator of any vessel that is not registered to a limited entry permit, must provide NMFS with a declaration report, as specified at paragraph (d)(5)(iv) of this section, before the vessel leaves port on a trip in which the vessel is used to take and retain or possess groundfish in the EEZ or land groundfish taken in the EEZ.

(4) *Declaration reports for tribal vessels using trawl gear.* The operator of any tribal vessel using trawl gear must provide NMFS with a declaration report, as specified at paragraph (d)(5)(iv) of this section, before the

vessel leaves port on a trip in which fishing occurs within the trawl RCA.

(5) *Declaration reports.* (i) The operator of a vessel specified in paragraphs (d)(1), (d)(2), and (d)(3) of this section must provide a declaration report to NMFS OLE prior to leaving port on the first trip in which the vessel meets the requirement specified at § 660.14(b) to have a VMS.

(ii) The vessel operator must send a new declaration report before leaving port on a trip in which a gear type that is different from the gear type most recently declared for the vessel will be used. A declaration report will be valid until another declaration report revising the existing gear declaration is received by NMFS OLE.

(iii) During the period of time that a vessel has a valid declaration report on file with NMFS OLE, it cannot fish with a gear other than a gear type declared by the vessel.

(iv) Declaration reports will include: The vessel name and/or identification number, and gear type (as defined in paragraph (d)(5)(iv)(A) of this section). Upon receipt of a declaration report, NMFS will provide a confirmation code or receipt to confirm that a valid declaration report was received for the vessel. Retention of the confirmation code or receipt to verify that a valid declaration report was filed and the declaration requirement was met is the responsibility of the vessel owner or operator. Vessels using non trawl gear may declare more than one gear type, however, vessels using trawl gear may only declare one of the trawl gear types listed in paragraph (d)(5)(iv)(A) of this section on any trip and may not declare non trawl gear on the same trip in which trawl gear is declared.

(A) One of the following gear types must be declared:

(*1*) Limited entry fixed gear,

(*2*) [Reserved]

(*3*) Limited entry mid water trawl, non-whiting,

(*4*) Limited entry mid water trawl, Pacific whiting shore based sector,

(*5*) Limited entry mid water trawl, Pacific whiting catcher/processor sector,

(*6*) Limited entry mid water trawl, Pacific whiting mother ship sector,

(*7*) Limited entry bottom trawl, not including emerald trawl,

(*8*) Limited entry emerald trawl,

(*9*) Non-groundfish trawl gear for pink shrimp,

(*10*) Non-groundfish trawl gear for ridgeback prawn,

(*11*) Non-groundfish trawl gear for California halibut,

(*12*) Non-groundfish trawl gear for sea cucumber,

(*13*) Open access longline gear for groundfish,

(*14*) Open access Pacific halibut longline gear,

(*15*) Open access groundfish trap or pot gear,

(*16*) Open access Dungeness crab trap or pot gear,

(*17*) Open access prawn trap or pot gear,

(*18*) Open access sheephead trap or pot gear,

(*19*) Open access line gear for groundfish,

(*20*) Open access HMS line gear,

(*21*) Open access salmon troll gear,

(*22*) Open access California Halibut line gear,

(*23*) Open access net gear,

(*24*) Other gear, or

(*25*) Tribal trawl.

(B) [Reserved]

§ 660.14 Vessel Monitoring System (VMS) requirements.

(a) *What is a VMS*? A VMS consists of a NMFS OLE type-approved mobile transceiver unit that automatically determines the vessel's position and transmits it to a NMFS OLE type-approved communications service provider. The communications service provider receives the transmission and relays it to NMFS OLE.

(b) *Who is Required to Have a VMS*? The following vessels are required to install a NMFS OLE type-approved mobile transceiver unit and to arrange for a NMFS OLE type-approved communications service provider to receive and relay transmissions to NMFS OLE prior to fishing:

(1) Any vessel registered for use with a limited entry permit that fishes in state or Federal waters seaward of the baseline from which the territorial sea is measured off the States of Washington, Oregon or California (0–200 nm offshore).

(2) Any vessel that uses non-groundfish trawl gear to fish in the EEZ.

(3) Any vessel that uses open access gear to take and retain, or possess groundfish in the EEZ or land groundfish taken in the EEZ.

(c) *How are Mobile Transceiver Units and Communications Service Providers Approved by NMFS OLE*?

(1) NMFS OLE will publish type-approval specifications for VMS components in the **Federal Register** or notify the public through other appropriate media.

(2) Mobile transceiver unit manufacturers or communication service providers will submit products or services to NMFS OLE for evaluation based on the published specifications.

(3) NMFS OLE may publish a list of NMFS OLE type-approved mobile transceiver units and communication service providers for the Pacific Coast groundfish fishery in the **Federal Register** or notify the public through other appropriate media. As necessary, NMFS OLE may publish amendments to the list of type-approved mobile transceiver units and communication service providers in the **Federal Register** or through other appropriate media. A list of VMS transceivers that have been type-approved by NMFS OLE may be mailed to the permit owner's address of record. NMFS will bear no responsibility if a notification is sent to the address of record and is not received because the applicant's actual address has changed without notification to NMFS, as required at § 660.25(b)(4)(i)(B).

(d) *What are the Vessel Owner's Responsibilities*? If you are a vessel owner that must participate in the VMS program, you or the vessel operator must:

(1) Obtain a NMFS OLE type-approved mobile transceiver unit and have it installed on board your vessel in accordance with the instructions provided by NMFS OLE. You may obtain a copy of the VMS installation and operation instructions from the NMFS OLE Northwest, VMS Program Manager upon request at 7600 Sand Point Way NE., Seattle, WA 98115–6349, phone: (206) 526–6133.

(2) Activate the mobile transceiver unit, submit an activation report at least 72 hours prior to leaving port on a trip in which VMS is required, and receive confirmation from NMFS OLE that the VMS transmissions are being received before participating in a fishery requiring the VMS. Instructions for submitting an activation report may be obtained from the NMFS, Northwest OLE VMS Program Manager upon request at 7600 Sand Point Way NE., Seattle, WA 98115–6349, phone: (206) 526–6133. An activation report must again be submitted to NMFS OLE following reinstallation of a mobile transceiver unit or change in service provider before the vessel may be used to fish in a fishery requiring the VMS.

(i) *Activation reports.* If you are a vessel owner who must use VMS and you are activating a VMS transceiver unit for the first time or reactivating a VMS transceiver unit following a reinstallation of a mobile transceiver unit or change in service provider, you must fax NMFS OLE an activation report that includes: Vessel name; vessel owner's name, address and telephone number, vessel operator's name, address and telephone number, USCG vessel documentation number/state registration number; if applicable, the groundfish permit number the vessel is

registered to; VMS transceiver unit manufacturer; VMS communications service provider; VMS transceiver identification; identifying if the unit is the primary or backup; and a statement signed and dated by the vessel owner confirming compliance with the installation procedures provided by NMFS OLE.

(ii) *Transferring ownership of VMS unit.* Ownership of the VMS transceiver unit may be transferred from one vessel owner to another vessel owner if all of the following documents are provided to NMFS OLE: A new activation report, which identifies that the transceiver unit was previously registered to another vessel; a notarized bill of sale showing proof of ownership of the VMS transceiver unit; documentation from the communications service provider showing proof that the service agreement for the previous vessel was terminated and that a service agreement was established for the new vessel.

(3) *Transceiver unit operation.* Operate and maintain the mobile transceiver unit in good working order continuously, 24 hours a day throughout the fishing year, unless such vessel is exempted under paragraph (d)(4) of this section. The mobile transceiver unit must transmit a signal accurately indicating the vessel's position at least once every hour, 24 hours a day, throughout the year unless a valid exemption report, as described in paragraph (b)(4) of this section, has been received by NMFS OLE. Less frequent position reporting at least once every four hours is authorized when a vessel remains in port for an extended period of time, but the mobile transceiver unit must remain in continuous operation at all times unless the vessel is exempted under this section.

(4) *VMS exemptions.* A vessel that is required to operate and maintain the mobile transceiver unit continuously 24 hours a day throughout the fishing year may be exempted from this requirement if a valid exemption report, as described at paragraph (d)(4)(vii) of this section, is received by NMFS OLE and the vessel is in compliance with all conditions and requirements of the VMS exemption identified in this section and specified in the exemption report.

(i) *Haul out exemption.* When it is anticipated that a vessel will be continuously out of the water for more than 7 consecutive days and a valid exemption report has been received by NMFS OLE, electrical power to the VMS mobile transceiver unit may be removed and transmissions may be discontinued. Under this exemption, VMS transmissions can be discontinued from the time the vessel is removed from the water until the time that the vessel is placed back in the water.

(ii) *Outside areas exemption.* When the vessel will be operating seaward of the EEZ off Washington, Oregon, or California continuously for more than 7 consecutive days and a valid exemption report has been received by NMFS OLE, the VMS mobile transceiver unit transmissions may be reduced or discontinued from the time the vessel leaves the EEZ off the coasts of Washington, Oregon or California until the time that the vessel re-enters the EEZ off the coasts of Washington, Oregon or California. Under this exemption, the vessel owner or operator can request that NMFS OLE reduce or discontinue the VMS transmissions after receipt of an exemption report, if the vessel is equipped with a VMS transceiver unit that NMFS OLE has approved for this exemption.

(iii) *Permit transfer exemption.* If the limited entry permit has been transferred from a vessel (for the purposes of this section, this includes permits placed into "unidentified" status) the vessel may be exempted from VMS requirements providing the vessel is not used to fish in state or Federal waters seaward of the baseline from which the territorial sea is measured off the States of Washington, Oregon or California (0–200 nm offshore) for the remainder of the fishing year. If the vessel is used to fish in this area for any species of fish at any time during the remaining portion of the fishing year without being registered to a limited entry permit, the vessel is required to have and use VMS.

(iv) *Long-term departure exemption.* A vessel participating in the open access fishery that is required to have VMS under paragraph (b)(3) of this section may be exempted from VMS provisions after the end of the fishing year in which it fished in the open access fishery, providing the vessel submits a completed exemption report signed by the vessel owner that includes a statement signed by the vessel owner indicating that the vessel will not be used to take and retain or possess groundfish in the EEZ or land groundfish taken in the EEZ during the new fishing year.

(v) *Emergency exemption.* Vessels required to have VMS under paragraph (b) of this section may be exempted from VMS provisions in emergency situations that are beyond the vessel owner's control, including but not limited to: Fire, flooding, or extensive physical damage to critical areas of the vessel. A vessel owner may apply for an emergency exemption from the VMS requirements specified in paragraph (b) of this section for his/her vessel by sending a written request to NMFS OLE specifying the following information: The reasons for seeking an exemption, including any supporting documents (*e.g.,* repair invoices, photographs showing damage to the vessel, insurance claim forms, etc.); the time period for which the exemption is requested; and the location of the vessel while the exemption is in effect. NMFS OLE will issue a written determination granting or denying the emergency exemption request. A vessel will not be covered by the emergency exemption until NMFS OLE issues a determination granting the exemption. If an exemption is granted, the duration of the exemption will be specified in the NMFS OLE determination.

(vi) *Submission of exemption reports.* Signed long-term departure exemption reports must be submitted by fax or by emailing an electronic copy of the actual report. In the event of an emergency in which an emergency exemption request will be submitted, initial contact with NMFS OLE must be made by telephone, fax or email within 24 hours from when the incident occurred. Emergency exemption requests must be requested in writing within 72 hours from when the incident occurred. Other exemption reports must be submitted through the VMS or another method that is approved by NMFS OLE and announced in the **Federal Register**. Submission methods for exemption requests, except long-term departures and emergency exemption requests, may include email, facsimile, or telephone. NMFS OLE will provide, through appropriate media, instructions to the public on submitting exemption reports. Instructions and other information needed to make exemption reports may be mailed to the vessel owner's address of record. NMFS will bear no responsibility if a notification is sent to the address of record for the vessel owner and is not received because the vessel owner's actual address has changed without notification to NMFS. Owners of vessels required to use VMS who do not receive instructions by mail are responsible for contacting NMFS OLE during business hours at least 3 days before the exemption is required to obtain information needed to make exemption reports. NMFS OLE must be contacted during business hours (Monday through Friday between 0800 and 1700 Pacific Time).

(vii) *Valid exemption reports.* For an exemption report to be valid, it must be received by NMFS at least 2 hours and not more than 24 hours before the exempted activities defined at

paragraphs (d)(4)(i) through (iv) of this section occur. An exemption report is valid until NMFS receives a report canceling the exemption. An exemption cancellation must be received at least 2 hours before the vessel re-enters the EEZ following an outside areas exemption; at least 2 hours before the vessel is placed back in the water following a haul out exemption; at least 2 hours before the vessel resumes fishing for any species of fish in state or Federal waters off the States of Washington, Oregon, or California after it has received a permit transfer exemption; or at least 2 hours before a vessel resumes fishing in the open access fishery after a long-term departure exemption. If a vessel is required to submit an activation report under paragraph (d)(2)(i) of this section before returning to fish, that report may substitute for the exemption cancellation. Initial contact must be made with NMFS OLE not more than 24 hours after the time that an emergency situation occurred in which VMS transmissions were disrupted and followed by a written emergency exemption request within 72 hours from when the incident occurred. If the emergency situation upon which an emergency exemption is based is resolved before the exemption expires, an exemption cancellation must be received by NMFS at least 2 hours before the vessel resumes fishing.

(5) When aware that transmission of automatic position reports has been interrupted, or when notified by NMFS OLE that automatic position reports are not being received, contact NMFS OLE at 7600 Sand Point Way NE, Seattle, WA 98115–6349, phone: (206) 526–6133 and follow the instructions provided to you. Such instructions may include, but are not limited to, manually communicating to a location designated by NMFS OLE the vessel's position or returning to port until the VMS is operable.

(6) After a fishing trip during which interruption of automatic position reports has occurred, the vessel's owner or operator must replace or repair the mobile transceiver unit prior to the vessel's next fishing trip. Repair or reinstallation of a mobile transceiver unit or installation of a replacement, including change of communications service provider shall be in accordance with the instructions provided by NMFS OLE and require the same certification.

(7) Make the mobile transceiver units available for inspection by NMFS OLE personnel, USCG personnel, state enforcement personnel or any authorized officer.

(8) Ensure that the mobile transceiver unit is not tampered with, disabled, destroyed, operated, or maintained improperly.

(9) Pay all charges levied by the communication service provider as necessary to ensure continuous operation of the VMS transceiver units.

§ 660.15 Equipment requirements.

(a) *Applicability.* This section contains the equipment and operational requirements for scales used to weigh catch at sea, scales used to weigh catch at IFQ first receivers, computer hardware for electronic fish ticket software and computer hardware for electronic logbook software.

(b) *Performance and technical requirements for scales used to weigh catch at sea.* [Reserved]

(c) *Performance and technical requirements for scales used to weigh catch at IFQ first receivers.* [Reserved]

(d) *Electronic fish tickets.* Pacific whiting shoreside first receivers using the electronic fish ticket software provided by Pacific States Marine Fish Commission are required to meet the hardware and software requirements below. Those Pacific whiting shoreside first receivers who have NMFS-approved software compatible with the standards specified by Pacific States Marine Fish Commission for electronic fish tickets are not subject to any specific hardware or software requirements.

(1) *Hardware and software requirements.* (i) A personal computer with Pentium 75-MHz or higher. Random Access Memory (RAM) must have sufficient megabyte (MB) space to run the operating system, plus an additional 8 MB for the software application and available hard disk space of 217 MB or greater. A CD–ROM drive with a Video Graphics Adapter (VGA) or higher resolution monitor (super VGA is recommended).

(ii) Microsoft Windows 2000 (64 MB or greater RAM required), Windows XP (128 MB or greater RAM required) or later operating system.

(iii) Microsoft Access 2003 or newer.

(2) *NMFS approved software standards and Internet access.* The first receiver is responsible for obtaining, installing and updating electronic fish tickets software either provided by Pacific States Marine Fish Commission, or compatible with the data export specifications specified by Pacific States Marine Fish Commission and for maintaining Internet access sufficient to transmit data files via e-mail. Requests for data export specifications can be submitted to: Attn: Frank Lockhart, National Marine Fisheries Service, Northwest Region Sustainable Fisheries Division, 7600 Sand Point Way NE., Seattle, WA 98115, or via e-mail to *frank.lockhart@noaa.gov*.

(3) *Maintenance.* The Pacific whiting shoreside first receiver is responsible for ensuring that all hardware and software required under this subsection are fully operational and functional whenever the Pacific whiting primary season deliveries are accepted.

(4) *Improving data quality.* Vessel owners and operators, Pacific whiting shoreside first receivers, or shoreside processor owners, or managers may contact NMFS in writing to request assistance in improving data quality and resolving issues. Requests may be submitted to: Attn: Frank Lockhart, National Marine Fisheries Service, Northwest Region Sustainable Fisheries Division, 7600 Sand Point Way NE., Seattle, WA 98115, or via e-mail to *frank.lockhart@noaa.gov*.

§ 660.16 Groundfish observer program.

(a) *General.* Vessel owners, operators, and managers are jointly and severally responsible for their vessels' compliance with observer requirements specified in this section and within § 660.116, subpart D, § 660.216, subpart E, § 660.316, subpart F, or subpart G.

(b) *Purpose.* The purpose of the Groundfish Observer Program is to collect fisheries data deemed by the Northwest Regional Administrator, NMFS, to be necessary and appropriate for management, compliance monitoring, and research in the groundfish fisheries and for the conservation of living marine resources and their habitat.

(c) *Catcher vessels.* For the purposes of observer coverage requirements the term "catcher vessel" includes the vessels described in paragraphs (c)(1) through (c)(3) of this section. The term "catcher vessel" does not include: Catcher/processor or mothership vessels, Pacific whiting shoreside vessels that sort catch at sea, or recreational vessels.

(1) Any vessel registered for use with a Pacific Coast groundfish limited entry permit that fishes in state or Federal waters seaward of the baseline from which the territorial sea is measured off the States of Washington, Oregon or California (0–200 nm offshore).

(2) Any vessel other than a vessel described in paragraph (c)(1) of this section that is used to take and retain, possess, or land groundfish in or from the EEZ.

(3) Any vessel that is required to take a Federal observer by the applicable State law.

(d) *Observer coverage requirements.* The following table provides references

to the regulatory sections with the observer coverage requirements.

West Coast Groundfish Fishery/Program	Regulation subpart and section
Catcher Vessels in the Trawl Fishery, and Pacific Whiting Shoreside Vessels that Sort Catch At Sea	subpart D, § 660.116.
Mothership Processors	subpart D, § 660.116.
Catcher/Processors	subpart D, § 660.116.
Catcher Vessels in the Fixed Gear Fisheries	subpart E, § 660.216.
Catcher Vessels in the Open Access Fisheries	subpart F, § 660.316.

(e) *NMFS-certified Observer Certification and Observer Responsibilities*—(1) *Observer Certification*—(i) *Applicability.* Observer certification authorizes an individual to fulfill duties as specified in writing by the NMFS Observer Program Office while under the employ of a NMFS-permitted observer provider and according to certification endorsements as designated under paragraph (e)(3) of this section.

(ii) *Certification requirements.* NMFS will certify individuals who:

(A) Are employed by an observer provider company permitted pursuant to 50 CFR 679.50 at the time of the issuance of the certification;

(B) Have provided, through their observer provider:

(*1*) Information identified by NMFS at 50 CFR 679.50(i)(2)(x)(A)(*1*)(*iii*) and (*iv*); and

(*2*) Information identified by NMFS at 50 CFR 679.50(i)(2)(x)(C) regarding the observer candidate's health and physical fitness for the job;

(C) Meet all education and health standards as specified in 50 CFR 679.50(i)(2)(i)(A) and (i)(2)(x)(C), respectively; and

(D) Have successfully completed NMFS-approved training as prescribed by the Observer Program.

(*1*) Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

(*2*) If a candidate fails training, he or she will be notified in writing on or before the last day of training. The notification will indicate: The reasons the candidate failed the training; whether the candidate can retake the training, and under what conditions, or whether, the candidate will not be allowed to retake the training. If a determination is made that the candidate may not pursue further training, notification will be in the form of an IAD denying certification, as specified under paragraph (e)(2)(i) of this section.

(E) Have not been decertified as specified in § 660.18(b), or pursuant to 50 CFR 679.50.

(2) *Agency determinations on observer certification*—(i) *Issuance of an observer certification.* An observer certification will be issued upon determination by the observer certification official (see § 660.18, subpart C) that the candidate has successfully met all requirements for certification as specified in paragraph (e)(1)(ii) of this section.

(ii) *Denial of a certification.* The NMFS observer certification official (see § 660.18, subpart C) will issue a written IAD denying observer certification when the observer certification official determines that a candidate has unresolvable deficiencies in meeting the requirements for certification as specified in § 660.18, subpart C. The IAD will identify the reasons certification was denied and what requirements were deficient.

(iii) *Appeals.* A candidate who receives an IAD that denies his or her certification may appeal pursuant to § 660.18, subpart C. A candidate who appeals the IAD will not be issued an interim observer certification, and will not receive a certification unless the final resolution of that appeal is in the candidate's favor.

(3) *Endorsements.* The following endorsements must be obtained, in addition to observer certification, in order for an observer to deploy.

(i) *Certification training endorsement.* A certification training endorsement signifies the successful completion of the training course required to obtain observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the Observer Program Office for a period of time, specified by the Observer Program, after his or her most recent debriefing. The observer can renew the endorsement by successfully completing certification training once more.

(ii) *Annual general endorsements.* Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any calendar year subsequent to a year in which a certification training endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(iii) *Deployment endorsements.* Each observer who has completed an initial deployment after certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all pre-cruise briefing requirements. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

(iv) *Pacific whiting fishery endorsements.* A Pacific whiting fishery endorsement is required for purposes of performing observer duties aboard vessels that process groundfish at sea in the Pacific whiting fishery. A Pacific whiting fishery endorsement to an observer's certification may be obtained by meeting the following requirements:

(A) Be a prior NMFS-certified observer in the groundfish fisheries off Alaska or the Pacific Coast, unless an individual with this qualification is not available;

(B) Receive an evaluation by NMFS for his or her most recent deployment (if any) that indicated that the observer's performance met Observer Program expectations for that deployment;

(C) Successfully complete a NMFS-approved observer training and/or Pacific whiting briefing as prescribed by the Observer Program; and

(D) Comply with all of the other requirements of this section.

(4) *Standards of observer conduct*—(i) *Standards of behavior.* Observers must avoid any behavior that could adversely affect the confidence of the public in the integrity of the Observer Program or of the government, including but not limited to the following:

(A) Observers must perform their assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office.

(B) Observers must accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(C) Observers must not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or processing facility, an authorized officer, or NMFS.

(D) Observers must refrain from engaging in any illegal actions or any other activities that would reflect negatively on their image as professional scientists, on other observers, or on the Observer Program as a whole. This includes, but is not limited to:

(*1*) Violating the drug and alcohol policy established by and available from the Observer Program;

(*2*) Engaging in the use, possession, or distribution of illegal drugs; or

(*3*) Engaging in physical sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

§ 660.17 Catch monitors and catch monitor service providers. [Reserved]

§ 660.18 Certification and decertification procedures for observers, catch monitors, catch monitor providers, and observer providers.

(a) *Observer certification official.* The Regional Administrator (or a designee) will designate a NMFS observer certification official who will make decisions for the Observer Program Office on whether to issue or deny observer certification pursuant to the regulations at § 660.16(e), subpart C.

(b) *Observer suspension and decertification.*

(1) *Suspension and decertification review official.* The Regional Administrator (or a designee) will designate a suspension and decertification review official(s), who will have the authority to review certifications and issue initial administrative determinations of certification suspension and/or decertification.

(2) *Causes for suspension or decertification.* The suspension/decertification official may initiate suspension or decertification proceedings against an observer:

(i) When it is alleged that the observer has committed any acts or omissions of any of the following:

(A) Failed to satisfactorily perform the duties of observers as specified in writing by the NMFS Observer Program; or

(B) Failed to abide by the standards of conduct for observers as prescribed under § 660.16(e)(4), subpart C.

(ii) Upon conviction of a crime or upon entry of a civil judgment for:

(A) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties as specified in writing by the NMFS Observer Program;

(B) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(C) Commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the fitness of observers.

(D) Conflict of interest as specified at § 660.18 (d) of this section.

(3) *Issuance of initial administrative determination.* Upon determination that suspension or decertification is warranted under § 660.18(b) of this section the suspension/decertification official will issue a written IAD to the observer and send it via certified mail to the observer's most current address of record as provided to NMFS. The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken. If the IAD issues a suspension of a certification, the terms of the suspension will be specified. Suspension or decertification is effective immediately as of the date of issuance, unless the suspension/decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions.

(4) *Appeals.* A certified observer who receives an IAD that suspends or revokes certification may appeal pursuant to paragraph (c) of this section.

(c) *Appeals process*—(1) *Decisions.* Decisions on appeals of initial administrative decisions denying certification to, or suspending, or decertifying, will be made by the Regional Administrator (or designated official). Appeals decisions shall be in writing and shall state the reasons therefore.

(2) *Filing an appeal of the determination.* An appeal must be filed with the Regional Administrator within 30 days of the initial administrative determination denying, suspending, or revoking the certification.

(3) *Content of an appeal.* The appeal must be in writing, and must allege facts or circumstances to show why the certification should be granted, or should not be suspended or revoked, under the criteria in this section.

(4) *Decision on an appeal.* Absent good cause for further delay, the Regional Administrator (or designated official) will issue a written decision on the appeal within 45 days of receipt of the appeal. The Regional Administrator's decision is the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce as of the date of the decision.

(d) *Limitations on conflict of interest*—(1) *Limitations on conflict of interest for observers:* (i) Must not have a direct financial interest, other than the provision of observer or catch monitor services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, Alaska state waters, or in a Pacific Coast fishery managed by either the state or Federal governments in waters off Washington, Oregon, or California, including but not limited to:

(A) Any ownership, mortgage holder, or other secured interest in a vessel, shorebased or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,

(B) Any business involved with selling supplies or services to any vessel, shorebased or floating stationary processing facility; or

(C) Any business involved with purchasing raw or processed products from any vessel, shorebased or floating stationary processing facilities.

(ii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(iii) May not serve as observer on any vessel or at any shoreside or floating stationary processing facility owned or operated where a person was previously employed.

(iv) May not solicit or accept employment as a crew member or an employee of a vessel, shoreside processor, or stationary floating

processor while employed by an observer or catch monitor provider.

(2) Provisions for remuneration of observers or catch monitors under this section do not constitute a conflict of interest.

(3) *Limitations on conflict of interest for catch monitors.* [Reserved]

(4) *Limitations on conflict of interest for catch monitors providers.* [Reserved]

§ 660.20 Vessel and gear identification.

(a) *Vessel identification*—(1) *Display.* The operator of a vessel that is over 25 ft (7.6 m) in length and is engaged in commercial fishing for groundfish must display the vessel's official number on the port and starboard sides of the deckhouse or hull, and on a weather deck so as to be visible from above. The number must contrast with the background and be in block Arabic numerals at least 18 inches (45.7 cm) high for vessels over 65 ft (19.8 m) long and at least 10 inches (25.4 cm) high for vessels between 25 and 65 ft (7.6 and 19.8 m) in length. The length of a vessel for purposes of this section is the length set forth in USCG records or in state records, if no USCG record exists.

(2) *Maintenance of numbers.* The operator of a vessel engaged in commercial fishing for groundfish must keep the identifying markings required by paragraph (a)(1) of this section clearly legible and in good repair, and must ensure that no part of the vessel, its rigging, or its fishing gear obstructs the view of the official number from an enforcement vessel or aircraft.

(3) *Commercial passenger vessels.* This section does not apply to vessels carrying fishing parties on a per-capita basis or by charter.

(b) *Gear identification.* Gear identification requirements specific to fisheries using fixed gear (limited entry and open access) are described at § 660.219, subpart E and § 660.319, subpart F.

§ 660.24 Limited entry and open access fisheries.

(a) *General.* All commercial fishing for groundfish must be conducted in accordance with the regulations governing limited entry and open access fisheries, except such fishing by treaty Indian tribes as may be separately provided for.

(b) [Reserved]

§ 660.25 Permits.

(a) *General.* Each of the permits or licenses in this section has different conditions or privileges as part of the permit or license. The permits or licenses in this section confer a conditional privilege of participating in the Pacific coast groundfish fishery, in accordance with Federal regulations in 50 CFR part 660, subparts C through G.

(b) *Limited entry permit*—(1) *Eligibility and registration*—(i) *General.* In order for a vessel to be used to fish in the limited entry fishery, the vessel owner must hold a limited entry permit and, through SFD, must register that vessel for use with a limited entry permit. When participating in the limited entry fishery, a vessel is authorized to fish with the gear type endorsed on the limited entry permit registered for use with that vessel, except that the MS permit does not have a gear endorsement. There are three types of gear endorsements: Trawl, longline, and pot (or trap). All limited entry permits, except the MS permit, have size endorsements; a vessel registered for use with a limited entry permit must comply with the vessel size requirements of this subpart. A sablefish endorsement is also required for a vessel to be used to fish in the primary season for the limited entry fixed gear sablefish fishery, north of 36° N. lat. Certain limited entry permits will also have endorsements required for participation in a specific fishery, such as the MS/CV endorsement and the C/P endorsement.

(A) Until the trawl rationalization program is implemented, a catcher vessel participating in either the Pacific whiting shorebased or mothership sector must, in addition to being registered for use with a limited entry permit, be registered for use with a sector-appropriate Pacific whiting vessel license under § 660.26, subpart C. A vessel participating in the Pacific whiting catcher/processor sector must, in addition to being registered for use with a limited entry permit, be registered for use with a sector-appropriate Pacific whiting vessel license under § 660.26, subpart C. Although a mothership vessel participating in the Pacific whiting mothership sector is not required to be registered for use with a limited entry permit, such vessel must be registered for use with a sector-appropriate Pacific whiting vessel license under § 660.26, subpart C.

(B) [Reserved]

(ii) *Eligibility.* Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12113 (a) may be issued or may hold a limited entry permit.

(iii) *Registration.* Limited entry permits will normally be registered for use with a particular vessel at the time the permit is issued, renewed, transferred, or replaced. If the permit will be used with a vessel other than the one registered on the permit, the permit owner must register that permit for use with the new vessel through the SFD. The reissued permit must be placed on board the new vessel in order for the vessel to be used to fish in the limited entry fishery.

(A) For all limited entry permits, including MS permits, MS/CV-endorsed permits, and C/P-endorsed permits when they are not fishing in the at-sea whiting fisheries, registration of a limited entry permit to be used with a new vessel will take effect no earlier than the first day of the next major limited entry cumulative limit period following the date SFD receives the transfer form and the original permit.

(B) For MS permits, MS/CV-endorsed permits, and C/P-endorsed permits when they are fishing in the at-sea whiting fisheries, registration of a limited entry permit to be used with a new vessel will take effect on the date NMFS approves and issuance of the transferred permit.

(iv) *Limited entry permits indivisible.* Limited entry permits may not be divided for use by more than one vessel.

(v) *Initial administrative determination.* SFD will make an IAD regarding permit endorsements, renewal, replacement, and change in vessel registration. SFD will notify the permit owner in writing with an explanation of any determination to deny a permit endorsement, renewal, replacement, or change in vessel registration. The SFD will decline to act on an application for permit endorsement, renewal, transfer, replacement, or registration of a limited entry permit if the permit is subject to sanction provisions of the Magnuson-Stevens Act at 16 U.S.C. 1858 (a) and implementing regulations at 15 CFR part 904, subpart D, apply.

(2) *Mothership (MS) permit.* The MS permit conveys a conditional privilege for the vessel registered to it,, to participate in the MS fishery by receiving and processing deliveries of groundfish in the Pacific whiting mothership sector. An MS permit is a type of limited entry permit. An MS permit does not have any endorsements affixed to the permit, as listed in paragraph (b)(3) of this section. The provisions for the MS permit, including eligibility, renewal, change of permit ownership, vessel registration, fees, and appeals are described at § 660.150, subpart D.

(3) *Endorsements*—(i) "*A*" *endorsement.* A limited entry permit with an "A" endorsement entitles the vessel registered to the permit to fish in the limited entry fishery for all groundfish species with the type(s) of limited entry gear specified in the

endorsement, except for sablefish harvested north of 36° N. lat. during times and with gears for which a sablefish endorsement is required. See paragraph (b)(3)(iv) of this section for provisions on sablefish endorsement requirements. An "A" endorsement is transferable with the limited entry permit to another person, or to a different vessel under the same ownership under paragraph (b)(4) of this section. An "A" endorsement expires on failure to renew the limited entry permit to which it is affixed. An MS permit is not considered a limited entry "A"-endorsed permit.

(ii) *Gear endorsement.* There are three types of gear endorsements: Trawl, longline and pot (trap). When limited entry "A"-endorsed permits were first issued, some vessel owners qualified for more than one type of gear endorsement based on the landings history of their vessels. Each limited entry "A"-endorsed permit has one or more gear endorsement(s). Gear endorsement(s) assigned to the permit at the time of issuance will be permanent and shall not be modified. While participating in the limited entry fishery, the vessel registered to the limited entry "A"-endorsed permit is authorized to fish the gear(s) endorsed on the permit. While participating in the limited entry, fixed gear primary fishery for sablefish described at § 660.231, subpart E, a vessel registered to more than one limited entry permit is authorized to fish with any gear, except trawl gear, endorsed on at least one of the permits registered for use with that vessel. During the limited entry fishery, permit holders may also fish with open access gear, except that vessels fishing against primary sablefish season cumulative limits described at § 660.231, subpart E, may not fish with open access gear against those limits. An MS permit does not have a gear endorsement.

(iii) *Vessel size endorsements*—(A) *General.* Each limited entry "A"-endorsed permit will be endorsed with the LOA for the size of the vessel that initially qualified for the permit, except when permits are combined into one permit to be registered for use with a vessel requiring a larger size endorsement, the new permit will be endorsed for the size that results from the combination of the permits.

(B) *Limitations of size endorsements.* (*1*) A limited entry permit may be registered for use with a vessel up to 5 ft (1.52 m) longer than, the same length as, or any length shorter than, the size endorsed on the existing permit without requiring a combination of permits or a change in the size endorsement.

(*2*) The vessel harvest capacity rating for each of the permits being combined is that indicated in Table 3 of subpart C for the LOA (in feet) endorsed on the respective limited entry permit. Harvest capacity ratings for fractions of a foot in vessel length will be determined by multiplying the fraction of a foot in vessel length by the difference in the two ratings assigned to the nearest integers of vessel length. The length rating for the combined permit is that indicated for the sum of the vessel harvest capacity ratings for each permit being combined. If that sum falls between the sums for two adjacent lengths on Table 3 of subpart C, the length rating shall be the higher length.

(C) *Size endorsement requirements for sablefish-endorsed permits.* Notwithstanding paragraphs (b)(3)(iii)(A) and (B) of this section, when multiple permits are "stacked" on a vessel, as described in paragraph (b)(4)(iii), at least one of the permits must meet the size requirements of those sections. The permit that meets the size requirements of those sections is considered the vessel's "base" permit, as defined in § 660.11, subpart C. If more than one permit registered for use with the vessel has an appropriate length endorsement for that vessel, NMFS SFD will designate a base permit by selecting the permit that has been registered to the vessel for the longest time. If the permit owner objects to NMFS' selection of the base permit, the permit owner may send a letter to NMFS SFD requesting the change and the reasons for the request. If the permit requested to be changed to the base permit is appropriate for the length of the vessel, NMFS SFD will reissue the permit with the new base permit. Any additional permits that are stacked for use with a vessel participating in the limited entry fixed gear primary sablefish fishery may be registered for use with a vessel even if the vessel is more than 5 ft (1.5 m) longer or shorter than the size endorsed on the permit.

(iv) *Sablefish endorsement and tier assignment*—(A) *General.* Participation in the limited entry fixed gear sablefish fishery during the primary season north of 36° N. lat., described in § 660.231, Subpart E, requires that an owner of a vessel hold (by ownership or lease) a limited entry permit, registered for use with that vessel, with a longline or trap (or pot) endorsement and a sablefish endorsement. Up to three permits with sablefish endorsements may be registered for use with a single vessel. Limited entry permits with sablefish endorsements are assigned to one of three different cumulative trip limit tiers, based on the qualifying catch history of the permit.

(*1*) A sablefish endorsement with a tier assignment will be affixed to the permit and will remain valid when the permit is transferred.

(*2*) A sablefish endorsement and its associated tier assignment are not separable from the limited entry permit, and therefore may not be transferred separately from the limited entry permit.

(B) *Issuance process for sablefish endorsements and tier assignments.* No new applications for sablefish endorsements will be accepted after November 30, 1998. All tier assignments and subsequent appeals processes were completed by September 1998.

(C) *Ownership requirements and limitations.* (*1*) No partnership or corporation may own a limited entry permit with a sablefish endorsement unless that partnership or corporation owned a limited entry permit with a sablefish endorsement on November 1, 2000. Otherwise, only individual human persons may own limited entry permits with sablefish endorsements.

(*2*) No individual person, partnership, or corporation in combination may have ownership interest in or hold more than 3 permits with sablefish endorsements either simultaneously or cumulatively over the primary season, except for an individual person, or partnerships or corporations that had ownership interest in more than 3 permits with sablefish endorsements as of November 1, 2000. The exemption from the maximum ownership level of 3 permits only applies to ownership of the particular permits that were owned on November 1, 2000. An individual person, or partnerships or corporations that had ownership interest in 3 or more permits with sablefish endorsements as of November 1, 2000, may not acquire additional permits beyond those particular permits owned on November 1, 2000. If, at some future time, an individual person, partnership, or corporation that owned more than 3 permits as of November 1, 2000, sells or otherwise permanently transfers (not holding through a lease arrangement) some of its originally owned permits, such that they then own fewer than 3 permits, they may then acquire additional permits, but may not have ownership interest in or hold more than 3 permits.

(*3*) A partnership or corporation will lose the exemptions provided in paragraphs (b)(3)(iv)(C)(*1*) and (*2*) of this section on the effective date of any change in the corporation or partnership from that which existed on November 1, 2000. A "change" in the partnership or

corporation is defined at § 660.11, subpart C. A change in the partnership or corporation must be reported to SFD within 15 calendar days of the addition of a new shareholder or partner.

(*4*) Any partnership or corporation with any ownership interest in or that holds a limited entry permit with a sablefish endorsement shall document the extent of that ownership interest or the individuals that hold the permit with the SFD via the Identification of Ownership Interest Form sent to the permit owner through the annual permit renewal process and whenever a change in permit owner, permit holder, and/or vessel registration occurs as described at paragraph (b)(4)(iv) and (v) of this section. SFD will not renew a sablefish-endorsed limited entry permit through the annual renewal process described at paragraph (b)(4)(i) of this section, or approve a change in permit owner, permit holder, and/or vessel registration unless the Identification of Ownership Interest Form has been completed. Further, if SFD discovers through review of the Identification of Ownership Interest Form that an individual person, partnership, or corporation owns or holds more than 3 permits and is not authorized to do so under paragraph (b)(3)(iv)(C)(*2*) of this section, the individual person, partnership or corporation will be notified and the permits owned or held by that individual person, partnership, or corporation will be void and reissued with the vessel status as "unidentified" until the permit owner owns and/or holds a quantity of permits appropriate to the restrictions and requirements described in paragraph (b)(3)(iv)(C)(*2*) of this section. If SFD discovers through review of the Identification of Ownership Interest Form that a partnership or corporation has had a change in membership since November 1, 2000, as described in paragraph (b)(3)(iv)(C)(*3*) of this section, the partnership or corporation will be notified, SFD will void any existing permits, and reissue any permits owned and/or held by that partnership or corporation in "unidentified" status with respect to vessel registration until the partnership or corporation is able to transfer those permits to persons authorized under this section to own sablefish-endorsed limited entry permits.

(*5*) A person, partnership, or corporation that is exempt from the owner-on-board requirement may sell all of their permits, buy another sablefish-endorsed permit within up to a year from the date the last permit was approved for transfer, and retain their exemption from the owner-on-board requirements. An individual person, partnership or corporation could only obtain a permit if it has not added or changed individuals since November 1, 2000, excluding individuals that have left the partnership or corporation or that have died.

(D) *Sablefish at-sea processing prohibition and exemption.* Vessels are prohibited from processing sablefish at sea that were caught in the primary sablefish fishery without sablefish at-sea processing exemptions. The sablefish at-sea processing exemption has been issued to a particular vessel and that permit and vessel owner who requested the exemption. The exemption is not part of the limited entry permit. The exemption is not transferable to any other vessel, vessel owner, or permit owner for any reason. The sablefish at-sea processing exemption will expire upon transfer of the vessel to a new owner or if the vessel is totally lost, as defined at § 660.11, subpart C.

(v) *MS/CV endorsement.* An MS/CV endorsement on a trawl limited entry permit conveys a conditional privilege that allows a vessel registered to it to fish in either the coop or non-coop fishery in the MS Coop Program described at § 660.150, subpart D. The provisions for the MS/CV-endorsed limited entry permit, including eligibility, renewal, change of permit ownership, vessel registration, combinations, accumulation limits, fees, and appeals are described at § 660.150, subpart D.

(vi) *C/P endorsement.* A C/P endorsement on a trawl limited entry permit conveys a conditional privilege that allows a vessel registered to it to fish in the C/P Coop Program described at § 660.160, subpart D. The provisions for the C/P-endorsed limited entry permit, including eligibility, renewal, change of permit ownership, vessel registration, combinations, fees, and appeals are described at § 660.160, subpart D.

(vii) *Endorsement and exemption restrictions.* "A" endorsements, gear endorsements, sablefish endorsements and sablefish tier assignments, MS/CV endorsements, and C/P endorsements may not be transferred separately from the limited entry permit. Sablefish at-sea processing exemptions are associated with the vessel and not with the limited entry permit and may not be transferred at all.

(4) *Limited entry permit actions—renewal, combination, stacking, change of permit ownership or permit holdership, and transfer*—(i) *Renewal of limited entry permits and gear endorsements.* (A) Limited entry permits expire at the end of each calendar year, and must be renewed between October 1 and November 30 of each year in order to remain in force the following year.

(B) Notification to renew limited entry permits will be issued by SFD prior to September 1 each year to the permit owner's most recent address in the SFD record. The permit owner shall provide SFD with notice of any address change within 15 days of the change.

(C) Limited entry permit renewal requests received in SFD between November 30 and December 31 will be effective on the date that the renewal is approved. A limited entry permit that is allowed to expire will not be renewed unless the permit owner requests reissuance by March 31 of the following year and the SFD determines that failure to renew was proximately caused by illness, injury, or death of the permit owner.

(D) Limited entry permits with sablefish endorsements, as described at paragraph (b)(3)(iv) of this section, will not be renewed until SFD has received complete documentation of permit ownership as required under paragraph (b)(3)(iv)(C)(*4*) of this section.

(E) Limited entry permits with an MS/CV endorsement or an MS permit, will not be renewed until SFD has received complete documentation of permit ownership as required under § 660.150(g) and § 660.150(f) of subpart D, respectively.

(ii) *Combining limited entry "A" permits.* Two or more limited entry permits with "A" gear endorsements for the same type of limited entry gear may be combined and reissued as a single permit with a larger size endorsement as described in paragraph (b)(3)(iii) of this section.

(A) *Sablefish-endorsed permit.* With respect to limited entry permits endorsed for longline and pot (trap) gear, a sablefish endorsement will be issued for the new permit only if all of the permits being combined have sablefish endorsements. If two or more permits with sablefish endorsements are combined, the new permit will receive the same tier assignment as the tier with the largest cumulative landings limit of the permits being combined.

(B) *MS/CV-endorsed permit.* When an MS/CV-endorsed permit is combined with another non-C/P-endorsed permit (including unendorsed permits), the resulting permit will be MS/CV-endorsed. If an MS/CV-endorsed permit is combined with a C/P-endorsed permit, the MS/CV endorsement and catch history assignment will not be reissued on the combined permit.

(C) *C/P-endorsed permit.* A C/P-endorsed permit that is combined with

a limited entry trawl permit that is not C/P-endorsed will result in a single C/P-endorsed permit with a larger size endorsement. An MS/CV endorsement on one of the permits being combined will not be reissued on the resulting permit.

(iii) *Stacking limited entry permits.* "Stacking" limited entry permits, as defined at § 660.11, subpart C, refers to the practice of registering more than one sablefish-endorsed permit for use with a single vessel. Only limited entry permits with sablefish endorsements may be stacked. Up to 3 limited entry permits with sablefish endorsements may be registered for use with a single vessel during the primary sablefish season described at § 660.231, subpart E. Privileges, responsibilities, and restrictions associated with stacking permits to fish in the primary sablefish fishery are described at § 660.231, subpart E and at paragraph (b)(3)(iv) of this section.

(iv) *Changes in permit ownership and permit holder.* (A) *General.* The permit owner may convey the limited entry permit to a different person. The new permit owner will not be authorized to use the permit until the change in permit ownership has been registered with and approved by the SFD. The SFD will not approve a change in permit ownership for a limited entry permit with a sablefish endorsement that does not meet the ownership requirements for such permit described at paragraph (b)(3)(iv)(C) of this section. The SFD will not approve a change in permit ownership for a limited entry permit with an MS/CV endorsement that does not meet the ownership requirements for such permit described at § 660.150(g)(3), subpart D. Change in permit owner and/or permit holder applications must be submitted to SFD with the appropriate documentation described at paragraph (b)(4)(vii) of this section.

(*1*) During the initial issuance application period for the trawl rationalization program, NMFS will not review or approve any request for a change in limited entry trawl permit owner at any time during the application period, as specified at § 660.140(d)(8)(viii) for QS applicants, at § 660.150(g)(6)(vii) for MS/CV endorsement applicants, and at § 660.160(d)(7)(vi) for C/P endorsement applicants. The initial issuance application period for the trawl rationalization program will begin on either November 1, 2010 or the date upon which the application is received by NMFS, whichever occurs first.

(*2*) [Reserved]

(B) *Effective date.* The change in ownership of the permit or change in the permit holder will be effective on the day the change is approved by SFD, unless there is a concurrent change in the vessel registered to the permit. Requirements for changing the vessel registered to the permit are described at paragraph (e) of this section.

(C) *Sablefish-endorsed permits.* If a permit owner submits an application to transfer a sablefish-endorsed limited entry permit to a new permit owner or holder (transferee) during the primary sablefish season described at § 660.231, subpart E (generally April 1 through October 31), the initial permit owner (transferor) must certify on the application form the cumulative quantity, in round weight, of primary season sablefish landed against that permit as of the application signature date for the then current primary season. The transferee must sign the application form acknowledging the amount of landings to date given by the transferor. This certified amount should match the total amount of primary season sablefish landings reported on state landing receipts. As required at § 660.12(b), subpart C, any person landing sablefish must retain on board the vessel from which sablefish is landed, and provide to an authorized officer upon request, copies of any and all reports of sablefish landings from the primary season containing all data, and in the exact manner, required by the applicable state law throughout the primary sablefish season during which a landing occurred and for 15 days thereafter.

(v) *Changes in vessel registration-transfer of limited entry permits and gear endorsements*—(A) *General.* A permit may not be used with any vessel other than the vessel registered to that permit. For purposes of this section, a permit transfer occurs when, through SFD, a permit owner registers a limited entry permit for use with a new vessel. Permit transfer applications must be submitted to SFD with the appropriate documentation described at paragraph (b)(4)(vii) of this section. Upon receipt of a complete application, and following review and approval of the application, the SFD will reissue the permit registered to the new vessel. Applications to transfer limited entry permits with sablefish endorsements will not be approved until SFD has received complete documentation of permit ownership as described at paragraph (b)(3)(iv)(C)(*4*) of this section and as required under paragraph (b)(4)(vii) of this section.

(B) *Application.* A complete application must be submitted to SFD in order for SFD to review and approve a change in vessel registration. At a minimum, a permit owner seeking to transfer a limited entry permit shall submit to SFD a signed application form and his/her current limited entry permit before the first day of the cumulative limit period in which they wish to fish. If a permit owner provides a signed application and current limited entry permit after the first day of a cumulative limit period, the permit will not be effective until the succeeding cumulative limit period. SFD will not approve a change in vessel registration (transfer) until it receives a complete application, the existing permit, a current copy of the USCG 1270, and other required documentation.

(C) *Effective date.* Changes in vessel registration on permits will take effect no sooner than the first day of the next major limited entry cumulative limit period following the date that SFD receives the signed permit transfer form and the original limited entry permit. No transfer is effective until the limited entry permit has been reissued as registered with the new vessel.

(D) *Sablefish-endorsed permits.* If a permit owner submits an application to register a sablefish-endorsed limited entry permit to a new vessel during the primary sablefish season described at § 660.231, subpart E (generally April 1 through October 31), the initial permit owner (transferor) must certify on the application form the cumulative quantity, in round weight, of primary season sablefish landed against that permit as of the application signature date for the then current primary season. The new permit owner or holder (transferee) associated with the new vessel must sign the application form acknowledging the amount of landings to date given by the transferor. This certified amount should match the total amount of primary season sablefish landings reported on state landing receipts. As required at § 660.12(b), subpart C, any person landing sablefish must retain on board the vessel from which sablefish is landed, and provide to an authorized officer upon request, copies of any and all reports of sablefish landings from the primary season containing all data, and in the exact manner, required by the applicable state law throughout the primary sablefish season during which a landing occurred and for 15 days thereafter.

(vi) *Restriction on frequency of transfers*—(A) *General.* A permit owner may designate the vessel registration for a permit as "unidentified," meaning that no vessel has been identified as registered for use with that permit. No vessel is authorized to use a permit with

the vessel registration designated as "unidentified." A vessel owner who removes a permit from his vessel and registers that permit as "unidentified" is not exempt from VMS requirements at § 660.14, subpart C unless specifically authorized by that section. When a permit owner requests that the permit's vessel registration be designated as "unidentified," the transaction is not considered a "transfer" for purposes of this section. Any subsequent request by a permit owner to change from the "unidentified" status of the permit in order to register the permit with a specific vessel will be considered a change in vessel registration (transfer) and subject to the restriction on frequency and timing of changes in vessel registration (transfer).

(B) *Limited entry fixed gear and trawl-endorsed permits (without MS/CV or C/P endorsements).* Limited entry fixed gear and trawl-endorsed permits (without MS/CV or C/P endorsements) permits may not be registered for use with a different vessel (transfer) more than once per calendar year, except in cases of death of a permit holder or if the permitted vessel is totally lost as defined in § 660.11, subpart C. The exception for death of a permit holder applies for a permit held by a partnership or a corporation if the person or persons holding at least 50 percent of the ownership interest in the entity dies.

(C) *Limited entry MS permits and limited entry permits with MS/CV or C/P endorsements.* Limited entry MS permits and limited entry permits with MS/CV or C/P endorsements may be registered to another vessel up to two times during the fishing season as long as the second transfer is back to the original vessel. The original vessel is either the vessel registered to the permit as of January 1, or if no vessel is registered to the permit as of January 1, the original vessel is the first vessel to which the permit is registered after January 1. After the original vessel has been established, the first transfer would be to another vessel, but any second transfer must be back to the original vessel.

(vii) *Application and supplemental documentation.* Permit holders may request a transfer (change in vessel registration) and/or change in permit ownership or permit holder by submitting a complete application form. In addition, a permit owner applying for renewal, replacement, transfer, or change of ownership or change of permit holder of a limited entry permit has the burden to submit evidence to prove that qualification requirements are met. The following evidentiary standards apply:

(A) For a request to change a vessel registration and/or change in permit ownership or permit holder, the permit owner must provide SFD with a current copy of the USCG Form 1270 for vessels of 5 net tons or greater, or a current copy of a state registration form for vessels under 5 net tons.

(B) For a request to change a vessel registration and/or change in permit ownership or permit holder for sablefish-endorsed permits with a tier assignment for which a corporation or partnership is listed as permit owner and/or holder, an Identification of Ownership Interest Form must be completed and included with the application form.

(C) For a request to change permit ownership for an MS permit or for a request to change a vessel registration and/or change in permit ownership or permit holder for an MS/CV-endorsed limited entry trawl permit, an Identification of Ownership Interest Form must be completed and included with the application form.

(D) For a request to change the vessel registration to a permit, the permit owner must submit to SFD a current marine survey conducted by a certified marine surveyor in accordance with USCG regulations to authenticate the length overall of the vessel being newly registered with the permit. Marine surveys older than 3 years at the time of the request for change in vessel registration will not be considered "current" marine surveys for purposes of this requirement.

(E) For a request to change a permit's ownership where the current permit owner is a corporation, partnership or other business entity, the applicant must provide to SFD a corporate resolution that authorizes the conveyance of the permit to a new owner and which authorizes the individual applicant to request the conveyance on behalf of the corporation, partnership, or other business entity.

(F) For a request to change a permit's ownership that is necessitated by the death of the permit owner(s), the individual(s) requesting conveyance of the permit to a new owner must provide SFD with a death certificate of the permit owner(s) and appropriate legal documentation that either: specifically transfers the permit to a designated individual(s); or, provides legal authority to the transferor to convey the permit ownership.

(G) For a request to change a permit's ownership that is necessitated by divorce, the individual requesting the change in permit ownership must submit an executed divorce decree that awards the permit to a designated individual(s).

(H) Such other relevant, credible documentation as the applicant may submit, or the SFD or Regional Administrator may request or acquire, may also be considered.

(viii) *Application forms available.* Application forms for the change in vessel registration (transfer) and change of permit ownership or permit holder of limited entry permits are available from the SFD (see part 600 for address of the Regional Administrator). Contents of the application, and required supporting documentation, are specified in the application form.

(ix) *Records maintenance.* The SFD will maintain records of all limited entry permits that have been issued, renewed, transferred, registered, or replaced.

(5) *Small fleet.* (i) Small limited entry fisheries fleets that are controlled by a local government, are in existence as of July 11, 1991, and have negligible impacts on the groundfish resource, may be certified as consistent with the goals and objectives of the limited entry program and incorporated into the limited entry fishery. Permits issued under this subsection will be issued in accordance with the standards and procedures set out in the PCGFMP and will carry the rights explained therein.

(ii) A permit issued under this section may be registered only to another vessel that will continue to operate in the same certified small fleet, provided that the total number of vessels in the fleet does not increase. A vessel may not use a small fleet limited entry permit for participation in the limited entry fishery outside of authorized activities of the small fleet for which that permit and vessel have been designated.

(c) *Quota share (QS) permit.* A QS permit conveys a conditional privilege to a person to own QS or IBQ for designated species and species groups and to fish in the Shorebased IFQ Program described § 660.140, subpart D. A QS permit is not a limited entry permit. The provisions for the QS permit, including eligibility, renewal, change of permit ownership, accumulation limits, fees, and appeals are described at § 660.140, subpart D.

(d) *First receiver site license.* The first receiver site license conveys a conditional privilege to a first receiver to receive, purchase, or take custody, control or possession of landings from the Shorebased IFQ Program. The first receiver site license is issued for a person and a unique physical site consistent with the terms and

conditions required to account for and weigh the landed species. A first receiver site license is not a limited entry permit. The provisions for the First Receiver Site License, including eligibility, registration, change of ownership, fees, and appeals are described at § 660.140(f), subpart D.

(e) *Coop permit.* [Reserved]

(1) *MS coop permit.* [Reserved]

(2) *C/P coop permit.* [Reserved]

(f) *Permit fees.* The Regional Administrator is authorized to charge fees to cover administrative expenses related to issuance of permits including initial issuance, renewal, transfer, vessel registration, replacement, and appeals. The appropriate fee must accompany each application.

(g) *Permit appeals process*—(1) *General.* For permit actions, including issuance, renewal, change in vessel registration, change in permit owner or permit holder, and endorsement upgrade, the Assistant Regional Administrator for Sustainable Fisheries will make an initial administrative determination (IAD) on the action. In cases where the applicant disagrees with the IAD, the applicant may appeal that decision. Final decisions on appeals of IADs regarding issuance, renewal, change in vessel registration, change in permit owner or permit holder, and endorsement upgrade, will be made in writing by the Regional Administrator acting on behalf of the Secretary of Commerce and will state the reasons therefore. This section describes the procedures for appealing the IAD on permit actions made in this title under subparts C through G of part 660. Additional information regarding appeals of an IAD related to the trawl rationalization program is contained in the specific program sections under subpart D of part 660.

(2) *Who May Appeal?* Only a person who received an IAD that disapproved any part of their application may file a written appeal. For purposes of this section, such person will be referred to as the "applicant."

(3) *Submission of appeals.* (i) The appeal must be in writing, must allege credible facts or circumstances to show why the criteria in this subpart have been met, and must include any relevant information or documentation to support the appeal.

(ii) Appeals must be mailed or faxed to: National Marine Fisheries Service, Northwest Region, Sustainable Fisheries Division, ATTN: Appeals, 7600 Sand Point Way NE., Seattle, WA, 98115; Fax: 206–526–6426; or delivered to National Marine Fisheries Service at the same address.

(4) *Timing of appeals.* (i) If an applicant appeals an IAD, the appeal must be postmarked, faxed, or hand delivered to NMFS no later than 30 calendar days after the date on the IAD. If the applicant does not appeal the IAD within 30 calendar days, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(ii) The time period to submit an appeal begins with the date on the IAD. If the last day of the time period is a Saturday, Sunday, or Federal holiday, the time period will extend to the close of business on the next business day.

(5) *Address of record.* For purposes of the appeals process, NMFS will establish as the address of record, the address used by the applicant in initial correspondence to NMFS. Notifications of all actions affecting the applicant after establishing an address of record will be mailed to that address, unless the applicant provides NMFS, in writing, with any changes to that address. NMFS bears no responsibility if a notification is sent to the address of record and is not received because the applicant's actual address has changed without notification to NMFS.

(6) *Decisions on appeals.* (i) For the appeal of an IAD related to the application and initial issuance process for the trawl rationalization program listed in subpart D of part 660, the Regional Administrator shall appoint an appeals officer. After determining there is sufficient information and that all procedural requirements have been met, the appeals officer will review the record and issue a recommendation on the appeal to the Regional Administrator, which shall be advisory only. The recommendation must be based solely on the record. Upon receiving the findings and recommendation, the Regional Administrator shall issue a final decision on the appeal acting on behalf of the Secretary of Commerce in accordance with paragraph (g)(6)(ii) of this section.

(ii) *Final decision on appeal.* The Regional Administrator will issue a written decision on the appeal which is the final decision of the Secretary of Commerce.

(7) *Status of permits pending appeal.* (i) For all permit actions, except those actions related to the application and initial issuance process for the trawl rationalization program listed in subpart D of part 660, the permit registration remains as it was prior to the request until the final decision has been made.

(ii) For permit actions related to the application and initial issuance process for the trawl rationalization program listed in subpart D of part 660, the status of permits pending appeal is as follows:

(A) For permit and endorsement qualifications and eligibility appeals (i.e., QS permit, MS permit, MS/CV endorsement, C/P endorsement), any permit or endorsement under appeal after December 31, 2010 may not be used to fish in the Pacific Coast groundfish fishery until a final decision on the appeal has been made. If the permit or endorsement will be issued, the permit or endorsement will be effective upon approval, except for QS permits, which will be effective at the start of the next fishing year.

(B) For a QS or IBQ amount for specific IFQ management unit species under appeal, the QS or IBQ amount for the IFQ species under appeal will remain as the amount assigned to the associated QS permit in the IAD). The QS permit may be used to fish in the Pacific Coast groundfish fishery with the QS or IBQ amounts assigned to the QS permit in the IAD. Once a final decision on the appeal has been made and if a revised QS or IBQ amount for a specific IFQ species will be assigned to the QS permit, the additional QS or IBQ amount associated with the QS permit will be effective at the start of the next calendar year following the final decision.

(C) For a Pacific whiting catch history assignment associated with an MS/CV endorsement under appeal, the catch history assignment will remain as that previously assigned to the associated MS/CV-endorsed limited entry permit in the IAD). The MS/CV-endorsed limited entry permit may be used to fish in the Pacific Coast groundfish fishery with the catch history assigned to the MS/CV-endorsed permit in the IAD. Once a final decision on the appeal has been made, and if a revised catch history assignment will be issued, the additional Pacific whiting catch history assignment associated with the MS/CV endorsement will be effective at the start of the next calendar year following the final decision.

(h) *Permit sanctions.* (1) All permits and licenses issued or applied for under Subparts C through G are subject to sanctions pursuant to the Magnuson-Stevens Act at 16 U.S.C. 1858(g) and 15 CFR part 904, subpart D.

(2) All Shorebased IFQ Program permits (QS permit, first receiver site license), QS accounts, vessel accounts, and MS Coop Program permits (MS permit, MS/CV-endorsed permit, and MS coop permit), and C/P Coop Program permits (C/P-endorsed permit, C/P coop permit) issued under subpart D:

(i) Are considered permits for the purposes of 16 U.S.C. 1857, 1858, and 1859;

(ii) May be revoked, limited, or modified at any time in accordance with the Magnuson-Stevens Act, including revocation if the system is found to have jeopardized the sustainability of the stocks or the safety of fishermen;

(iii) Shall not confer any right of compensation to the holder of such permits, licenses, and accounts if it is revoked, limited, or modified;

(iv) Shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested by the holder; and

(v) Shall be considered a grant of permission to the holder of the permit, license, or account to engage in activities permitted by such permit, license, or account.

§ 660.26 Pacific whiting vessel licenses.

(a) *General.* After May 11, 2009, participation in the Pacific whiting seasons described in § 660.131(b), subpart D requires:

(1) An owner of any vessel that catches Pacific whiting must own a limited entry permit, registered for use with that vessel, with a trawl gear endorsement; and, a Pacific whiting vessel license registered for use with that vessel and appropriate to the sector or sectors in which the vessel intends to fish;

(2) An owner of any mothership vessel that processes Pacific whiting to hold a Pacific whiting vessel license registered for use with that vessel and appropriate to the sector or sectors in which the vessel intends to fish.

(b) *In combination with a limited entry permit.* Pacific whiting vessel licenses are separate from limited entry permits and do not license a vessel to harvest Pacific whiting in the primary Pacific whiting season unless that vessel is also registered for use with a limited entry permit with a trawl gear endorsement.

(c) *Pacific whiting vessel license qualifying criteria*—(1) *Qualifying catch and/or processing history.* Vessel catch and/or processing history will be used to determine whether that vessel meets the qualifying criteria for a Pacific whiting vessel license and to determine the sectors for which that vessel may qualify. Vessel catch and/or processing history includes only the catch and/or processed product of that particular vessel, as identified in association with the vessel's USCG number. Only Pacific whiting regulated 50 CFR part 660, subparts C and D that was taken with midwater (or pelagic) trawl gear will be considered for the Pacific whiting vessel license. Pacific whiting harvested or processed by a vessel that has since been totally lost, scrapped, or is rebuilt such that a new U.S.C.G. documentation number would be required will not be considered for this license. Pacific whiting harvested or processed illegally or landed illegally will not be considered for this license. Catch and/or processing history associated with a vessel whose permit was purchased by the Federal Government through the Pacific Coast groundfish fishing capacity reduction program, as identified at 68 FR 62435 (November 4, 2003), does not qualify a vessel for a Pacific whiting vessel license and no vessel owner may apply for or receive a Pacific whiting vessel license based on catch and/or processing history from one of those buyback vessels. The following sector-specific license qualification criteria apply:

(i) For catcher/processor vessels, the qualifying criteria for a Pacific whiting vessel license is evidence of having caught and processed any amount of Pacific whiting during a primary catcher/processor season during the period January 1, 1997 through January 1, 2007.

(ii) For mothership at-sea processing vessels, the qualifying criteria for a Pacific whiting vessel license is documentation of having received and processed any amount of Pacific whiting during a primary mothership season during the period January 1, 1997 through January 1, 2007.

(iii) For catcher vessels delivering Pacific whiting to at-sea mothership processing vessels, the qualifying criteria for a Pacific whiting vessel license is documentation of having delivered any amount of Pacific whiting to a mothership processor during a primary mothership season during the period January 1, 1997, through January 1, 2007.

(iv) For catcher vessels delivering Pacific whiting to Pacific whiting shoreside first receivers, the qualifying criteria for a Pacific whiting vessel license is documentation of having made at least one landing of Pacific whiting taken with midwater trawl gear during a primary shorebased season during the period January 1, 1994, through January 1, 2007, and where the weight of Pacific whiting exceeded 50 percent of the total weight of the landing.

(2) *Documentation and burden of proof.* A vessel owner applying for a Pacific whiting vessel license has the burden to submit documentation that qualification requirements are met. An application that does not include documentation of meeting the qualification requirements during the qualifying years will be considered incomplete and will not be reviewed. The following standards apply:

(i) A certified copy of the current vessel document (USCG or State) is the best documentation of vessel ownership and LOA.

(ii) A certified copy of a State fish receiving ticket is the best documentation of a landing at a Pacific whiting shoreside first receiver, and of the type of gear used.

(iii) For participants in the at-sea Pacific whiting fisheries, documentation of participation could include, but is not limited to: A final observer report documenting a particular catcher vessel, mothership, or catcher/processor's participation in the Pacific whiting fishery in an applicable year and during the applicable primary season, a bill of lading for Pacific whiting from an applicable year and during the applicable primary season, a catcher vessel receipt from a particular mothership known to have fished in the Pacific whiting fishery during an applicable year, a signed copy of a Daily Receipt of Fish and Cumulative Production Logbook (mothership sector) or Daily Fishing and Cumulative Production Logbook (catcher/processor sector) from an applicable year during the applicable primary season.

(iv) Such other relevant, credible documentation as the applicant may submit, or the SFD or the Regional Administrator request or acquire, may also be considered.

(d) *Issuance process for Pacific whiting vessel licenses.* (1) SFD will mail, to the most recent address provided to the SFD, Permits Office, a Pacific whiting vessel license application to all current and prior owners of vessels that have been registered for use with limited entry permits with trawl endorsements, excluding owners of those vessels whose permits were purchased through the Pacific Coast groundfish fishing capacity reduction program. NMFS will also make license applications available online at: *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm.* A vessel owner who believes that his/her vessel may qualify for the Pacific whiting vessel license will have until May 11, 2009, to submit an application with documentation showing how his/her vessel has met the qualifying criteria described in this section. NMFS will not accept applications for Pacific whiting vessel licenses received after May 11, 2009.

(2) After receipt of a complete application, NMFS will notify applicants by letter of its determination

whether their vessels qualify for Pacific whiting vessel licenses and the sector or sectors to which the licenses apply. Vessels that have met the qualification criteria will be issued the appropriate licenses at that time. After May 11, 2009, NMFS will publish a list of vessels that qualified for Pacific whiting vessel licenses in the **Federal Register.**

(3) If a vessel owner files an appeal from the determination under paragraph (d)(2) of this section, the appeal must be filed with the Regional Administrator within 30 calendar days of the issuance of the letter of determination. The appeal must be in writing and must allege facts or circumstances, and include credible documentation demonstrating why the vessel qualifies for a Pacific whiting vessel license. The appeal of a denial of an application for a Pacific whiting vessel license will not be referred to the Council for a recommendation, nor will any appeals be accepted by NMFS after June 15, 2009.

(4) Absent good cause for further delay, the Regional Administrator will issue a written decision on the appeal within 30 calendar days of receipt of the appeal. The Regional Administrator's decision is the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce as of the date of the decision.

(e) *Notification to NMFS of changes to Pacific whiting vessel license information.* The owner of a vessel registered for use with a Pacific whiting vessel license must provide a written request to NMFS to change the name or names of vessel owners provided on the vessel license, or to change the licensed vessel's name. The request must detail the names of all new vessel owners as registered with U.S. Coast Guard, a business address for the vessel owner, business phone and fax number, tax identification number, date of birth, and/or date of incorporation for each individual and/or entity, and a copy of the vessel documentation (USCG 1270) to show proof of ownership. NMFS will reissue a new vessel license with the names of the new vessel owners and/or vessel name information. The Pacific Whiting vessel license is considered void if the name of the vessel or vessel owner is changed from that given on the license. In addition, the vessel owner must report to NMFS any change in address for the vessel owner within 15 days of that change. Although the name of an individual vessel registered for use with a Pacific whiting vessel license may be changed, the license itself may not be registered to any vessel other than the vessel to which it was originally issued, as identified by that vessel's United States Coast Guard documentation number.

§ 660.30 Compensation with fish for collecting resource information—EFPs.

In addition to the reasons stated in § 600.745(b)(1) of this chapter, an EFP may be issued under this subpart C for the purpose of compensating the owner or operator of a vessel for collecting resource information according to a protocol approved by NMFS. NMFS may issue an EFP allowing a vessel to retain fish as compensation in excess of trip limits or to be exempt from other specified management measures for the Pacific coast groundfish fishery.

(a) *Compensation EFP for vessels under contract with NMFS to conduct a resource survey.* NMFS may issue an EFP to the owner or operator of a vessel that conducted a resource survey according to a contract with NMFS. A vessel's total compensation from all sources (in terms of dollars or amount of fish, including fish from survey samples or compensation fish) will be determined through normal Federal procurement procedures. The compensation EFP will specify the maximum amount or value of fish the vessel may take and retain after the resource survey is completed.

(1) *Competitive offers.* NMFS may initiate a competitive solicitation (request for proposals or RFP) to select vessels to conduct resource surveys that use fish as full or partial compensation, following normal Federal procurement procedures.

(2) *Consultation and approval.* At a Council meeting, NMFS will consult with the Council and receive public comment on upcoming resource surveys to be conducted if groundfish could be used as whole or partial compensation. Generally, compensation fish would be similar to surveyed species, but there may be reasons to provide payment with healthier, more abundant, less restricted stocks, or more easily targeted species. For example, NMFS may decline to pay a vessel with species that are, or are expected to be, overfished, or that are subject to overfishing, or that are unavoidably caught with species that are overfished or subject to overfishing. NMFS may also consider levels of discards, bycatch, and other factors. If the Council does not approve providing whole or partial compensation for the conduct of a survey, NMFS will not use fish, other than fish taken during the scientific research, as compensation for that survey. For each proposal, NMFS will present:

(i) The maximum number of vessels expected or needed to conduct the survey,

(ii) An estimate of the species and amount of fish likely to be needed as compensation,

(iii) When the survey and compensation fish would be taken, and

(iv) The year in which the compensation fish would be deducted from the ABC before determining the optimum yield (harvest guideline or quota).

(3) *Issuance of the compensation EFP.* Upon successful completion of the survey, NMFS will issue a "compensation EFP" to the vessel if it has not been fully compensated. The procedures in § 600.745(b)(1) through (b)(4) of this chapter do not apply to a compensation EFP issued under this subpart for the Pacific coast groundfish fishery (50 CFR part 660, subparts C through G).

(4) *Terms and conditions of the compensation EFP.* Conditions for disposition of bycatch or any excess catch, for reporting the value of the amount landed, and other appropriate terms and conditions may be specified in the EFP. Compensation fishing must occur during the period specified in the EFP, but no later than the end of September of the fishing year following the survey, and must be conducted according to the terms and conditions of the EFP.

(5) *Reporting the compensation catch.* The compensation EFP may require the vessel owner or operator to keep separate records of compensation fishing and to submit them to NMFS within a specified period of time after the compensation fishing is completed.

(6) *Accounting for the compensation catch.* As part of the harvest specifications process, as described at § 660.60, subpart C, NMFS will advise the Council of the amount of fish authorized to be retained under a compensation EFP, which then will be deducted from the next harvest specifications (ABCs) set by the Council. Fish authorized in an EFP too late in the year to be deducted from the following year's ABCs will be accounted for in the next management cycle where it is practicable to do so.

(b) Compensation for commercial vessels collecting resource information under a standard EFP. NMFS may issue an EFP to allow a commercial fishing vessel to take and retain fish in excess of current management limits for the purpose of collecting resource information (§ 600.745(b) of this chapter). The EFP may include a compensation clause that allows the participating vessel to be compensated with fish for its efforts to collect resource information according to NMFS' approved protocol. If

compensation with fish is requested in an EFP application, or proposed by NMFS, the following provisions apply in addition to those at § 600.745(b) of this chapter.

(1) *Application.* In addition to the requirements in § 600.745(b) of this chapter, application for an EFP with a compensation clause must clearly state whether a vessel's participation is contingent upon compensation with groundfish and, if so, the minimum amount (in metric tons, round weight) and the species. As with other EFPs issued under § 600.745 of this chapter, the application may be submitted by any individual, including a state fishery management agency or other research institution.

(2) *Denial.* In addition to the reasons stated in § 600.745(b)(3)(iii) of this chapter, the application will be denied if the requested compensation fishery, species, or amount is unacceptable for reasons such as, but not limited to, the following: NMFS concludes the value of the resource information is not commensurate with the value of the compensation fish; the proposed compensation involves species that are (or are expected to be) overfished or subject to overfishing, fishing in times or areas where fishing is otherwise prohibited or severely restricted, or fishing for species that would involve unavoidable bycatch of species that are overfished or subject to overfishing; or NMFS concludes the information can reasonably be obtained at a less cost to the resource.

(3) *Window period for other applications.* If the Regional Administrator or designee agrees that compensation should be considered, and that more than a minor amount would be used as compensation, then a window period will be announced in the **Federal Register** during which additional participants will have an opportunity to apply. This notification would be made at the same time as announcement of receipt of the application and request for comments required under § 600.745(b). If there are more qualified applicants than needed for a particular time and area, NMFS will choose among the qualified vessels, either randomly, in order of receipt of the completed application, or by other impartial selection methods. If the permit applicant is a state, university, or Federal entity other than NMFS, and NMFS approves the selection method, the permit applicant may choose among the qualified vessels, either randomly, in order of receipt of the vessel application, or by other impartial selection methods.

(4) *Terms and conditions.* The EFP will specify the amounts that may be taken as scientific samples and as compensation, the time period during which the compensation fishing must occur, management measures that NMFS will waive for a vessel fishing under the EFP, and other terms and conditions appropriate to the fishery and the collection of resource information. NMFS may require compensation fishing to occur on the same trip that the resource information is collected.

(5) *Accounting for the catch.* Samples taken under this EFP, as well as any compensation fish, count toward the current year's catch or landings.

§ 660.40 Overfished species rebuilding plans.

For each overfished groundfish stock with an approved rebuilding plan, this section contains the standards to be used to establish annual or biennial OYs, specifically the target date for rebuilding the stock to its MSY level and the harvest control rule to be used to rebuild the stock. The harvest control rule is expressed as a "Spawning Potential Ratio" or "SPR" harvest rate.

(a) *Bocaccio.* The target year for rebuilding the southern bocaccio stock to B_{MSY} is 2026. The harvest control rule to be used to rebuild the southern bocaccio stock is an annual SPR harvest rate of 77.7 percent.

(b) *Canary rockfish.* The target year for rebuilding the canary rockfish stock to B_{MSY} is 2021. The harvest control rule to be used to rebuild the canary rockfish stock is an annual SPR harvest rate of 88.7 percent.

(c) *Cowcod.* The target year for rebuilding the cowcod stock south of Point Conception to B_{MSY} is 2072. The harvest control rule to be used to rebuild the cowcod stock is an annual SPR harvest rate of 82.1 percent.

(d) *Darkblotched rockfish.* The target year for rebuilding the darkblotched rockfish stock to B_{MSY} is 2028. The harvest control rule to be used to rebuild the darkblotched rockfish stock is an annual SPR harvest rate of 62.1 percent.

(e) *Pacific Ocean Perch (POP).* The target year for rebuilding the POP stock to B_{MSY} is 2017. The harvest control rule to be used to rebuild the POP stock is an annual SPR harvest rate of 86.4 percent.

(f) *Widow rockfish.* The target year for rebuilding the widow rockfish stock to B_{MSY} is 2015. The harvest control rule to be used to rebuild the widow rockfish stock is an annual SPR harvest rate of 95.0 percent.

(g) *Yelloweye rockfish.* The target year for rebuilding the yelloweye rockfish stock to B_{MSY} is 2084. The harvest control rule to be used to rebuild the yelloweye rockfish stock is an annual SPR harvest rate of 66.3 percent in 2009 and in 2010. Yelloweye rockfish is subject to a ramp-down strategy where the harvest level has been reduced annually from 2007 through 2009. Yelloweye rockfish will remain at the 2009 level in 2010. Beginning in 2011, yelloweye rockfish will be subject to a constant harvest rate strategy with a constant SPR harvest rate of 71.9 percent.

§ 660.50 Pacific Coast treaty Indian fisheries.

(a) *Pacific Coast treaty Indian tribes have treaty rights.* Pacific Coast treaty Indian tribes have treaty rights to harvest groundfish in their usual and accustomed fishing areas in U.S. waters. In 1994, the United States formally recognized that the four Washington coastal treaty Indian tribes (Makah, Quileute, Hoh, and Quinault) have treaty rights to fish for groundfish in the Pacific Ocean, and concluded that, in general terms, the quantification of those rights is 50 percent of the harvestable surplus of groundfish that pass through the tribes U&A fishing areas.

(b) *Pacific Coast treaty Indian tribes.* For the purposes of this part, Pacific Coast treaty Indian tribes means the Hoh, Makah, and Quileute Indian Tribes and the Quinault Indian Nation.

(c) *Usual and accustomed fishing areas (U&A).* The Pacific Coast treaty Indian tribes' U&A fishing areas within the fishery management area (FMA) are set out below in paragraphs (c)(1) through (c)(4) of this section. Boundaries of a tribe's fishing area may be revised as ordered by a Federal court.

(1) *Makah.* That portion of the FMA north of 48°02.25′ N. lat. (Norwegian Memorial) and east of 125°44′ W. long.

(2) *Quileute.* That portion of the FMA between 48°07.60′ N. lat. (Sand Point) and 47°31.70′ N. lat. (Queets River) and east of 125°44′ W. long.

(3) *Hoh.* That portion of the FMA between 47°54.30′ N. lat. (Quillayute River) and 47°21′ N. lat. (Quinault River) and east of 125°44′ W. long.

(4) *Quinault.* That portion of the FMA between 47°40.10′ N. lat. (Destruction Island) and 46°53.30′ N. lat. (Point Chehalis) and east of 125°44′ W. long.

(d) *Procedures.* The rights referred to in paragraph (a) of this section will be implemented by the Secretary, after consideration of the tribal request, the recommendation of the Council, and the comments of the public. The rights will

be implemented either through an allocation or set-aside of fish that will be managed by the tribes, or through regulations in this section that will apply specifically to the tribal fisheries.

(1) *Tribal allocations, set-asides, and regulations.* An allocation, set-aside or a regulation specific to the tribes shall be initiated by a written request from a Pacific Coast treaty Indian tribe to the Regional Administrator, prior to the first Council meeting in which biennial harvest specifications and management measures are discussed for an upcoming biennial management period. The Secretary generally will announce the annual tribal allocations at the same time as the announcement of the harvest specifications.

(2) *Co-management.* The Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Accordingly, the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

(e) *Fishing by a member of a Pacific Coast treaty Indian tribe.* A member of a Pacific Coast treaty Indian tribe fishing under this section and within their U&A fishing area is not subject to the provisions of other sections of subparts C through G of this part.

(1) *Identification.* A valid treaty Indian identification card issued pursuant to 25 CFR part 249, subpart A, is prima facie evidence that the holder is a member of the Pacific Coast treaty Indian tribe named on the card.

(2) *Permits.* A limited entry permit described under § 660.25, subpart C is not required for a member of a Pacific Coast treaty Indian tribe to fish in a tribal fishery described in paragraph (d) of this section.

(3) *Federal and tribal laws and regulations.* Any member of a Pacific Coast treaty Indian tribe must comply with this section, and with any applicable tribal law and regulation, when participating in a tribal groundfish fishery described in this section.

(4) *Fishing outside the U&A or without a groundfish allocation.* Fishing by a member of a Pacific Coast treaty Indian tribe outside the applicable Indian tribe's usual and accustomed fishing area, or for a species of groundfish not covered by an allocation, set-aside, or regulation under this section, is subject to the regulations in the other sections of subpart C through subpart G of this part. Treaty fisheries operating within tribal allocations are prohibited from operating outside U&A fishing areas.

(f) *Pacific Coast treaty Indian fisheries allocations and harvest guidelines.* The tribal harvest guideline for black rockfish is provided in paragraph (f)(1) of this section. Tribal fishery allocations for sablefish are provided in paragraph (f)(2) of this section, and Pacific whiting are provided in paragraph (f)(4) of this section. Trip limits for certain species were recommended by the tribes and the Council and are specified here with the tribal allocations.

(1) *Black rockfish.* (i) Harvest guidelines for commercial harvests of black rockfish by members of the Pacific Coast Indian tribes using hook and line gear will be established biennially for two subsequent one-year periods for the areas between the U.S.-Canadian border and Cape Alava (48°09.50′ N. lat.) and between Destruction Island (47°40′ N. lat.) and Leadbetter Point (46°38.17′ N. lat.), in accordance with the procedures for implementing harvest specifications and management measures. Pacific Coast treaty Indians fishing for black rockfish in these areas under these harvest guidelines are subject to the provisions in this section, and not to the restrictions in other sections of subparts C through G of this part.

(ii) For the commercial harvest of black rockfish off Washington State, a treaty Indian tribes' harvest guideline is set at 30,000 lb (13,608 kg) for the area north of Cape Alava, WA (48°09.50′ N. lat) and 10,000 lb (4,536 kg) for the area between Destruction Island, WA (47°40′ N. lat.) and Leadbetter Point, WA (46°38.17′ N. lat.). This harvest guideline applies and is available to the Pacific Coast treaty Indian tribes. There are no tribal harvest restrictions for black rockfish in the area between Cape Alava and Destruction Island.

(2) *Sablefish.* (i) The sablefish allocation to Pacific coast treaty Indian tribes is 10 percent of the sablefish total catch OY for the area north of 36° N. lat. This allocation represents the total amount available to the treaty Indian fisheries before deductions for discard mortality.

(ii) The tribal allocation is 694 mt per year. This allocation is, for each year, 10 percent of the Monterey through Vancouver area (North of 36° N. lat.) OY, less 1.6 percent estimated discard mortality.

(3) *Lingcod.* Lingcod taken in the treaty fisheries are subject to an overall expected total lingcod catch of 250 mt.

(4) *Pacific whiting.* The tribal allocation for 2010 is 49,939 mt.

(5) *Pacific cod.* There is a tribal harvest guideline of 400 mt of Pacific cod. The tribes will manage their fisheries to stay within this harvest guideline.

(g) *Washington coastal tribal fisheries management measures*—(1) *Rockfish.* The tribes will require full retention of all overfished rockfish species and all other marketable rockfish species during treaty fisheries.

(2) *Thornyheads.* The tribes will manage their fisheries to the limited entry trip limits in place at the beginning on the year for both shortspine and longspine thornyheads as follows:

(i) *Trawl gear.* (A) Shortspine thornyhead cumulative trip limits are as follows:

(*1*) Small and large footrope trawl gear—17,000-lb (7,711-kg) per 2 months.

(*2*) Selective flatfish trawl gear—3,000-lb (1,361-kg) per 2 months.

(*3*) Multiple bottom trawl gear—3,000-lb (1,361-kg) per 2 months.

(B) Longspine thornyhead cumulative trip limits are as follows:

(*1*) Small and large footrope trawl gear—22,000-lb (9,979-kg) per 2 months.

(*2*) Selective flatfish trawl gear—5,000-lb (2,268-kg) per 2 months.

(*3*) Multiple bottom trawl gear—5,000-lb (2,268-kg) per 2 months.

(ii) *Fixed gear.* (A) Shortspine thornyhead cumulative trip limits are 2,000-lb (907-kg) per 2 months.

(B) Longspine thornyhead cumulative trip limits are 10,000-lb (4,536-kg) per 2 months.

(3) *Canary rockfish*—are subject to a 300-lb (136-kg) trip limit.

(4) *Yelloweye rockfish*—are subject to a 100-lb (45-kg) trip limit.

(5) *Yellowtail and widow rockfish.* The Makah Tribe will manage the midwater trawl fisheries as follows: Yellowtail rockfish taken in the directed tribal mid-water trawl fisheries are subject to a cumulative limit of 180,000-lb (81,647 kg) per 2 month period for the entire fleet. Landings of widow rockfish must not exceed 10 percent of the weight of yellowtail rockfish landed, for a given vessel, throughout the year. These limits may be adjusted by the tribe inseason to minimize the incidental catch of canary rockfish and widow rockfish, provided the average 2-month cumulative yellowtail rockfish limit does not exceed 180,000-lb (81,647 kg) for the fleet.

(6) *Other rockfish.* Other rockfish, including minor nearshore, minor shelf, and minor slope rockfish groups are subject to a 300-lb (136-kg) trip limit per species or species group, or to the non-tribal limited entry trip limit for those species if those limits are less restrictive than 300-lb (136 kg) per trip.

(7) *Flatfish and other fish.* Treaty fishing vessels using bottom trawl gear

are subject to the limits applicable to the non-tribal limited entry trawl fishery for Dover sole, English sole, rex sole, arrowtooth flounder, and other flatfish in place at the beginning of the season. For Dover sole and arrowtooth flounder, the limited entry trip limits in place at the beginning of the season will be combined across periods and the fleet to create a cumulative harvest target. The limits available to individual vessels will then be adjusted inseason to stay within the overall harvest target as well as estimated impacts to overfished species. For petrale sole, treaty fishing vessels are restricted to a 50,000-lb (22,680 kg) per 2 month limit for the entire year. Trawl vessels are restricted to using small footrope trawl gear.

(8) *Pacific whiting.* Tribal whiting processed at-sea by non-tribal vessels, must be transferred within the tribal U&A from a member of a Pacific Coast treaty Indian tribe fishing under this section.

(9) *Spiny dogfish.* The tribes will manage their spiny dogfish fishery within the limited entry trip limits for the non-tribal fisheries.

(10) *Groundfish without a tribal allocation.* Makah tribal members may use midwater trawl gear to take and retain groundfish for which there is no tribal allocation and will be subject to the trip landing and frequency and size limits applicable to the limited entry fishery.

(11) *EFH.* Measures implemented to minimize adverse impacts to groundfish EFH, as described in § 660.12 of this subpart, do not apply to tribal fisheries in their U&A fishing areas.

§ 660.55 Allocations.

(a) *General.* An allocation is the apportionment of a harvest privilege for a specific purpose, to a particular person, group of persons, or fishery sector. The opportunity to harvest Pacific Coast groundfish is allocated among participants in the fishery when the OYs for a given year are established in the biennial harvest specifications. For any stock that has been declared overfished, any formal allocation may be temporarily revised for the duration of the rebuilding period. For certain species, primarily trawl-dominant species, beginning with the 2011–2012 biennial specifications process, separate allocations for the trawl fishery and nontrawl fishery (which for this purpose includes limited entry fixed gear, open access, and recreational fisheries) will be established biennially or annually using the standards and procedures described in Chapter 6 of the PCGFMP. Chapter 6 of the PCGFMP provides the allocation structure and percentages for species allocated between the trawl and nontrawl fisheries. Also, separate allocations for the limited entry and open access fisheries may be established using the procedures described in Chapters 6 and 11 of the PCGFMP and this subpart. Allocation of sablefish north of 36° N. lat. is described in paragraph (h) of this section and in the PCGFMP. Allocation of Pacific whiting is described in paragraph (i) of this section and in the PCGFMP. Allocation of black rockfish is described in paragraph (l) of this section. Allocation of Pacific halibut bycatch is described in paragraph (m) of this section. Allocations not specified in the PCGFMP are established in regulation through the biennial harvest specifications and are listed in Tables 1 a through d and Tables 2 a through d of this subpart.

(b) *Fishery harvest guidelines and reductions made prior to fishery allocations.* Beginning with the 2011–2012 biennial specifications process and prior to the setting of fishery allocations, the OY is reduced by the Pacific Coast treaty Indian tribal harvest (allocations, set-asides, and estimated harvest under regulations at § 660.50); projected scientific research catch of all groundfish species, estimates of fishing mortality in non-groundfish fisheries and, as necessary, set-asides for EFPs. The remaining amount after these deductions is the fishery harvest guideline or quota. (*Note:* recreational estimates are not deducted here).

(1) Pacific Coast treaty Indian tribal allocations, set-asides, and regulations are specified during the biennial harvest specifications process and are found at § 660.50 and in Tables 1a and 2a of this subpart.

(2) Scientific research catch results from scientific research activity as defined in regulations at § 600.10.

(3) Estimates of fishing mortality in non-groundfish fisheries are based on historical catch and projected fishing activities.

(4) EFPs are authorized and governed by § 660.60(f).

(c) *Trawl/nontrawl allocations.* (1) Beginning with the 2011–2012 biennial specifications process, the fishery harvest guideline or quota, may be divided into allocations for groundfish trawl and nontrawl (limited entry fixed gear, open access, and recreational) fisheries. IFQ species not listed in the table below will be allocated between the trawl and nontrawl fisheries through the biennial harvest specifications process. Species/species groups and areas allocated between the trawl and nontrawl fisheries listed in Chapter 6, Table 6–1 of the PCGFMP are allocated based on the percentages that follow:

ALLOCATION PERCENTAGES FOR LIMITED ENTRY TRAWL AND NON-TRAWL SECTORS SPECIFIED FOR FMP GROUNDFISH STOCKS AND STOCK COMPLEXES

Stock or complex	All non-treaty LE trawl sectors %	All non-treaty non-trawl sectors %
Lingcod	45	55
Pacific Cod	95	5
Sablefish S. of 36° N. lat.	42	58
PACIFIC OCEAN PERCH	95	5
WIDOW	91	9
Chilipepper S. of 40°10′ N. lat.	75	25
Splitnose S. of 40°10′ N. lat.	95	5
Yellowtail N. of 40°10′ N. lat.	88	12
Shortspine N. of 34°27′ N. lat.	95	5
Shortspine S. of 34°27′ N. lat.	50 mt	Remaining Yield
Longspine N. of 34°27′ N. lat.	95	5
DARKBLOTCHED	95	5
Minor Slope RF North of 40°10′ N. lat.	81	18
Minor Slope RF South of 40°10′ N. lat.	63	37
Dover Sole	95	5
English Sole	95	5
Petrale Sole	95	5

ALLOCATION PERCENTAGES FOR LIMITED ENTRY TRAWL AND NON-TRAWL SECTORS SPECIFIED FOR FMP GROUNDFISH STOCKS AND STOCK COMPLEXES—Continued

Stock or complex	All non-treaty LE trawl sectors %	All non-treaty non-trawl sectors %
Arrowtooth Flounder	95	5
Starry Flounder	50	50
Other Flatfish	90	10

(i) *Trawl fishery allocation.* The allocation for the limited entry trawl fishery is derived by applying the trawl allocation percentage by species/species group and area as specified in paragraph (c) of this section and as specified during the biennial harvest specifications process to the fishery harvest guideline for that species/species group and area. For IFQ species other than darkblotched rockfish, Pacific Ocean Perch, and widow rockfish, the trawl allocation will be further subdivided among the trawl sectors (MS, C/P, and IFQ) as specified in §§ 660.140, 660.150, and 660.160 of subpart D. For darkblotched rockfish, Pacific Ocean Perch, and widow rockfish, the trawl allocation is further subdivided among the trawl sectors (MS, C/P, and IFQ) as follows:

(A) *Darkblotched rockfish.* Allocate 9 percent or 25 mt, whichever is greater, of the total trawl allocation of darkblotched rockfish to the whiting fisheries (MS, C/P, and IFQ combined). The distribution of the whiting trawl allocation of darkblotched to each sector (MS, C/P, and IFQ) will be done pro rata relative to the sectors' whiting allocation. After deducting allocations for the whiting fisheries, allocate the remainder of the trawl allocation to the nonwhiting fishery.

(B) *Pacific Ocean Perch (POP).* Allocate 17 percent or 30 mt, whichever is greater, of the total trawl allocation of Pacific ocean perch to the whiting fisheries (MS, C/P, and IFQ combined). The distribution of the whiting trawl allocation of POP to each sector (MS, C/P, and IFQ) will be done pro rata relative to the sectors' whiting allocation. After deducting allocations for the whiting fisheries, allocate the remainder of the trawl allocation to the nonwhiting fishery.

(C) *Widow rockfish.* Allocate 52 percent of the total trawl allocation of widow rockfish to the whiting sectors if the stock is under rebuilding or 10 percent of the total trawl allocation or 500 mt of the trawl allocation to the whiting sectors, whichever is greater, if the stock is rebuilt. The latter allocation scheme automatically kicks in when widow rockfish is declared rebuilt. The distribution of the whiting trawl allocation of widow to each sector (MS, C/P, and IFQ) will be done pro rata relative to the sectors' whiting allocation. After deducting allocations for the whiting fisheries, allocate the remainder of the trawl allocation to the nonwhiting fishery.

(ii) *Nontrawl fishery allocation.* The allocation for the nontrawl fishery is the fishery harvest guideline minus the allocation of the species/species group and area to the trawl fishery. These amounts will equal the nontrawl allocation percentage or amount by species for species listed in paragraph (c) of this section and the nontrawl allocation percentage from the biennial harvest specifications for other IFQ species. The nontrawl allocation will be shared between the limited entry fixed gear, open access, and recreational fisheries as specified through the biennial harvest specifications process and consistent with allocations in the PCGFMP.

(2) [Reserved]

(d) *Commercial harvest guidelines.* Beginning with the 2011–2012 biennial specifications process, to derive the commercial harvest guideline, the fishery harvest guideline is further reduced by the recreational set-asides. The commercial harvest guideline is then allocated between the limited entry fishery (both trawl and fixed gear) and the directed open access fishery, as appropriate.

(e) *Limited entry (LE)/open access (OA) allocations*—(1) *LE/OA allocation percentages.* The allocations between the limited entry and open access fisheries are based on standards from the PCGFMP.

(2) *Species with LE/OA allocations.* For species with LE/OA allocations, the allocation between the limited entry (both trawl and fixed gear) and the open access fisheries is determined by applying the percentage for those species with a LE/OA allocation to the commercial harvest guideline plus the amount set-aside for the non-groundfish fisheries.

(i) *Limited entry allocation.* The allocation for the limited entry fishery is the commercial harvest guideline minus any allocation to the directed open access fishery.

(ii) *Open access allocation.* The allocation for the open access fishery is derived by applying the open access allocation percentage to the annual commercial harvest guideline or quota plus the non-groundfish fishery (*i.e.,* incidental open access fishery) amount described in paragraph (b) of this section. The result is the total open access allocation. The portion that is set-aside for the non-groundfish fisheries is deducted and the remainder is the directed open access portion. For management areas or stocks for which quotas or harvest guidelines for a stock are not fully utilized, no separate allocation will be established for the open access fishery until it is projected that the allowable catch for a species will be reached.

(A) *Open access allocation percentage.* For each species with a harvest guideline or quota, the initial open access allocation percentage is calculated by:

(*1*) Computing the total catch for that species during the window period (July 11, 1984 through August 1, 1988) for the limited entry program by any vessel that did not initially receive a limited entry permit.

(*2*) Dividing that amount by the total catch during the window period by all gear.

(*3*) The guidelines in this paragraph apply to recalculation of the open access allocation percentage. Any recalculated allocation percentage will be used in calculating the following biennial fishing period's open access allocation.

(B) [Reserved]

(f) *Catch accounting.* Catch accounting refers to how the catch in a fishery is monitored against the allocations described in this section. For species with trawl/nontrawl allocations, catch of those species are counted against the trawl/nontrawl allocations as explained in paragraph (f)(1) of this section. For species with limited entry/open access allocations in a given biennial cycle, catch of those species are counted against the limited entry/open access allocations as explained in paragraph (f)(2) of this section.

(1) *Between the trawl and nontrawl fisheries*—(i) *Catch accounting for the trawl allocation.* Any groundfish caught

by a vessel registered to a limited entry trawl-endorsed permit will be counted against the trawl allocation while they are declared in to a groundfish limited entry trawl fishery and while the applicable trawl fishery listed in subpart D of this part for that vessel's limited entry permit is open.

(ii) *Catch accounting for the nontrawl allocation.* All groundfish caught by a vessel not registered to a limited entry permit and not fishing in the non-groundfish fishery will be counted against the nontrawl allocation. All groundfish caught by a vessel registered to a limited entry permit when the fishery for a vessel's limited entry permit has closed or they are not declared in to a limited entry fishery, will be counted against the nontrawl allocation, unless they are declared in to a non-groundfish fishery. Catch by vessels fishing in the non-groundfish fishery, as defined at § 660.11, will be accounted for in the estimated mortality in the non-groundfish fishery that is deducted from the OY.

(2) *Between the limited entry and open access fisheries.* Any groundfish caught by a vessel with a limited entry permit will be counted against the limited entry allocation while the limited entry fishery for that vessel's limited entry gear is open. When the fishery for a vessel's limited entry gear has closed, groundfish caught by that vessel with open access gear will be counted against the open access allocation. All groundfish caught by vessels without limited entry permits will be counted against the open access allocation.

(g) *Recreational fisheries.* Recreational fishing for groundfish is outside the scope of, and not affected by, the regulations governing limited entry and open access fisheries. Certain amounts of groundfish will be set aside for the recreational fishery during the biennial specifications process. These amounts will be estimated prior to dividing the commercial harvest guideline between the limited entry and open access fisheries.

(h) *Sablefish Allocations (north of 36° N. lat.).* The allocations of sablefish north of 36° N. lat. described in paragraph (h) of this section are specified in Chapter 6 of the PCGFMP.

(1) *Tribal/nontribal allocation.* The sablefish allocation to Pacific coast treaty Indian tribes is identified at § 660.50(f)(2), subpart C. The remainder is available to the nontribal fishery (limited entry, open access (directed and incidental), and research).

(2) *Between the limited entry and open access fisheries.* The allocation of sablefish after tribal deductions is further reduced by the estimated total mortality of sablefish in research and incidental catch in non-groundfish fisheries (incidental open access); the remaining yield (nontribal share) is divided between open access and limited entry fisheries. The limited entry fishery allocation is 90.6 percent and the open access allocation is 9.4 percent.

(3) *Between the limited entry trawl and limited entry fixed gear fisheries.* The limited entry sablefish allocation is further allocated 58 percent to the trawl fishery and 42 percent to the limited entry fixed gear (longline and pot/trap) fishery.

(4) *Between the limited entry fixed gear primary season and daily trip limit fisheries.* Within the limited entry fixed gear fishery allocation, 85 percent is reserved for the primary season described in § 660.231, subpart E, leaving 15 percent for the limited entry daily trip limit fishery described in § 660.232, subpart E.

(5) *Ratios between tiers for sablefish-endorsed limited entry permits.* The Regional Administrator will biennially or annually calculate the size of the cumulative trip limit for each of the three tiers associated with the sablefish endorsement such that the ratio of limits between the tiers is approximately 1:1.75:3.85 for Tier 3:Tier 2:Tier 1, respectively. The size of the cumulative trip limits will vary depending on the amount of sablefish available for the primary fishery and on estimated discard mortality rates within the fishery. The size of the cumulative trip limits for the three tiers in the primary fishery will be announced in § 660.231(b)(3), subpart E.

(i) *Pacific whiting allocation.* The allocation structure and percentages for Pacific whiting are described in the PCGFMP.

(1) Annual treaty tribal Pacific whiting allocations are provided in § 660.50, subpart C.

(2) The commercial harvest guideline for Pacific whiting is allocated among three sectors, as follows: 34 percent for the catcher/processor sector; 24 percent for the mothership sector; and 42 percent for the Shorebased IFQ Program. No more than 5 percent of the shorebased allocation may be taken and retained south of 42° N. lat. before the start of the primary Pacific whiting season north of 42° N. lat. Specific sector allocations for a given calendar year are found in Tables 1a and 2a of this subpart. Set asides for other species for the at-sea whiting fishery for a given calendar year are found in Tables 1d and 2d of this subpart.

(j) *Fishery set-asides.* Annual set-asides are not formal allocations but they are amounts which are not available to the other fisheries during the fishing year. For the catcher/processor and mothership sectors of the at-sea Pacific whiting fishery, set-asides will be deducted from the limited entry trawl fishery allocation. Set-aside amounts will be specified in Tables 1a through 2d of this subpart and may be adjusted through the biennial harvest specifications and management measures process.

(k) *Exempted fishing permit set-asides.* Annual set-asides for EFPs described at § 660.60(f), will be deducted from the OY. Set-aside amounts will be adjusted through the biennial harvest specifications and management measures process.

(l) *Black rockfish harvest guideline.* The commercial tribal harvest guideline for black rockfish off Washington State is specified at § 660.50(f)(1), subpart C.

(m) *Pacific halibut bycatch allocation.* The Pacific halibut fishery off Washington, Oregon and California (Area 2A in the halibut regulations) is managed under regulations at 50 CFR part 300, subpart E. Beginning with the 2011–2012 biennial specifications process, the PCGFMP sets a trawl mortality bycatch limit for legal and sublegal halibut at 15 percent of the Area 2A constant exploitation yield (CEY) for legal size halibut, not to exceed 130,000 pounds for the first four years of trawl rationalization and not to exceed 100,000 pounds starting in the fifth year. This total bycatch limit may be adjusted downward or upward through the biennial specifications and management measures process. Part of the overall total catch limit is a set-aside of 10 mt of Pacific halibut, to accommodate bycatch in the at-sea Pacific whiting fishery and in the shoreside trawl fishery south of 40°10′ N lat (estimated to be approximately 5 mt each).

§ 660.60 Specifications and management measures.

(a) *General.* NMFS will establish and adjust specifications and management measures biennially or annually and during the fishing year. Management of the Pacific Coast groundfish fishery will be conducted consistent with the standards and procedures in the PCGFMP and other applicable law. The PCGFMP is available from the Regional Administrator or the Council. Regulations under this subpart may be promulgated, removed, or revised during the fishing year. Any such action will be made according to the framework standards and procedures in

the PCGFMP and other applicable law, and will be published in the **Federal Register**.

(b) *Biennial actions.* The Pacific Coast Groundfish fishery is managed on a biennial, calendar year basis. Harvest specifications and management measures will be announced biennially, with the harvest specifications for each species or species group set for two sequential calendar years. In general, management measures are designed to achieve, but not exceed, the specifications, particularly optimum yields (harvest guidelines and quotas), fishery harvest guidelines, commercial harvest guidelines and quotas, limited entry and open access allocations, or other approved fishery allocations, and to protect overfished and depleted stocks. Management measures will be designed to take into account the co-occurrence ratios of target species with overfished species, and will select measures that will minimize bycatch to the extent practicable.

(c) *Routine management measures.* In addition to the catch restrictions in subparts D through G of this part, other catch restrictions that are likely to be adjusted on a biennial or more frequent basis may be imposed and announced by a single notification in the **Federal Register** if good cause exists under the APA to waive notice and comment, and if they have been designated as routine through the two-meeting process described in the PCGFMP. Routine management measures that may be revised during the fishing year via this process are implemented in paragraph (h) of this section, and in subparts D through G of this part, including Tables 1 (North) and 1 (South) of subpart D, Tables 2 (North) and 2 (South) of subpart E, Tables 3 (North) and 3 (South) of subpart F. Most trip, bag, and size limits, and area closures in the groundfish fishery have been designated "routine," which means they may be changed rapidly after a single Council meeting. Council meetings are held in the months of March, April, June, September, and November. Inseason changes to routine management measures are announced in the **Federal Register** pursuant to the requirements of the Administrative Procedure Act (APA). Changes to trip limits are effective at the times stated in the **Federal Register**. Once a change is effective, it is illegal to take and retain, possess, or land more fish than allowed under the new trip limit. This means that, unless otherwise announced in the **Federal Register**, offloading must begin before the time a fishery closes or a more restrictive trip limit takes effect. The following catch restrictions have been designated as routine:

(1) *Commercial Limited Entry and Open Access Fisheries.* (i) Trip landing and frequency limits, size limits, all gear. Trip landing and frequency limits have been designated as routine for the following species or species groups: Widow rockfish, canary rockfish, yellowtail rockfish, Pacific ocean perch, yelloweye rockfish, black rockfish, blue rockfish, splitnose rockfish, chilipepper rockfish, bocaccio, cowcod, minor nearshore rockfish or shallow and deeper minor nearshore rockfish, shelf or minor shelf rockfish, and minor slope rockfish; DTS complex which is composed of Dover sole, sablefish, shortspine thornyheads, and longspine thornyheads; petrale sole, rex sole, arrowtooth flounder, Pacific sanddabs, and the flatfish complex, which is composed of those species plus any other flatfish species listed at § 660.11, subpart C; Pacific whiting; lingcod; Pacific cod; spiny dogfish; and "other fish" as a complex consisting of all groundfish species listed at § 660.11, subpart C and not otherwise listed as a distinct species or species group. Size limits have been designated as routine for sablefish and lingcod. Trip landing and frequency limits and size limits for species with those limits designated as routine may be imposed or adjusted on a biennial or more frequent basis for the purpose of keeping landings within the harvest levels announced by NMFS, and for the other purposes given in paragraphs (c)(1)(i)(A) and (B) of this section.

(A) *Trip landing and frequency limits.* To extend the fishing season; to minimize disruption of traditional fishing and marketing patterns; to reduce discards; to discourage target fishing while allowing small incidental catches to be landed; to protect overfished species; to allow small fisheries to operate outside the normal season; and, for the open access fishery only, to maintain landings at the historical proportions during the 1984–88 window period.

(B) *Size limits.* To protect juvenile fish; to extend the fishing season.

(ii) *Differential trip landing limits and frequency limits based on gear type, closed seasons, and bycatch limits.* Trip landing and frequency limits that differ by gear type and closed seasons may be imposed or adjusted on a biennial or more frequent basis for the purpose of rebuilding and protecting overfished or depleted stocks. To achieve the rebuilding of an overfished or depleted stock, bycatch limits may be established and adjusted to be used to close the primary season for any sector of the Pacific whiting fishery described at § 660.131(b), before the sector's Pacific whiting allocation is achieved if the applicable bycatch limit is reached. Bycatch limit amounts are specified at § 660.131(b)(5), subpart D.

(iii) *Type of limited entry trawl gear on board.* Limits on the type of limited entry trawl gear on board a vessel may be imposed on a biennial or more frequent basis. Requirements and restrictions on limited entry trawl gear type are found at § 660.130, subpart D.

(2) *Recreational fisheries all gear types.* Routine management measures for all groundfish species, separately or in any combination, include bag limits, size limits, time/area closures, boat limits, hook limits, and dressing requirements. All routine management measures on recreational fisheries are intended to keep landings within the harvest levels announced by NMFS, to rebuild and protect overfished or depleted species, and to maintain consistency with State regulations, and for the other purposes set forth in this section.

(i) *Bag limits.* To spread the available catch over a large number of anglers; to protect and rebuild overfished species; to avoid waste.

(ii) *Size limits.* To protect juvenile fish; to protect and rebuild overfished species; to enhance the quality of the recreational fishing experience.

(iii) *Season duration restrictions.* To spread the available catch over a large number of anglers; to protect and rebuild overfished species; to avoid waste; to enhance the quality of the recreational fishing experience.

(3) *All fisheries, all gear types, depth-based management measures.* Depth-based management measures, particularly the setting of closed areas known as Groundfish Conservation Areas, may be implemented in any fishery that takes groundfish directly or incidentally. Depth-based management measures are set using specific boundary lines that approximate depth contours with latitude/longitude waypoints found at § 660.70 through 660.74. Depth-based management measures and the setting of closed areas may be used: to protect and rebuild overfished stocks, to prevent the overfishing of any groundfish species by minimizing the direct or incidental catch of that species, to minimize the incidental harvest of any protected or prohibited species taken in the groundfish fishery, to extend the fishing season; for the commercial fisheries, to minimize disruption of traditional fishing and marketing patterns; for the recreational fisheries, to spread the available catch over a large number of

anglers; to discourage target fishing while allowing small incidental catches to be landed; and to allow small fisheries to operate outside the normal season.

(d) *Automatic actions.* Automatic management actions may be initiated by the NMFS Regional Administrator without prior public notice, opportunity to comment, or a Council meeting. These actions are nondiscretionary, and the impacts must have been taken into account prior to the action. Unless otherwise stated, a single notice will be published in the **Federal Register** making the action effective if good cause exists under the APA to waive notice and comment.

(1) Automatic actions are used in the Pacific whiting fishery to:

(i) Close sectors of the fishery or to reinstate trip limits in the shorebased fishery when a whiting harvest guideline, commercial harvest guideline, or a sector's allocation is reached, or is projected to be reached;

(ii) Close all sectors or a single sector of the fishery when a bycatch limit is reached or projected to be reached;

(iii) Reapportion unused Pacific whiting allocation to other sectors of the fishery;

(iv) Reapportion unused bycatch limit species to other sectors of the Pacific whiting fishery.

(v) Implement the Ocean Salmon Conservation Zone, described at § 660.131(c)(3), subpart D, when NMFS projects the Pacific whiting fishery may take in excess of 11,000 Chinook within a calendar year.

(vi) Implement Pacific Whiting Bycatch Reduction Areas, described at § 660.131(c)(4) Subpart D, when NMFS projects a sector-specific bycatch limit will be reached before the sector's whiting allocation.

(2) [Reserved]

(e) *Prohibited species.* Groundfish species or species groups under the PCGFMP for which quotas have been achieved and/or the fishery closed are prohibited species. In addition, the following are prohibited species:

(1) Any species of salmonid.

(2) Pacific halibut.

(3) Dungeness crab caught seaward of Washington or Oregon.

(f) *Exempted fishing permits (EFP).* (1) The Regional Administrator may issue EFPs under regulations at § 660.30, subpart C, for compensation with fish for collecting resource information. Such EFPs may include the collecting of scientific samples of groundfish species that would otherwise be prohibited for retention.

(2) The Regional Administrator may also issue EFPs under regulations at 50 CFR part § 600.745 for limited testing, public display, data collection, exploratory, health and safety, environmental cleanup, and/or hazard removal purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited.

(3) U.S. vessels operating under an EFP are subject to restrictions in §§ 660.10 through 660.79, unless otherwise provided in the permit.

(g) *Applicability.* Groundfish species harvested in the territorial sea (0–3 nm) will be counted toward the catch limitations in Tables 1a through 2d of this subpart, and those specified in subparts D through G, including Tables 1 (North) and 1 (South) of subpart D, Tables 2 (North) and 2 (South) of subpart E, Tables 3 (North) and 3 (South) of subpart F.

(h) *Fishery restrictions*—(1) *Commercial trip limits and recreational bag and boat limits.* Commercial trip limits and recreational bag and boat limits defined in Tables 1a through 2d of this subpart, and those specified in subparts D through G of this part, including Tables 1 (North) and 1 (South) of subpart D, Tables 2 (North) and 2 (South) of subpart E, Tables 3 (North) and 3 (South) of subpart F must not be exceeded.

(2) *Landing.* As stated at § 660.11, subpart C (in the definition of "Landing"), once the offloading of any species begins, all fish aboard the vessel are counted as part of the landing and must be reported as such. Transfer of fish at sea is prohibited under § 660.12, subpart C, unless a vessel is participating in the primary whiting fishery as part of the mothership or catcher/processor sectors, as described at § 660.131(a), subpart D.

(3) *Fishing ahead.* Unless the fishery is closed, a vessel that has landed its cumulative or daily limit may continue to fish on the limit for the next legal period, so long as no fish (including, but not limited to, groundfish with no trip limits, shrimp, prawns, or other nongroundfish species or shellfish) are landed (offloaded) until the next legal period. Fishing ahead is not allowed during or before a closed period.

(4) *Weights and percentages.* All weights are round weights or round-weight equivalents unless otherwise specified. Percentages are based on round weights, and, unless otherwise specified, apply only to legal fish on board.

(5) *Size limits, length measurement, and weight limits.* (i) *Size limits and length measurement.* Unless otherwise specified, size limits in the commercial and recreational groundfish fisheries apply to the "total length," which is the longest measurement of the fish without mutilation of the fish or the use of force to extend the length of the fish. No fish with a size limit may be retained if it is in such condition that its length has been extended or cannot be determined by these methods. For conversions not listed here, contact the state where the fish will be landed. Washington state regulations require all fish with a size limit landed into Washington to be landed with the head on.

(A) *Whole fish.* For a whole fish, total length is measured from the tip of the snout (mouth closed) to the tip of the tail in a natural, relaxed position.

(B) "*Headed*" *fish.* For a fish with the head removed ("headed"), the length is measured from the origin of the first dorsal fin (where the front dorsal fin meets the dorsal surface of the body closest to the head) to the tip of the upper lobe of the tail; the dorsal fin and tail must be left intact.

(C) *Filets.* A filet is the flesh from one side of a fish extending from the head to the tail, which has been removed from the body (head, tail, and backbone) in a single continuous piece. Filet lengths may be subject to size limits for some groundfish taken in the recreational fishery off California (see subpart G of this part). A filet is measured along the length of the longest part of the filet in a relaxed position; stretching or otherwise manipulating the filet to increase its length is not permitted.

(ii) *Weight limits and conversions.* The weight limit conversion factor established by the state where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. Weight conversions provided herein are those conversions currently in use by the States of Washington, Oregon and California and may be subject to change by those states. Fishery participants should contact fishery enforcement officials in the state where the fish will be landed to determine that state's official conversion factor. To determine the round weight, multiply the processed weight times the conversion factor.

(iii) *Sablefish.* The following conversion applies to both the limited entry and open access fisheries when trip limits are in effect for those fisheries. For headed and gutted (eviscerated) sablefish the weight conversion factor is 1.6 (multiply the headed and gutted weight by 1.6 to determine the round weight).

(iv) *Lingcod.* The following conversions apply in both limited entry and open access fisheries.

(A) North of 42° N. lat., for lingcod with the head removed, the minimum size limit is 18 inches (46 cm), which corresponds to 22 inches (56 cm) total length for whole fish.

(B) South of 42° N. lat., for lingcod with the head removed, the minimum size limit is 19.5 inches (49.5 cm), which corresponds to 24 inches (61 cm) total length for whole fish.

(C) The weight conversion factor for headed and gutted lingcod is 1.5. The conversion factor for lingcod that has only been gutted with the head on is 1.1.

(6) *Sorting.* Trawl fishery sorting requirements are specified at § 660.130(d), subpart D. Limited entry fixed gear fishery sorting requirements are specified at § 660.230(c), subpart E, and Open access fishery sorting requirements are specified at § 660.330(c), subpart F.

(7) *Crossover provisions.* NMFS uses different types of management areas for West Coast groundfish management. One type of management area is the north-south management area, a large ocean area with northern and southern boundary lines wherein trip limits, seasons, and conservation areas follow a single theme. Within each north-south management area, there may be one or more conservation areas, defined at § 660.11 and §§ 660.60 through 660.74, subpart C. The provisions within this paragraph apply to vessels operating in different north-south management areas. Crossover provisions also apply to vessels that fish in both the limited entry and open access fisheries, or that use open access non-trawl gear while registered to limited entry fixed gear permits. Fishery specific crossover provisions can be found in subparts D through F of this part.

(i) *Operating in north-south management areas with different trip limits.* Trip limits for a species or a species group may differ in different north-south management areas along the coast. The following crossover provisions apply to vessels operating in different geographical areas that have different cumulative or "per trip" trip limits for the same species or species group. Such crossover provisions do not apply to species that are subject only to daily trip limits, or to the trip limits for black rockfish off Washington, as described at § 660.230(d), subpart E and § 660.330(e), subpart F.

(A) *Going from a more restrictive to a more liberal area.* If a vessel takes and retains any groundfish species or species group of groundfish in an area where a more restrictive trip limit applies before fishing in an area where a more liberal trip limit (or no trip limit) applies, then that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(B) *Going from a more liberal to a more restrictive area.* If a vessel takes and retains a groundfish species or species group in an area where a higher trip limit or no trip limit applies, and takes and retains, possesses or lands the same species or species group in an area where a more restrictive trip limit applies, that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(C) *Operating in two different areas where a species or species group is managed with different types of trip limits.* During the fishing year, NMFS may implement management measures for a species or species group that set different types of trip limits (for example, per trip limits versus cumulative trip limits) for different areas. If a vessel fishes for a species or species group that is managed with different types of trip limits in two different areas within the same cumulative limit period, then that vessel is subject to the most restrictive overall cumulative limit for that species, regardless of where fishing occurs.

(D) *Minor rockfish.* Several rockfish species are designated with species-specific limits on one side of the 40°10′ N. lat. management line, and are included as part of a minor rockfish complex on the other side of the line. A vessel that takes and retains fish from a minor rockfish complex (nearshore, shelf, or slope) on both sides of a management line during a single cumulative limit period is subject to the more restrictive cumulative limit for that minor rockfish complex during that period.

(*1*) If a vessel takes and retains minor slope rockfish north of 40°10′ N. lat., that vessel is also permitted to take and retain, possess or land splitnose rockfish up to its cumulative limit south of 40°10′ N. lat., even if splitnose rockfish were a part of the landings from minor slope rockfish taken and retained north of 40°10′ N. lat.

(*2*) If a vessel takes and retains minor slope rockfish south of 40°10′ N. lat., that vessel is also permitted to take and retain, possess or land POP up to its cumulative limit north of 40°10′ N. lat., even if POP were a part of the landings from minor slope rockfish taken and retained south of 40°10′ N. lat.

(ii) *Operating in both limited entry and open access fisheries.* Open access trip limits apply to any fishing conducted with open access gear, even if the vessel has a valid limited entry permit with an endorsement for another type of gear. A vessel that operates in both the open access and limited entry fisheries is not entitled to two separate trip limits for the same species. If a vessel has a limited entry permit and uses open access gear, but the open access limit is smaller than the limited entry limit, the open access limit may not be exceeded and counts toward the limited entry limit. If a vessel has a limited entry permit and uses open access gear, but the open access limit is larger than the limited entry limit, the smaller limited entry limit applies, even if taken entirely with open access gear.

§ 660.65 Groundfish harvest specifications.

Fishery specifications include ABCs, the designation of OYs (which may be represented by harvest guidelines (HGs) or quotas for species that need individual management,) and the allocation of fishery HGs between the trawl and nontrawl segments of the fishery, and the allocation of commercial HGs between the open access and limited entry segments of the fishery. These specifications include fish caught in state ocean waters (0–3 nm offshore) as well as fish caught in the EEZ (3–200 nm offshore). Harvest specifications are provided at Tables 1a through 2d of this subpart.

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Table 1a. To Part 660, Subpart C-2009, Specifications of ABCs, OYs, and HGs, by Management Area (weights in metric tons).

Species	ABC Specifications						OY	HG b/	
	ABC Contributions by Area					ABC		Commercial	Recreation-al
	Vancouver a/	Columbia	Eureka	Monterey	Conception				
ROUNDFISH:									
Lingcod c/ N of 42 N. lat.	4,473					5,278	5,278		
S of 42 N. lat.			805						
Pacific Cod e/	3,200		d/			3,200	1,600	1,200	
Pacific Whiting f/	187,346					187,346	135,939	81,939	
Sablefish g/ N of 36 N. lat.	9,914					9,914	7,052	6,347	
S of 36 N. lat.							1,371	1,371	
Cabezon h/ S of 42 N. lat.	d/		81		25	106	69		
FLATFISH:									
Dover sole i/	29,453					29,453	16,500		
English sole j/	14,326					14,326	14,326	-	
Petrale sole k/	1,509		1,302			2,811	2,433	-	
Arrowtooth flounder l/	11,267					11,267	11,267	-	
Starry Flounder m/	1,509					1,509	1,004		
Other flatfish n/	6,731					6,731	4,884	-	
ROCKFISH:									
Pacific Ocean Perch o/	1,160					1,160	189	187	

Species	ABC Specifications						OY	HG b/	
	ABC Contributions by Area					ABC			
	Vancouver a/	Columbia	Eureka	Monterey	Conception			Commercial	Recreation-al
Shortbelly p/	6,950					6,950	6,950		
Widow q/	7,728					7,728	522	460.4	7.2
Canary r/	937					937	105	42.3	43.8
Chilipepper s/	d/			3,037		3,037	2,885	2,885	
Bocaccio t/	d/			793		793	288	206.4	67.3
Splitnose u/	d/			615		615	461		
Yellowtail v/	4,562			d/		4,562	4,562		
Shortspine thornyhead w/ N of 34 27' N. lat.	2,437					2,437	1,608	1,608	
S of 34 27' N. lat.							414		
Longspine thornyhead x/ N of 34 27' N. lat.	3,766					3,766	2,231		
S of 34 27' N. lat.							395		
Cowcod y/	d/			13		13	4		
Darkblotched z/	437					437	285	282.05	
Yelloweye aa/	31					31	17	3.1	8
California Scorpionfish bb/					175	175	175		
Black cc/ N of 46 16' N. lat.	490					490	490		
S of 46 16' N. lat.			1,469			1,469	1,000		

Species	ABC Specifications							HG b/	
	ABC Contributions by Area					ABC	OY	Commercial	Recreation-al
	Vancouver a/	Columbia	Eureka	Monterey	Conception				
Minor Rockfish dd/ N of 40 10' N. lat.	3,678			--		3,678	2,283		
Minor Rockfish ee/ S of 40 10' N. lat.	--			3,384		3,384	1,990		
Remaining	1,640			1,318					
bank ff/	d/			350					
blackgill gg/	d/			292					
blue	28			213					
bocaccio north	318			--					
chilipepper north	32			--					
redstripe	576			d/					
sharpchin	307			45					
silvergrey	38			d/					
splitnose north	242			--					
yellowmouth	99			d/					
yellowtail	--			116					
gopher	d/			302					
Other rockfish hh/	2,038			2,066					
SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING:									
Longnose Skate ii/	3,428					3,428	1,349		
Other fish jj/	11,200					11,200	5,600		

Table 1b. To Part 660, Subpart C-2009, Harvest Guidelines for Minor Rockfish by Depth Sub-groups (weights in metric tons).

Species	Total Catch ABC	Total Catch OY	Rec-rea-tion-al HG	Commer-cial HG	Limited Entry HG		Open Access HG	
					Mt	%	Mt	%
Minor Rockfish dd/ N of 40°10' N. lat.	3,678	2,283	--	--	--	91.7	--	8.3
Nearshore		155	--	--				
Shelf		968	--	--				
Slope		1,160	--	--				
Minor Rockfish ee/ S of 40°10' N. lat.	3,384	1,990	--	--	--	55.7	--	44.3
Nearshore		650	--	--				
Shelf		714	--	--				
Slope		626	--	--				

Table 1c. To Part 660, Subpart C-2009, Open Access and Limited Entry Allocations by Species or Species Group. (Weights in Metric Tons)

Species	Commercial Total Catch HGs	Commercial Total Catch HGs			
		Limited Entry		Open Access	
		Mt	%	Mt	%
Lingcod N of 42° N. lat.	--	--	81.0	--	19.0
S of 42° N. lat.					
Sablefish kk/ N of 36° N. lat.	6,347	5,750	90.6	597	9.4
Widow ll/	460.4	--	97.0	--	3.0
Canary ll/	42.3	--	87.7	--	12.3
Chilipepper	2,885	1,607	55.7	1,278	44.3
Bocaccio ll/	206.4	--	55.7	--	44.3
Yellowtail	--	--	91.7	--	8.3
Shortspine thornyhead N of 34°27' N. lat.	1,608	1,603	99.7	5	0.27
Minor Rockfish N of 40°10' N. lat.	--	--	91.7	--	8.3
S of 40°10' N. lat.	--	--	55.7	--	44.3

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[a] ABCs apply only to the U.S. portion of the Vancouver area.

[b] Optimum Yields (OYs) and Harvest Guidelines (HGs) are specified as total catch values. A harvest guideline is a specified harvest target and not a quota. The use of this term may differ from the use of similar terms in state regulation.

[c] Lingcod—A coastwide lingcod stock assessment was prepared in 2005. The lingcod biomass was estimated to be at 64 percent of its unfished biomass coastwide in 2005. The ABC of 5,278 mt was calculated using an FMSY proxy of F45%. Because the stock is above B40% coastwide, the coastwide OY was set equal to the ABC. The tribal harvest guideline is 250 mt.

[d] "Other species"—these species are neither common nor important to the commercial and recreational fisheries in the areas footnoted. Accordingly, these species are included in the harvest guidelines of "other

fish", "other rockfish" or "remaining rockfish".

[e] Pacific Cod—The 3,200 mt ABC for the Vancouver-Columbia area is based on historical landings data. The 1,600 mt OY is the ABC reduced by 50 percent as a precautionary adjustment. A tribal harvest guideline of 400 mt is deducted from the OY resulting in a commercial OY of 1,200 mt.

[f] Pacific whiting—The most recent stock assessment was prepared in February 2009. The stock assessment base model estimated the Pacific whiting biomass to be at 32 percent (50th percentile estimate of depletion) of its unfished biomass in 2009. The U.S Canada coastwide ABC is 253,582 mt, the U.S. share of the ABC is 187,346 mt (73.88 percent of the coastwide ABC). The U.S.-Canada coastwide OY is 184,000 mt with a corresponding U.S. OY of 135,939 mt. The tribal set aside is 50,000 mt. The amount estimated to be taken as research catch and in non-groundfish fisheries is 4,000 mt. The commercial OY is 81,939 mt. Each sector receives a portion of the commercial OY, with the catcher/processors getting 34 percent (27,859 mt), motherships getting 24 percent (19,665 mt), and the shore-based sector getting 42 percent (34,414 mt). The allocation for the fishery south of 42°N. lat. is 1,721 mt.

[g] Sablefish—A coastwide sablefish stock assessment was prepared in 2007. The sablefish biomass was estimated to be at 38.3 percent of its unfished biomass in 2007. The coastwide ABC of 9,914 mt was based on the new stock assessment with a FMSY proxy of F45%. The 40–10 harvest policy was applied to the ABC then apportion between the northern and southern areas with 72 percent going to the area north of 36° N. lat. and 28 percent going to the area south of 36° N. lat. The OY for the area north of 36° N. lat. is 7,052 mt. When establishing the OY for the area south of 36° N. lat. a 50 percent reduction was made resulting in a Conception area OY of 1,371 mt. The coastwide OY of 8,423 mt is the sum of the northern and southern area OYs. The tribal allocation for the area north of 36° N. lat. is 705 mt (10 percent of the OY north of 36° N. lat.), which is further reduced by 1.6 percent (11 mt) to account for discard mortality. The tribal landed catch value is 694 mt.

[h] Cabezon south of 42° N. lat. was assessed in 2005. The Cabezon stock was estimated to be at 40 percent of its unfished biomass north of 34° 27′N. lat. and 28 percent of its unfished biomass south of 34° 27′N. lat. in 2005. The ABC of 106 mt is based on the 2005 stock assessment with a harvest rate proxy of F45%. The OY of 69 mt is consistent with the application of a 60–20 harvest rate policy specified in the California Nearshore Fishery Management Plan.

[i] Dover sole north of 34° 27' N. lat. was assessed in 2005. The Dover sole biomass was estimated to be at 59.8 percent of its unfished biomass in 2005 and was projected to be increasing. The ABC of 29,453 mt is based on the results of the 2005 assessment with an FMSY proxy of F40%. Because the stock is above B40% coastwide, the OY could be set equal to the ABC. The OY of 16,500 mt is less than the ABC. The OY is set at the MSY harvest level which is considerably larger than the coastwide catches in any recent years.

[j] A coastwide English sole stock assessment was prepared in 2005 and updated in 2007. The stock was estimated to be at 116 percent of its unfished biomass in 2007. The stock biomass is believed to be declining. The ABC of 14,326 mt is based on the results of the 2007 assessment update with an FMSY proxy of F40%. Because the stock is above B40%, the OY was set equal to the ABC.

[k] A petrale sole stock assessment was prepared for 2005. In 2005 the petrale sole stock was estimated to be at 32 percent of its unfished biomass coastwide (34 percent in the northern assessment area and 29 percent of in the southern assessment area). The ABC of 2,811 mt is based on the 2005 stock assessment with a F40%FMSYproxy. To derive the OY, the 40–10 harvest policy was applied to the ABC for both the northern and southern assessment areas. As a precautionary measure, an additional 25 percent reduction was made in the OY contribution for the southern area due assessment uncertainty. The coastwide OY is 2,433 mt in 2009.

[l] Arrowtooth flounder was assessed in 2007 and was estimated to be at 79 percent of its unfished biomass in 2007. Because the stock is above B40%, the OY is set equal to the ABC.

[m] Starry Flounder was assessed for the first time in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005. However, the stock was projected to decline below 40 percent in both the northern and southern areas after 2008. The starry flounder assessment was considered to be a data-poor assessment relative to other groundfish assessments. For 2009, the coastwide ABC of 1,509 mt is based on the 2005 assessment with a FMSY proxy of F40%. To derive the OY (1,004 mt), the 40–10 harvest policy was applied to the ABC for both the northern and southern assessment areas then an additional 25 percent reduction was made due to assessment uncertainty.

[n] "Other flatfish" are those flatfish species that do not have individual ABC/OYs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, and sand sole. The other flatfish ABC is based on historical catch levels. The ABC of 6,731 mt is based on the highest landings for sanddabs (1995) and rex sole (1982) for the 1981–2003 period and on the average landings from the 1994–1998 period for the remaining other flatfish species. The OY of 4,884 mt is based on the ABC with a 25 percent precautionary adjustment for sanddabs and rex sole and a 50 percent precautionary adjustment for the remaining species.

[o] A POP stock assessment was prepared in 2005 and was updated in 2007. The stock assessment update estimated the stock to be at 27.5 percent of its unfished biomass in 2007. The ABC of 1,160 mt for the Vancouver and Columbia areas is based on the 2007 stock assessment update with an FMSY proxy of F50%. The OY of 189 mt is based on a rebuilding plan with a target year to rebuild of 2017 and an SPR harvest rate of 86.4 percent. The OY is reduced by 2.0 mt for the amount anticipated to be taken during research activity and 0.14 mt for the amount expected to be taken during EFP fishing.

[p] Shortbelly rockfish remains an unexploited stock and is difficult to assess quantitatively. To understand the potential environmental determinants of fluctuations in the recruitment and abundance of an unexploited rockfish population in the California Current ecosystem, a non-quantitative assessment was conducted in 2007. The results of the assessment indicated the shortbelly stock was healthy with an estimated spawning stock biomass at 67 percent of its unfished biomass in 2005. The ABC and OY are being set at 6,950 mt which is 50 percent of the 2008 ABC and OY values. The stock is expected to remain at its current equilibrium with these harvest specifications.

[q] Widow rockfish was assessed in 2005 and an update was prepared in 2007. The stock assessment update estimated the stock to be at 36.2 percent of its unfished biomass in 2006. The ABC of 7,728 mt is based on the stock assessment update with an F50%FMSYproxy. The OY of 522 mt is based on a rebuilding plan with a target year to rebuild of 2015 and an SPR harvest rate of 95 percent. To derive the commercial harvest guideline of 460.4 mt the OY is reduced by 1.1 mt for the amount anticipated to be taken during research activity, 45.5 mt for the tribal set-aside, 7.2 mt the amount estimated to be taken in the recreational fisheries, 0.4 mt for the amount expected to be taken incidentally in non-groundfish fisheries, and 7.4 mt for the amount projected to be taken during EFP fishing. The following are the sector specific bycatch limits established for the Pacific whiting fishery: 85.0 mt for catcher/processors, 60.0 mt for motherships, and 105.0 mt for shore-based.

[r] Canary rockfish—A canary rockfish stock assessment was completed in 2007 and the stock was estimated to be at 32.7 percent of its unfished biomass coastwide in 2007. The coastwide ABC of 937 mt based on the 2007 rebuilding plan. The OY of 105 mt is based on a rebuilding plan with a target year to rebuild of 2021 and a SPR harvest rate of 88.7 percent. To derive the commercial harvest guideline of 42.3 mt, the OY is reduced by 8.0 mt for the amount anticipated to be taken during research activity, 7.3 mt the tribal set-aside, 43.8 mt the amount estimated to be taken in the recreational fisheries, 0.9 mt for the amount expected to be taken incidentally in non-groundfish fisheries, and 2.7 mt for the amount expected to be taken during EFP fishing. The following harvest guidelines are being specified for catch sharing in 2009: 19.7 mt for limited entry Non-Whiting Trawl, 18.0 mt for limited entry Whiting Trawl, 2.2 mt for limited entry fixed gear, 2.5 mt for directed open access, 4.9 mt for Washington recreational, 16.0 mt for Oregon recreational, and 22.9 mt for California recreational.

[s] Chilipepper rockfish was assessed in 2007 and the stock was estimated to be at 71 percent of its unfished biomass coastwide in 2007. The ABC of 3,037 mt is based on a FMSY proxy of F50%. Because the unfished biomass is estimated to be above 40 percent the unfished biomass, the default OY could be set equal to the ABC. However, the OY of 2,885 mt was the ABC reduced by 5 percent as a precautionary measure for uncertainty in the stock assessment. Open access is allocated 44.3 percent (1,278 mt) of the

commercial HG and limited entry is allocated 55.7 percent (1,607 mt) of the commercial HG.

[t] A bocaccio stock assessment and a rebuilding analysis were prepared in 2007. The bocaccio stock was estimated to be at 13.8 percent of its unfished biomass in 2007. The ABC of 793 mt for the Monterey-Conception area is based on the new assessment with an FMSY proxy of F50%. The OY of 288 mt is based on a rebuilding plan with a target year to rebuild of 2026 and a SPR harvest rate of 77.7 percent. To derive the commercial harvest guideline of 206.4 mt, the OY is reduced by 2.0 mt for the amount anticipated to be taken during research activity, 67.3 mt for the amount estimated to be taken in the recreational fisheries, 1.3 mt for the amount expected to be taken incidentally in non-groundfish fisheries, and 11.0 mt for the amount expected to be taken during EFP fishing.

[u] Splitnose rockfish—The ABC is 615 mt in the Monterey-Conception area. The 461 mt OY for the area reflects a 25 percent precautionary adjustment because of the less rigorous stock assessment for this stock. In the north (Vancouver, Columbia and Eureka areas), splitnose is included within the minor slope rockfish OY. Because the harvest assumptions used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2009 was considered to be conservative and based on the best available data.

[v] Yellowtail rockfish—A yellowtail rockfish stock assessment was prepared in 2005 for the Vancouver, Columbia, Eureka areas. Yellowtail rockfish was estimated to be above 40 percent of its unfished biomass in 2005. The ABC of 4,562 mt is based on the 2005 stock assessment with the FMSY proxy of F50%. The OY of 4,562 mt was set equal to the ABC, because the stock is above the precautionary threshold of B40%.

[w] Shortspine thornyhead was assessed in 2005 and the stock was estimated to be at 63 percent of its unfished biomass in 2005. The ABC of 2,437 mt is based on a F50%FMSYproxy. For that portion of the stock (66 percent of the biomass) north of Point Conception (34°27′N. lat.), the OY of 1,608 mt was set at equal to the ABC because the stock is estimated to be above the precautionary threshold. For that portion of the stock south of 34°27′N. lat. (34 percent of the biomass), the OY of 414 mt was the portion of the ABC for the area reduced by 50 percent as a precautionary adjustment due to the short duration and amount of survey data for that area.

[x] Longspine thornyhead was assessed coastwide in 2005 and the stock was estimated to be at 71 percent of its unfished biomass in 2005. The coastwide ABC of 3,766 mt is based on a F50%FMSYproxy. The OY is set equal to the ABC because the stock is above the precautionary threshold. Separate OYs are being established for the areas north and south of 34°27′N. lat. (Point Conception). The OY of 2,231 mt for that portion of the stock in the northern area (79 percent) the ABC reduced by 25 percent as a precautionary adjustment. For that portion of the stock in the south of 34°27′N. lat. (21 percent), the OY of 395 mt was the portion of the ABC for the area reduced by 50 percent as a precautionary adjustment due to the short duration and amount of survey data for that area.

[y] Cowcod in the Conception area was assessed in 2007 and the stock was estimated to be between 3.4 to 16.3 percent of its unfished biomass. The ABC for the area south of 36°N. lat., the Conception and Monterey areas, is 13 mt and is based on the 2007 rebuilding analysis in which the Conception area stock assessment projection was doubled to account for both areas. A single OY of 4 mt is being set for both areas. The OY of 4 mt is based on a rebuilding plan with a target year to rebuild of 2072 and an SPR rate of 82.1 percent. The amount anticipated to be taken during research activity is 0.2 mt and the amount expected to be taken during EFP activity is 0.24 mt.

[z] Darkblotched rockfish was assessed in 2007 and a rebuilding analysis was prepared. The new stock assessment estimated the stock to be at 22.4 percent of its unfished biomass in 2007. The ABC is projected to be 437 mt and is based on the 2007 stock assessment with an FMSYproxy of F50%. The OY of 285 mt is based on a rebuilding plan with a target year to rebuild of 2028 and an SPR harvest rate of 62.1 percent. The commercial OY of 282.05 mt is the OY reduced by 2.0 mt for the amount anticipated to be taken during research activity and 0.95 mt for the amount projected to be taken during EFP activity.

[aa] Yelloweye rockfish was fully assessed in 2006 and an assessment update was completed in 2007. The 2007 stock assessment update estimated the spawning stock biomass in 2006 to be at 14 percent of its unfished biomass coastwide. The 31 mt coastwide ABC was derived from the base model in the new stock assessment with an FMSY proxy of F50%. The 17 mt OY is based on a rebuilding plan with a target year to rebuild of 2084 and an SPR harvest rate of 66.3 percent in 2009 and 2010 and an SPR harvest rate of 71.9 percent for 2011 and beyond. The OY is reduced by 2.8 mt for the amount anticipated to be taken during research activity, 2.3 mt the amount estimated to be taken in the tribal fisheries and 0.3 mt for the amount expected to be taken incidentally in non-groundfish fisheries. The catch sharing harvest guidelines for yelloweye rockfish in 2009 are: limited entry non-whiting trawl 0.6 mt, limited entry whiting 0.0 mt, limited entry fixed gear 1.4 mt, directed open access 1.1 mt, Washington recreational 2.7 mt, Oregon recreational 2.4 mt, California recreational 2.8 mt, and 0.3 mt for exempted fishing.

[bb] California Scorpionfish south of 34°27′N. lat. was assessed in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005. The ABC of 175 mt is based on the new assessment with a harvest rate proxy of F50%. Because the stock is above B40%coastwide, the OY is set equal to the ABC.

[cc] New assessments were prepared for black rockfish south of 45°56.00 N. lat. (Cape Falcon, Oregon) and for black rockfish north of Cape Falcon. The ABC for the area north of 46°16′N. lat. (Washington) is 490 mt (97 percent) of the 505 mt ABC contribution from the northern assessment area. The ABC for the area south of 46°16′N. lat. (Oregon and California) is 1,469 mt which is the sum of a contribution of 15 mt (3 percent) from the northern area assessment, and 1,454 mt from the southern area assessment. The ABCs were based on the results of the new assessment and derived using an FMSYproxy of F50%. Because both portions of the stock are above 40 percent, the OYs could be set equal to the ABCs. For the area north of 46°16′N. lat., the OY of 490 mt is set equal to the ABC. The following tribal harvest guidelines are being set: 20,000 lb (9.1 mt) north of Cape Alava, WA (48°09.50′N. lat.) and 10,000 lb (4.5 mt) between Destruction Island, WA (47°40′N. lat.) and Leadbetter Point, WA (46°38.17′N. lat.) The OY for the area south of 46°16′N. lat. is being set at 1,000 mt which is a constant harvest level. The black rockfish OY in the area south of 46°16′N. lat., is subdivided with separate HGs being set for the area north of 42° N. lat. (580 mt/58 percent) and for the area south of 42° N. lat. (420 mt/42 percent).

[dd] Minor rockfish north includes the "remaining rockfish" and "other rockfish" categories in the Vancouver, Columbia, and Eureka areas combined. These species include "remaining rockfish", which generally includes species that have been assessed by less rigorous methods than stock assessments, and "other rockfish", which includes species that do not have quantifiable stock assessments. Blue rockfish has been removed from the "other rockfish" and added to the remaining rockfish. The ABC of 3,678 mt is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent (F = 0.75M) as a precautionary adjustment. To obtain the total catch OY of 2,283 mt, the remaining rockfish ABCs were further reduced by 25 percent and other rockfish ABCs were reduced by 50 percent. This was a precautionary measure to address limited stock assessment information.

[ee] Minor rockfish south includes the "remaining rockfish" and "other rockfish" categories in the Monterey and Conception areas combined. These species include "remaining rockfish" which generally includes species that have been assessed by less rigorous methods than stock assessment, and "other rockfish" which includes species that do not have quantifiable stock assessments. Blue rockfish has been removed from the "other rockfish" and added to the remaining rockfish. The ABC of 3,384 mt is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent (F = 0.75M) as a precautionary adjustment. The remaining rockfish ABCs are further reduced by 25 percent, with the exception of blackgill rockfish (see footnote gg). The other rockfish ABCs were reduced by 50 percent. This was a precautionary measure due to limited stock assessment information. The resulting minor rockfish OY is 1,990 mt.

[ff] Bank rockfish—The ABC is 350 mt which is based on a 2000 stock assessment for the Monterey and Conception areas. This stock contributes 263 mt towards the minor rockfish OY in the south.

[gg] Blackgill rockfish in the Monterey and Conception areas was assessed in 2005 and is estimated to be at 49.9 percent of its unfished biomass in 2008. The ABC of 292 mt for the Monterey and Conception areas is based on the 2005 stock assessment with an FMSY proxy of F50%and is the two year average ABC for the 2007 and 2008 periods. This stock contributes 292 mt towards minor rockfish south.

[hh] "Other rockfish" includes rockfish species listed in 50 CFR 660.302. A new stock assessment was conducted for blue rockfish in 2007. As a result of the new stock assessment, the blue rockfish contribution to the other rockfish group, of 30 mt in the north and 232 mt in the south, are removed. A new contribution of 28 mt contribution in the north and 202 mt contribution in the south is added to the remaining rockfish. The ABC for the remaining species is based on historical data from a 1996 review landings and includes an estimate of recreational landings. Most of these species have never been assessed quantitatively.

[ii] Longnose skate was fully assessed in 2006 and an assessment update was completed in 2007. The ABC of 3,428 is based on the 2007 with an FMSYproxy of F45%. Longnose skate was previously managed as part of the Other Fish complex. The 2009 OY of 1,349 mt is a precautionary OY based on historical total catch increased by 50 percent.

[jj] "Other fish" includes sharks, skates, rays, ratfish, morids, grenadiers, kelp greenling, and other groundfish species noted above in footnote d/. The longnose skate contribution is being removed from this complex.

[kk] Sablefish allocation north of 36° N. lat.—The limited entry allocation is further divided with 58 percent allocated to the trawl fishery and 42 percent allocated to the fixed-gear fishery.

[ll] Specific open access/limited entry allocations specified in the FMP have been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks.

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Table 1d to Part 660, Subpart C—At-Sea Whiting Fishery Annual Set-Asides, 2011 and 2012.

Species or Species Complex	Set-aside (mt)
Lingcod	6
Pacific Cod	5
Pacific Whiting	NA
Sablefish N. of 36°	50
Sablefish S. of 36°	NA
PACIFIC OCEAN PERCH	Allocation
WIDOW ROCKFISH	Allocation
Chilipepper S. of 40°10'	NA
Splitnose S. of 40°10'	NA
Yellowtail N. of 40°10'	300
Shortspine Thornyhead N. of 34°27'	20
Shortspine Thornyhead S. of 34°27'	NA
Longspine Thornyhead N. of 34°27'	5
Longspine Thornyhead S. of 34°27'	NA
DARKBLOTCHED	Allocation
Minor Slope RF N.	55
Minor Slope RF S.	NA
Dover Sole	5
English Sole	5
Petrale Sole - coastwide	5
Arrowtooth Flounder	10
Starry Flounder	5
Other Flatfish	20
CANARY ROCKFISH	Allocation
BOCACCIO	NA
COWCOD	NA
YELLOWEYE	0
Black Rockfish	NA

Blue Rockfish (CA)	NA
Minor Nearshore RF N.	NA
Minor Nearshore RF S.	NA
Minor Shelf RF N.	35
Minor Shelf RF S.	NA
California scorpionfish	NA
Cabezon (off CA only)	NA
Other Fish	520
Longnose Skate	5
Pacific Halibut	10 [a/]
a/ As stated in § 660.55(m), the Pacific halibut set-aside is 10 mt, to accommodate bycatch in the at-sea Pacific whiting fisheries and in the shorebased trawl sector south of 40°10' N lat. (estimated to be approximately 5 mt each).	

Table 2a. To Part 660, Subpart C - 2010, Specifications of ABCs, OYs, and HGs, by Management Area (weights in metric tons).

Species	ABC Specifications								
	ABC Contributions by Area					ABC	OY	HG b/	
	Vancouver a/	Columbia	Eureka	Monterey	Conception			Commercial	Recreational
ROUNDFISH:									
Lingcod c/									
N of 42 N. lat.	4,058		771			4,829	4,829		
S of 42 N. lat.									
Pacific Cod e/	3,200		d/			3,200	1,600		
Pacific Whiting f/	336,560					336,560	193,935		
Sablefish g/									
N of 36 N. lat.	9,217					9,217	6,471		
S of 36 N. lat.							1,258		
Cabezon h/									
S of 42 N. lat.	d/		86		25	111	79		
FLATFISH:									
Dover sole i/	28,582					28,582	16,500		
English sole j/	9,745					9,745	9,745	-	
Petrale sole k/	1,514		1,237			2,751	1,200	-	
Arrowtooth flounder l/	10,112					10,112	10,112	-	
Starry Flounder m/	1,578					1,578	1,077		
Other flatfish n/	6,731					6,731	4,884	-	
ROCKFISH:									
Pacific Ocean Perch o/	1,173					1,173	200	198	

Species	ABC Specifications							HG b/	
	ABC Contributions by Area					ABC	OY	Commercial	Recreation-al
	Vancouver a/	Columbia	Eureka	Monterey	Conception				
Shortbelly p/	6,950					6,950	6,950		
Widow q/	6,937					6,937	509	447.4	7.2
Canary r/	940					940	105		
Chilipepper s/	d/			2,576		2,576	2,447	2,447	
Bocaccio t/	d/			793		793	288	206.4	67.3
Splitnose u/	d/			615		615	461		
Yellowtail v/	4,562			d/		4,562	4,562		
Shortspine thornyhead w/ N of 34 27' N. lat.	2,411					2,411	1,591	1,591	
S of 34 27' N. lat.							410		
Longspine thornyhead x/ N of 34 27' N. lat.	3,671					3,671	2,175		
S of 34 27' N. lat.							385		
Cowcod y/	d/			14		14	4		
Darkblotched z/	440					440	330	288.05	
Yelloweye aa/						32	14	1.9	7.6
California Scorpionfish bb/					155	155	155		
Black cc/ N of 46 16' N. lat.	464					464	464		
S of 46 16' N. lat.			1,317			1,317	1,000		

Species	ABC Specifications						OY	HG b/	
	ABC Contributions by Area					ABC		Commercial	Recreation-al
	Vancouver a/	Columbia	Eureka	Monterey	Conception				
Minor Rockfish dd/ N of 40 10' N. lat.	3,678			--		3,678	2,283		
Minor Rockfish ee/ S of 40 10' N. lat.	--			3,382		3,382	1,990		
Remaining	1,640			1,318					
bank ff/	d/			350					
blackgill gg/	d/			292					
blue	28			211					
bocaccio north	318			--					
chilipepper north	32			--					
redstripe	576			d/					
sharpchin	307			45					
silvergrey	38			d/					
splitnose north	242			--					
yellowmouth	99			d/					
yellowtail	--			116					
gopher	d/			302					
Other rockfish hh/	2,038			2,066					
SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING:									
Longnose Skate ii/	3,269					3,269	1,349		
Other fish jj/	11,200					11,200	5,600		

Table 2b. To Part 660, Subpart C-2010, and beyond, Harvest Guidelines for Minor Rockfish by Depth Sub-groups (weights in metric tons).

Species	Total Catch ABC	Total Catch OY	Rec-rea-tion-al HG	Commer-cial HG	Limited Entry HG		Open Access HG	
					Mt	%	Mt	%
Minor Rockfish dd/ N of 40° 10' N. lat.	3,678	2,283	--	--	--	91.7	--	8.3
Nearshore		155	--	--				
Shelf		968	--	--				
Slope		1,160	--	--				
Minor Rockfish ee/ S of 40° 10' N. lat.	3,382	1,990	--	--	--	55.7	--	44.3
Nearshore		650	--	--				
Shelf		714	--	--				
Slope		626	--	--				

Table 2c. To Part 660, Subpart C 2010, and beyond, Open Access and Limited Entry Allocations by Species or Species Group. (Weights in Metric Tons)

Species	Commercial Total Catch HGs	Commercial Total Catch HGs			
		Limited Entry		Open Access	
		Mt	%	Mt	%
Lingcod N of 42° N. lat.	--	--	81.0	--	19.0
S of 42° N. lat.					
Sablefish kk/ N of 36° N. lat.	6,471	5,863	90.6	608	9.4
Widow ll/	--	--	97.0	--	3.0
Canary ll/	42.3	--	87.7	--	12.3
Chilipepper	2,447	1,363	55.7	1,084	44.3
Bocaccio ll/	206.4	--	55.7	--	44.3
Yellowtail	-	--	91.7	--	8.3
Shortspine thornyhead N of 34°27' N. lat.	1,591	1,586	99.7	5	0.27
Minor Rockfish N of 40°10' N. lat.	--	--	91.7	--	8.3
S of 40°10' N. lat.	--	--	55.7	--	44.3

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[a] ABCs apply only to the U.S. portion of the Vancouver area.

[b] Optimum Yields (OYs) and Harvest Guidelines (HGs) are specified as total catch values. A harvest guideline is a specified harvest target and not a quota. The use of this term may differ from the use of similar terms in state regulation.

[c] Lingcod—A coastwide lingcod stock assessment was prepared in 2005. The lingcod biomass was estimated to be at 64 percent of its unfished biomass coastwide in 2005. The ABC of 4,829 mt was calculated using an FMSY proxy of F45%. Because the stock is above B40%coastwide, the coastwide OY was set equal to the ABC. The tribal harvest guideline is 250 mt.

[d] "Other species"—these species are neither common nor important to the commercial and recreational fisheries in the areas footnoted. Accordingly, these species are included in the harvest guidelines of "other fish", "other rockfish" or "remaining rockfish".

[e] Pacific Cod—The 3,200 mt ABC for the Vancouver-Columbia area is based on historical landings data. The 1,600 mt OY is the ABC reduced by 50 percent as a precautionary adjustment. A tribal harvest guideline of 400 mt is deducted from the OY resulting in a commercial OY of 1,200 mt.

[f] Pacific whiting—The most recent stock assessment was prepared in January 2010. The stock assessment base model estimated the Pacific whiting biomass to be at 31 percent (50th percentile estimate of depletion) of its unfished biomass in 2010. The U.S.-Canada coastwide ABC is 455,550 mt, the U.S. share of the ABC is 336,560 mt (73.88 percent of the coastwide ABC). The U.S.-Canada coastwide Pacific whiting OY is 262,500 mt, with a corresponding U.S. OY of 193,935 mt. The tribal allocation is 49,939 mt. The amount estimated to be taken as research catch and in non-groundfish fisheries is 3,000 mt. The commercial OY is 140,996 mt. Each sector receives a portion of the commercial OY, with the catcher/processors getting 34 percent (47,939 mt), motherships getting 24 percent (33,839 mt), and the shore-based sector getting 42 percent (59,218 mt). No more than 2,961 mt (5 percent of the shore-based allocation) may be taken in the fishery south of 42° N. lat. prior to the start of the primary season for the shorebased fishery north of 42° N. lat.

[g] Sablefish—A coastwide sablefish stock assessment was prepared in 2007. The coastwide sablefish biomass was estimated to be at 38.3 percent of its unfished biomass in 2007. The coastwide ABC of 9,217 mt was based on the new stock assessment with a FMSY proxy of F45%. The 40–10 harvest policy was applied to the ABC then apportion between the northern and southern areas with 72 percent going to the area north of 36* N. lat. and 28 percent going to the area south of 36* N. lat. The OY for the area north of 36* N. lat. is 6,471 mt. When establishing the OY for the area south of 36* N. lat. a 50 percent reduction was made resulting in a Conception area OY of 1,258 mt. The Coastwide OY of 7,729 mt is the sum of the northern and southern area OYs. The tribal allocation for the area north of 36* N. lat. is 647 mt (10 percent of the OY north of 36* N. lat.), which is further reduced by 1.6 percent (10 mt) to account for discard mortality. The tribal landed catch value is 637 mt.

[h] Cabezon south of 42* N. lat. was assessed in 2005. The Cabezon stock was estimated to be at 40 percent of its unfished biomass north of 34* 27 ′N. lat. and 28 percent of its unfished biomass south of 34* 27 ′N. lat. in 2005. The ABC of 111 mt is based on the 2005 stock assessment with a harvest rate proxy of F45%. The OY of 79 mt is consistent with the application of a 60–20 harvest rate policy specified in the California Nearshore Fishery Management Plan.

[i] Dover sole north of 34* 27′ N. lat. was assessed in 2005. The Dover sole biomass was estimated to be at 59.8 percent of its unfished biomass in 2005 and was projected to be increasing. The ABC of 28,582 mt is based on the results of the 2005 assessment with an FMSY proxy of F40%. Because the stock is above B40%coastwide, the OY could be set equal to the ABC. The OY of 16,500 mt is less than the ABC. The OY is set at the MSY harvest level which is considerably larger than the coastwide catches in any recent years.

[j] A coastwide English sole stock assessment was prepared in 2005 and updated in 2007. The stock was estimated to be at 116 percent of its unfished biomass in 2007. The stock biomass is believed to be declining. The ABC of 9,745 mt is based on the results of the 2007 assessment update with an FMSY proxy of F40%. Because the stock is above B40%, the OY was set equal to the ABC.

[k] A petrale sole stock assessment was prepared for 2005. In 2005 the petrale sole stock was estimated to be at 32 percent of its unfished biomass coastwide (34 percent in the northern assessment area and 29 percent in the southern assessment area). The 2010 ABC of 2,751 mt is based on the 2005 assessment with a F40% FMSY proxy. To derive the 2010 OY, the 40 10 harvest policy was applied to the ABC for both the northern and southern assessment areas. As a precautionary measure, an additional 25 percent reduction was made in the OY contribution for the southern area due to assessment uncertainty. As another precautionary measure, an additional 1,193 mt reduction was made in the coastwide OY due to preliminary results of the more pessimistic 2009 stock assessment. The coastwide OY is 1,200 mt in 2010.

[l] Arrowtooth flounder was assessed in 2007 and was estimated to be at 79 percent of its unfished biomass in 2007. Because the stock is above B40%, the OY is set equal to the ABC.

[m] Starry Flounder was assessed for the first time in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005. However, the stock was projected to decline below 40 percent in both the northern and southern areas after 2008. For 2010, the coastwide ABC of 1,578 mt is based on the 2005 assessment with a FMSY proxy of F40%. To derive the OY of 1,077 mt, the 40–10 harvest policy was applied to the ABC for both the northern and southern assessment areas then an additional 25 percent reduction was made due to assessment uncertainty.

[n] "Other flatfish" are those flatfish species that do not have individual ABC/OYs and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole. The other flatfish ABC is based on historical catch levels. The ABC of 6,731 mt is based on the highest landings for sanddabs (1995) and rex sole (1982) for the 1981–2003 period and on the average landings from the 1994–1998 period for the remaining other flatfish species. The OY of 4,884 mt is based on the ABC with a 25 percent precautionary adjustment for sanddabs and rex sole and a 50 percent precautionary adjustment for the remaining species.

[o] A POP stock assessment was prepared in 2005 and was updated in 2007. The stock assessment update estimated the stock to be at 27.5 percent of its unfished biomass in 2007. The ABC of 1,173 mt for the Vancouver and Columbia areas is based on the 2007 stock assessment update with an FMSY proxy of F50%. The OY of 200 mt is based on a rebuilding plan with a target year to rebuild of 2017 and an SPR harvest rate of 86.4 percent. The OY is reduced by 2.0 mt for the amount anticipated to be taken during research activity and 0.14 mt for the amount expected to be taken during EFP fishing.

[p] Shortbelly rockfish remains an unexploited stock and is difficult to assess quantitatively. To understand the potential environmental determinants of fluctuations in the recruitment and abundance of an unexploited rockfish population in the California Current ecosystem, a non-quantitative assessment was conducted in 2007. The results of the assessment indicated the shortbelly stock was healthy with an estimated spawning stock biomass at 67 percent of its unfished biomass in 2005. The ABC and OY are being set at 6,950 mt which is 50 percent of the 2008 ABC and OY values. The stock is expected to remain at its current equilibrium with these harvest specifications.

[q] Widow rockfish was assessed in 2005, and an update was prepared in 2007. The stock assessment update estimated the stock to be at 36.2 percent of its unfished biomass in 2006. The ABC of 6,937 mt is based on the stock assessment update with an F50% FMSY proxy. The OY of 509 mt is based on a rebuilding plan with a target year to rebuild of 2015 and an SPR harvest rate or 95 percent. To derive the commercial harvest guideline of 447.4 mt, the OY is reduced by 1.1 mt for the amount anticipated to be taken during research activity, 45.5 mt for the tribal set-aside, 7.2 mt the amount estimated to be taken in the recreational fisheries, 0.4 mt for the amount expected to be taken incidentally in non-groundfish fisheries, and 7.4 mt for EFP fishing activities.

[r] Canary rockfish—A canary rockfish stock assessment was completed in 2007 and the stock was estimated to be at 32.7 percent of its unfished biomass coastwide in 2007. The coastwide ABC of 940 mt is based on a FMSY proxy of F50%. The OY of 105 mt is based on a rebuilding plan with a target year to rebuild of 2021 and a SPR harvest rate of 88.7 percent. To derive the commercial harvest guideline of 42.3 mt, the OY is reduced by 8.0 mt for the amount anticipated to be taken during research activity, 7.3 mt the tribal set-aside, 43.8 mt the amount estimated to be taken in the recreational fisheries, 0.9 mt for the amount expected to be taken incidentally

in non-groundfish fisheries, and 2.7 mt for the amount expected to be taken during EFP fishing. The following harvest guidelines are being specified for catch sharing in 2009: 19.7 mt for limited entry Non-Whiting Trawl, 18.0 mt for limited entry Whiting Trawl, 2.2 mt for limited entry fixed gear, 2.5 mt for directed open access, 4.9 mt for Washington recreational, 16.0 mt for Oregon recreational, and 22.9 mt for California recreational.

[s] Chilipepper rockfish was assessed in 2007 and the stock was estimated to be at 71 percent of its unfished biomass coastwide in 2007. The ABC of 2,576 mt is based on the new assessment with an FMSY proxy of F50%. Because the unfished biomass is estimated to be above 40 percent of the unfished biomass, the default OY could be set equal to the ABC. However, the OY of 2,447 mt was the ABC reduced by 5 percent as a precautionary measure. Open access is allocated 44.3 percent (1,084 mt) of the commercial HG and limited entry is allocated 55.7 percent (1,363 mt) of the commercial HG.

[t] A bocaccio stock assessment and a rebuilding analysis were prepared in 2007. The bocaccio stock was estimated to be at 13.8 percent of its unfished biomass in 2007. The ABC of 793 mt for the Monterey-Conception area is based on the new stock assessment with an FMSY proxy of F50%. The OY of 288 is based on a rebuilding plan with a target year to rebuild of 2026 and a SPR harvest rate of 77.7 percent. To derive the commercial harvest guideline of 206.4 mt, the OY is reduced by 2.0 mt for the amount anticipated to be taken during research activity, 67.3 mt for the amount estimated to be taken in the recreational fisheries, 1.3 mt for the amount expected to be taken incidentally in non-groundfish fisheries, and 11.0 mt for the amount expected to be taken during EFP fishing.

[u] Splitnose rockfish—The ABC is 615 mt in the Monterey-Conception area. The 461 mt OY for the area reflects a 25 percent precautionary adjustment because of the less rigorous stock assessment for this stock. In the north (Vancouver, Columbia and Eureka areas), splitnose is included within the minor slope rockfish OY. Because the harvest assumptions used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2010 was considered to be conservative and based on the best available data.

[v] Yellowtail rockfish—A yellowtail rockfish stock assessment was prepared in 2005 for the Vancouver, Columbia, Eureka areas. Yellowtail rockfish was estimated to be above 40 percent of its unfished biomass in 2005. The ABC of 4,562 mt is based on the 2005 stock assessment with the FMSY proxy of F50%. The OY of 4,562 mt was set equal to the ABC, because the stock is above the precautionary threshold of B40%.

[w] Shortspine thornyhead was assessed in 2005 and the stock was estimated to be at 63 percent of its unfished biomass in 2005. The ABC of 2,411 mt is based on a F50%FMSYproxy. For that portion of the stock (66 percent of the biomass) north of Point Conception (34°27′ N. lat.), the OY of 1,591 mt was set at equal to the ABC because the stock is estimated to be above the precautionary threshold. For that portion of the stock south of 34°27′ N. lat. (34 percent of the biomass), the OY of 410 mt was the portion of the ABC for the area reduced by 50 percent as a precautionary adjustment due to the short duration and amount of survey data for that area.

[x] Longspine thornyhead was assessed coastwide in 2005 and the stock was estimated to be at 71 percent of its unfished biomass in 2005. The coastwide ABC of 3,671 mt is based on a F50%FMSYproxy. The OY is set equal to the ABC because the stock is above the precautionary threshold. Separate OYs are being established for the areas north and south of 34°27′ N. lat. (Point Conception). The OY of 2,175 mt for that portion of the stock in the northern area (79 percent) was the ABC reduced by 25 percent as a precautionary adjustment. For that portion of the stock in the southern area (21 percent), the OY of 385 mt was the portion of the ABC for the area reduced by 50 percent as a precautionary adjustment due to the short duration and amount of survey data for that area.

[y] Cowcod in the Conception area was assessed in 2007 and the stock was estimated to be between 3.4 to 16.3 percent of its unfished biomass. The ABC for the Monterey and Conception areas is 14 mt and is based on the 2007 rebuilding analysis in which the Conception area stock assessment projection was doubled to account for both areas. A single OY of 4 mt is being set for both areas. The OY of 4 mt is based on the need to conform the 2010 cowcod harvest specifications to the Court's Order in *Natural Resources Defense Council* v. *Locke*, Civil Action No. C 01–0421 JL. The amount anticipated to be taken during scientific research activity is 0.2 mt and the amount expected to be taken during EFP activity is 0.24 mt.

[z] Darkblotched rockfish was assessed in 2007 and a rebuilding analysis was prepared. The new stock assessment estimated the stock to be at 22.4 percent of its unfished biomass in 2007. The ABC is projected to be 440 mt and is based on the 2007 stock assessment with an FMSY proxy of F50%. The OY of 330 mt is based on the need to conform the 2010 darkblotched rockfish harvest specifications to the Court's Order in Natural Resources Defense Council v. Locke, Civil Action No. C 01–0421 JL. The amount anticipated to be taken during scientific research activity is 2.0 mt and the amount anticipated to be taken during EFP activity is 0.95 mt.

[aa] Yelloweye rockfish was fully assessed in 2006 and an assessment update was completed in 2007. The 2007 stock assessment update estimated the spawning stock biomass in 2006 to be at 14 percent of its unfished biomass coastwide. The 32 mt coastwide ABC was derived from the base model in the new stock assessment with an FMSY proxy of F50%. The 14 mt OY is based on the need to conform the 2010 yelloweye rockfish harvest specifications to the Court's Order in *Natural Resources Defense Council* v. *Locke*, Civil Action No. C 01–0421 JL. The amount anticipated to be taken during scientific research activity is 1.3 mt, the amount anticipated to be taken in the tribal fisheries is 2.3 mt, and the amount anticipated to be taken incidentally in non-groundfish fisheries is 0.3 mt. The catch sharing harvest guidelines for yelloweye rockfish in 2010 are: Limited entry non-whiting trawl 0.3 mt, limited entry whiting 0.0 mt, limited entry fixed gear 0.8 mt, directed open access 1.2 mt, Washington recreational 2.6 mt, Oregon recreational 2.3 mt, California recreational 2.7 mt, and 0.2 mt for exempted fishing.

[bb] California Scorpionfish south of 34°27′N. lat. (point Conception) was assessed in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005. The ABC of 155 mt is based on the new assessment with a harvest rate proxy of F50%. Because the stock is above B40% coastwide, the OY is set equal to the ABC.

[cc] New assessments were prepared for black rockfish south of 45°56.00 N. lat. (Cape Falcon, Oregon) and for black rockfish north of Cape Falcon. The ABC for the area north of 46°16′N. lat. (Washington) is 464 mt (97 percent) of the 478 mt ABC contribution from the northern assessment area. The ABC for the area south of 46°16′N. lat. (Oregon and California) is 1,317 mt which is the sum of a contribution of 14 mt (3 percent) from the northern area assessment, and 1,303 mt from the southern area assessment. The ABCs were derived using an FMSY proxy of F50%. Because both portions of the stock are above 40 percent, the OYs could be set equal to the ABCs. For the area north of 46°16′N. lat., the OY of 490 mt is set equal to the ABC. The following tribal harvest guidelines are being set: 30,000 lb (13.6 mt) north of Cape Alava, WA (48°09.50′N. lat.) and 10,000 lb (4.5 mt) between Destruction Island, WA (47°40′N. lat.) and Leadbetter Point, WA (46°38.17′N. lat.) For the area south of 46°16′N. lat., the OY of 1,000 mt is a constant harvest level. The black rockfish OY in the area south of 46°16′N. lat., is subdivided with separate HGs being set for the area north of 42° N. lat. (580 mt/58 percent) and for the area south of 42° N. lat. (420 mt/42 percent).

[dd] Minor rockfish north includes the "remaining rockfish" and "other rockfish" categories in the Vancouver, Columbia, and Eureka areas combined. These species include "remaining rockfish", which generally includes species that have been assessed by less rigorous methods than stock assessments, and "other rockfish", which includes species that do not have quantifiable stock assessments. Blue rockfish has been removed from the "other rockfish" and added to the remaining rockfish. The ABC of 3,678 mt is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent (F = 0.75M) as a precautionary adjustment. To obtain the total catch OY of 2,283 mt, the remaining rockfish ABCs were further reduced by 25 percent and other rockfish ABCs were reduced by 50 percent. This was a precautionary measure to address limited stock assessment information.

[ee] Minor rockfish south includes the "remaining rockfish" and "other rockfish" categories in the Monterey and Conception areas combined. These species include "remaining rockfish" which generally

includes species that have been assessed by less rigorous methods than stock assessment, and "other rockfish" which includes species that do not have quantifiable stock assessments. Blue rockfish has been removed from the "other rockfish" and added to the remaining rockfish. The ABC of 3,382 mt is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent (F = 0.75M) as a precautionary adjustment. The remaining rockfish ABCs are further reduced by 25 percent, with the exception of blackgill rockfish (see footnote gg). The other rockfish ABCs were reduced by 50 percent. This was a precautionary measure due to limited stock assessment information. The resulting minor rockfish OY is 1,990 mt.

[ff] Bank rockfish—The ABC is 350 mt which is based on a 2000 stock assessment for the Monterey and Conception areas. This stock contributes 263 mt towards the minor rockfish OY in the south.

[gg] Blackgill rockfish in the Monterey and Conception areas was assessed in 2005 and is estimated to be at 49.9 percent of its unfished biomass in 2008. The ABC of 292 mt for the Monterey and Conception areas is based on the 2005 stock assessment with an FMSY proxy of F50%and is the two year average ABC for the 2007 and 2008 periods. This stock contributes 292 mt towards minor rockfish south.

[hh] "Other rockfish" includes rockfish species listed in 50 CFR 660.302. A new stock assessment was conducted for blue rockfish in 2007. As a result of the new stock assessment, the blue rockfish contribution to the other rockfish group, of 30 mt in the north and 232 mt in the south, are removed. A new contribution of 28 mt contribution in the north and 202 mt contribution in the south is added to the remaining rockfish. The ABC for the remaining species is based on historical data from a 1996 review landings and includes an estimate of recreational landings. Most of these species have never been assessed quantitatively.

[ii] Longnose skate was fully assessed in 2006 and an assessment update was completed in 2007. The ABC of 3,428 is based on the 2007 with an FMSY proxy of F45%. Longnose skate was previously managed as part of the Other Fish complex. The 2009 OY of 1,349 mt is a precautionary OY based on historical total catch increased by 50 percent.

[jj] "Other fish" includes sharks, skates, rays, ratfish, morids, grenadiers, kelp greenling, and other groundfish species noted above in footnote d/. The longnose skate contribution is being removed from this complex.

[kk] Sablefish allocation north of 36* N. lat.—The limited entry allocation is further divided with 58 percent allocated to the trawl fishery and 42 percent allocated to the fixed-gear fishery.

[ll] Specific open access/limited entry allocations specified in the FMP have been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks.

Subpart D—West Coast Groundfish—Limited Entry Trawl Fisheries

§ 660.100 Purpose and scope.

This subpart covers the Pacific Coast Groundfish limited entry trawl fishery. Under the trawl rationalization program, the limited entry trawl fishery consists of the Shorebased IFQ Program, the MS Coop Program, and the C/P Coop Program.

§ 660.111 Trawl fishery—definitions.

These definitions are specific to the limited entry trawl fisheries covered in this subpart. General groundfish definitions are found at § 660.11, subpart C.

Catch history assignment means a percentage of the mothership sector allocation of Pacific whiting based on a limited entry permit's qualifying history and which is specified on the MS/CV-endorsed limited entry permit.

Catcher/processor coop or C/P coop means a harvester group that includes all eligible catcher/processor at-sea Pacific whiting endorsed permit owners who voluntarily form a coop and who manage the catcher/processor-specified allocations through private agreements and contracts.

Catcher/Processor Coop Program or C/P Coop Program means the C/P Coop Program described at § 660.160, subpart D.

Coop agreement means a private agreement between a group of MS/CV-endorsed limited entry permit owners or C/P-endorsed permit owners that contains all information specified at §§ 660.150 and 660.160, subpart D.

Coop member means a permit owner of an MS/CV-endorsed permit for the MS Coop Program that is a party to an MS coop agreement, or a permit owner of a C/P-endorsed permit for the C/P Coop Program that is legally obligated to the C/P coop.

Coop permit means a Federal permit required to participate as a Pacific whiting coop in the catcher/processor or mothership sectors.

Designated coop manager means an individual appointed by a permitted coop that is identified in the coop agreement and is responsible for actions described at §§ 660.150 (for an MS coop) or 660.160 (for a C/P coop), subpart D.

IBQ pounds means the quotas, expressed in round weight of fish, that are issued annually to each QS permit owner in the Shorebased IFQ Program based on the amount of IBQ they own and the amount of allowable bycatch mortality allocated to the Shorebased IFQ Program. IBQ pounds have the same species/species group and area designations as the IBQ from which they are issued.

IFQ first receivers mean persons who first receive, purchase, or take custody, control, or possession of catch onshore directly from a vessel that harvested the catch while fishing under the Shorebased IFQ Program described at § 660.140, subpart D.

IFQ landing means an offload of fish harvested under the Shorebased IFQ Program described at § 660.140, subpart D.

Individual bycatch quota (IBQ) means the amount of bycatch quota for an individual species/species group and area expressed as a percentage of the annual allocation of allowable bycatch mortality to the Shorebased IFQ Program. IBQ is used as the basis for the annual calculation and allocation of a QS permit owner's IBQ pounds in the Shorebased IFQ Program. Both IBQ and QS may be listed on a QS permit and in the associated QS account. Species for which IBQ will be issued for the Shorebased IFQ Program are listed at § 660.140, subpart D.

Individual fishing quota (IFQ) means a Federal permit to harvest a quantity of fish, expressed as a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person. An IFQ is a harvest privilege that may be revoked at any time in accordance with the Magnuson-Stevens Act. IFQ species for the Shorebased IFQ Program are listed at § 660.140, subpart D.

Inter-coop means two or more permitted coops that have submitted an accepted inter-coop agreement to NMFS that specifies a coordinated strategy for harvesting pooled allocations of Pacific whiting and non-whiting groundfish.

Inter-coop agreement means a written agreement between two or more permitted mothership coops and which contains private contractual arrangements for sharing catch and/or bycatch with one another.

Material change means, for the purposes of a coop agreement, a change to any of the required components of the coop agreement, defined at §§ 660.150 and 660.160, subpart D, which was submitted to NMFS during the application process for the coop permit.

Mothership coop or MS coop means a group of MS/CV-endorsed limited entry permit owners that are authorized by means of a coop permit to jointly harvest and process from a single coop allocation.

Mothership Coop Program or MS Coop Program means the MS Coop Program described at § 660.150, subpart D, and includes both the coop and non-coop fisheries.

Mutual agreement exception means, for the purpose of § 660.150, subpart D, an agreement that allows the owner of an MS/CV-endorsed limited entry permit to withdraw the permit's obligation of its catch history assignment to a permitted mothership processor, when mutually agreed to with the mothership processor, and to obligate to a different permitted mothership processor.

Pacific halibut set-aside means an amount of Pacific halibut annually set aside for the at-sea whiting fisheries (mothership and C/P sectors) and which is based on the trawl allocation of Pacific whiting.

Pacific whiting IFQ fishery means a trip in which a vessel registered to a trawl-endorsed limited entry permit uses legal midwater groundfish trawl gear with a valid declaration for limited entry midwater trawl, Pacific whiting IFQ, as specified at § 660.13(d)(5), subpart C, during the dates what the midwater Pacific whiting season is open.

Pacific whiting shoreside first receivers means persons who first receive, purchase, or take custody, control, or possession of Pacific whiting onshore directly from a Pacific whiting shoreside vessel.

Pacific whiting shoreside or shorebased fishery means Pacific whiting shoreside vessels and Pacific whiting shoreside first receivers.

Pacific whiting shoreside vessel means any vessel that fishes using midwater trawl gear to take, retain, possess and land 4,000-lb (1,814 kg) or more of Pacific whiting per fishing trip from the Pacific whiting shorebased sector allocation for delivery to a Pacific whiting shoreside first receiver during the primary season.

Processor obligation means an annual requirement for an MS/CV-endorsed limited entry permit to assign the amount of catch available from the permit's catch history assignment to a particular MS permit.

Quota pounds (QP) means the quotas, expressed in round weight of fish, that are issued annually to each QS permit owner in the Shorebased IFQ Program based on the amount of QS they own and the amount of fish allocated to the Shorebased IFQ Program. QP have the same species/species group and area designations as the QS from which they are issued.

Quota share (QS) means the amount of fishing quota for an individual species/species group and area expressed as a percentage of the annual allocation of fish to the Shorebased IFQ Program. The QS is used as the basis for the annual calculation and allocation of a QS permit owner's QP in the Shorebased IFQ Program. Both QS and IBQ may be listed on a QS permit and in the associated QS account. Species for which QS will be issued for the Shorebased IFQ Program are listed at § 660.140, subpart D.

Shorebased IFQ Program means the Shorebased IFQ Program described at § 660.140, subpart D.

Vessel account means an account held by the vessel owner where QP and IBQ pounds are registered for use by a vessel in the Shorebased IFQ Program.

Vessel limits means the maximum amount of QP or IBQ pounds a vessel owner can hold, acquire, and/or use during a calendar year. Vessel limits specify the maximum amount of QP or IBQ pounds that may be registered to a single vessel account during the year (QP Vessel Limit) and, for some species, the maximum amount of unused QP or IBQ pounds registered to a vessel account at any one time (Unused QP Vessel Limit).

§ 660.112 Trawl fishery—prohibitions.

These prohibitions are specific to the limited entry trawl fisheries. General groundfish prohibitions are defined at § 660.12, subpart C. In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person or vessel to:

(a) *General*—(1) *Trawl gear endorsement.* Fish with groundfish trawl gear, or carry groundfish trawl gear on board a vessel that also has groundfish on board, unless the vessel is registered for use with a valid limited entry permit with a trawl gear endorsement, with the following exception.

(i) The vessel is in continuous transit from outside the fishery management area to a port in Washington, Oregon, or California;

(ii) The vessel is registered to a limited entry MS permit with a valid mothership fishery declaration, in which case trawl nets and doors must be stowed in a secured and covered manner, and detached from all towing lines, so as to be rendered unusable for fishing.

(2) *Sorting.* [Reserved]

(3) *Recordkeeping and reporting.* (i) Fail to comply with all recordkeeping and reporting requirements at § 660.13, subpart C; including failure to submit information, submission of inaccurate information, or intentionally submitting false information on any report required at § 660.13(d), subpart C.

(ii) Falsify or fail to make and/or file, retain or make available any and all reports of groundfish landings, containing all data, and in the exact manner, required by the regulation at § 660.13, subpart C, or § 660.113, subpart D.

(4) *Fishing in conservation areas with trawl gear.* (i) Operate any vessel registered to a limited entry permit with a trawl endorsement and trawl gear on board in a applicable GCA (defined at § 660.11, subpart C and § 660.130(e), subpart D), except for purposes of continuous transiting, with all groundfish trawl gear stowed in accordance with § 660.130(e)(4), subpart D or except as authorized in the groundfish management measures published at § 660.130, subpart D.

(ii) Fish with bottom trawl gear (defined at § 660.11, subpart C) anywhere within EFH seaward of a line approximating the 700-fm (1280-m) depth contour, as defined in § 660.76, subpart C. For the purposes of regulation, EFH seaward of 700-fm (1280-m) within the EEZ is described at § 660.75, subpart C.

(iii) Fish with bottom trawl gear (defined at § 660.11, subpart C) with a footrope diameter greater than 19 inches (48 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope) anywhere within EFH within the EEZ. For the purposes of regulation, EFH within the EEZ is described at § 660.75, subpart C.

(iv) Fish with bottom trawl gear (defined at § 660.11, subpart C) with a footrope diameter greater than 8 inches (20 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope) anywhere within the EEZ shoreward of a line approximating the 100-fm (183-m) depth contour (defined at § 660.73, subpart C).

(v) Fish with bottom trawl gear (defined at § 660.11, subpart C), within the EEZ in the following areas (defined at §§ 660.77 and 660.78, Subpart C): Olympic 2, Biogenic 1, Biogenic 2, Grays Canyon, Biogenic 3, Astoria Canyon, Nehalem Bank/Shale Pile, Siletz Deepwater, Daisy Bank/Nelson Island, Newport Rockpile/Stonewall Bank, Heceta Bank, Deepwater off Coos Bay, Bandon High Spot, Rogue Canyon.

(vi) Fish with bottom trawl gear (defined at § 660.11, subpart C), other than demersal seine, unless otherwise specified in this section or § 660.381, within the EEZ in the following areas (defined at § 660.79, subpart C): Eel River Canyon, Blunts Reef, Mendocino Ridge, Delgada Canyon, Tolo Bank, Point Arena North, Point Arena South Biogenic Area, Cordell Bank/Biogenic Area, Farallon Islands/Fanny Shoal, Half Moon Bay, Monterey Bay/Canyon, Point Sur Deep, Big Sur Coast/Port San Luis, East San Lucia Bank, Point

Conception, Hidden Reef/Kidney Bank (within Cowcod Conservation Area West), Catalina Island, Potato Bank (within Cowcod Conservation Area West), Cherry Bank (within Cowcod Conservation Area West), and Cowcod EFH Conservation Area East.

(vii) Fish with bottom contact gear (defined at § 660.11, subpart C) within the EEZ in the following areas (defined at §§ 660.78 and 660.79, subpart C): Thompson Seamount, President Jackson Seamount, Cordell Bank (50–fm (91-m) isobath), Harris Point, Richardson Rock, Scorpion, Painted Cave, Anacapa Island, Carrington Point, Judith Rock, Skunk Point, Footprint, Gull Island, South Point, and Santa Barbara.

(viii) Fish with bottom contact gear (defined at § 660.11, subpart C), or any other gear that is deployed deeper than 500-fm (914-m), within the Davidson Seamount area (defined at § 660.79, subpart C).

(b) *Shorebased IFQ Program.* [Reserved]

(c) *MS and C/P Coop Programs.* [Reserved]

(d) *MS Coop Program (coop and non-coop fisheries).* [Reserved]

(e) *C/P Coop Program.* [Reserved]

(f) *Pacific Whiting Fisheries*—(1) *Pacific whiting vessel license requirements prior to trawl rationalization.* Fish in any of the sectors of the whiting fishery described at § 660.131(a), subpart D, after May 11, 2009 using a vessel that is not registered for use with a sector-appropriate Pacific whiting vessel license under § 660.26, subpart C. After May 11, 2009, vessels are prohibited from fishing, landing, or processing primary season Pacific whiting with a catcher/processor, mothership or mothership catcher vessel that has no history of participation within that specific sector of the whiting fishery during the period from January 1, 1997, through January 1, 2007, or with a shoreside catcher vessels that has no history of participation within the shorebased sector of the whiting fishery during the period from January 1, 1994 through January 1, 2007, as specified in § 660.26(c), subpart C. For the purpose of this paragraph, "historic participation" for a specific sector is the same as the qualifying criteria listed in § 660.26(c), subpart C.

(i) If a Pacific whiting vessel license is registered for use with a vessel, fail to carry that license onboard the vessel registered for use with the license at any time the vessel is licensed. A photocopy of the license may not substitute for the license itself.

(ii) [Reserved]

(2) Process whiting in the fishery management area during times or in areas where at-sea processing is prohibited for the sector in which the vessel participates, unless:

(i) The fish are received from a member of a Pacific Coast treaty Indian tribe fishing under § 660.50, subpart C;

(ii) The fish are processed by a waste-processing vessel according to § 660.131(j), subpart D; or

(iii) The vessel is completing processing of whiting taken on board during that vessel's primary season.

(3) During times or in areas where at-sea processing is prohibited, take and retain or receive whiting, except as cargo or fish waste, on a vessel in the fishery management area that already has processed whiting on board. An exception to this prohibition is provided if the fish are received within the tribal U&A from a member of a Pacific Coast treaty Indian tribe fishing under § 660.50, subpart C.

(4) Fish as a mothership if that vessel operates in the same calendar year as a catcher/processor in the whiting fishery, according to § 660.131, subpart D.

(5) Operate as a waste-processing vessel within 48 hours of a primary season for whiting in which that vessel operates as a catcher/processor or mothership, according to § 660.131(j), subpart D.

(6) On a vessel used to fish for whiting, fail to keep the trawl doors on board the vessel, when taking and retention is prohibited under § 660.131(f), subpart D.

(7) Sort or discard any portion of the catch taken by a catcher vessel in the mothership sector prior to the catch being received on a mothership, and prior to the observer being provided access to the unsorted catch, with the exception of minor amounts of catch that are lost when the codend is separated from the net and prepared for transfer.

(8) *Pacific whiting shoreside first receivers.* (i) [Reserved]

(ii) Fail to sort fish received from a Pacific whiting shoreside vessel prior to first weighing after offloading as specified at § 660.131(k)(2), subpart D for the Pacific whiting fishery.

(iii) Process, sell, or discard any groundfish received from a Pacific whiting shoreside vessel that has not been weighed on a scale that is in compliance with requirements at § 660.131 (k)(1)(i), subpart D, and accounted for on an electronic fish ticket with the identification number for the Pacific whiting shoreside vessel that delivered the fish.

(iv) Fail to weigh fish landed from a Pacific whiting shoreside vessel prior to transporting any fish from that landing away from the point of landing.

§ 660.113 Trawl fishery—recordkeeping and reporting.

General groundfish recordkeeping and reporting requirements are defined at § 660.13, subpart C. The following recordkeeping and reporting requirements are in addition to those and are specific to the limited entry trawl fisheries.

(a) *Shorebased IFQ Program.* [Reserved]

(b) *MS Coop Program (coop and non-coop fisheries).* [Reserved]

(c) *C/P Coop Program.* [Reserved]

(d) *Participants in the Pacific whiting shoreside fishery prior to trawl rationalization.* Reporting requirements defined in the following section are in addition to reporting requirements under applicable state law and requirements described at § 660.13, subpart C.

(1) *Reporting requirements for any Pacific whiting shoreside first receiver.*

(i) *Responsibility for compliance.* The Pacific whiting shoreside first receiver is responsible for compliance with all reporting requirements described in this paragraph.

(ii) *General requirements.* All records or reports required by this paragraph must: Be maintained in English, be accurate, be legible, be based on local time, and be submitted in a timely manner as required in paragraph (d)(1)(iv)(E) of this section.

(iii) *Required information.* All Pacific whiting shoreside first receivers must provide the following types of information: Date of landing, Pacific whiting shoreside vessel that made the delivery, gear type used, first receiver, round weights of species landed listed by species or species group including species with no value, number of salmon by species, number of Pacific halibut, and any other information deemed necessary by the Regional Administrator as specified on the appropriate electronic fish ticket form.

(iv) *Electronic fish ticket submissions.* The Pacific whiting shoreside first receiver must:

(A) Sort all fish, prior to first weighing, by species or species groups as specified at § 660.131(l)(2)(ii), subpart D.

(B) Include as part of each electronic fish ticket submission, the actual scale weight for each groundfish species as specified by requirements at § 660.131(l)(i), subpart D, and the Pacific whiting shoreside vessel identification number.

(C) Use for the purpose of submitting electronic fish tickets, and maintain in good working order, computer equipment as specified at § 660.15(d), subpart C;

(D) Install, use, and update as necessary, any NMFS-approved software described at § 660.15(d), subpart C;

(E) Submit a completed electronic fish ticket for every landing that includes 4,000-lb (1,814 kg) or more of Pacific whiting (round weight equivalent) no later than 24 hours after the date the fish are received, unless a waiver of this requirement has been granted under provisions specified below at paragraph (d)(1)(vii) of this section.

(v) *Revising a submitted electronic fish ticket submission.* In the event that a data error is found, electronic fish ticket submissions may be revised by resubmitting the revised form. Electronic fish tickets are to be used for the submission of final data. Preliminary data, including estimates of fish weights or species composition, shall not be submitted on electronic fish tickets.

(vi) *Retention of Records.* [Reserved]

(vii) *Waivers for submission of electronic fish tickets upon written request.* On a case-by-case basis, a temporary written waiver of the requirement to submit electronic fish tickets may be granted by the Assistant Regional Administrator or designee if he/she determines that circumstances beyond the control of a Pacific whiting shoreside first receiver would result in inadequate data submissions using the electronic fish ticket system. The duration of the waiver will be determined on a case-by-case basis.

(viii) Reporting requirements when a temporary waiver has been granted. Pacific whiting shoreside first receivers that have been granted a temporary waiver from the requirement to submit electronic fish tickets must submit on paper the same data as is required on electronic fish tickets within 24 hours of the date received during the period that the waiver is in effect. Paper state landing receipts must be sent by facsimile to NMFS, Northwest Region, Sustainable Fisheries Division, 206–526–6736 or by delivering it in person to 7600 Sand Point Way NE., Seattle, WA 98115. The requirements for submissions of paper tickets in this paragraph are separate from, and in addition to existing state requirements for landing receipts or fish receiving tickets.

(2) [Reserved]

§ 660.116 Trawl fishery—observer requirements.

(a) *Observer coverage requirements*—(1) *NMFS-certified observers.*

(i) A catcher/processor or mothership 125-ft (38.1-m) LOA or longer must carry two NMFS-certified observers, and a catcher/processor or mothership shorter than 125-ft (38.1-m) LOA must carry one NMFS-certified observer, each day that the vessel is used to take, retain, receive, land, process, or transport groundfish.

(ii) A Pacific whiting shoreside vessel that sorts catch at sea must carry one NMFS-certified observer, from the time the vessel leaves port on a trip in which the catch is sorted at sea to the time that all catch from that trip has been offloaded.

(2) *Catcher vessels.* When NMFS notifies the owner, operator, permit holder, or the manager of a catcher vessel, specified at § 660.16(c), Subpart C of any requirement to carry an observer, the catcher vessel may not be used to fish for groundfish without carrying an observer.

(i) *Notice of departure—basic rule.* At least 24 hours (but not more than 36 hours) before departing on a fishing trip, a vessel that has been notified by NMFS that it is required to carry an observer, or that is operating in an active sampling unit, must notify NMFS (or its designated agent) of the vessel's intended time of departure. Notice will be given in a form to be specified by NMFS.

(A) *Optional notice—weather delays.* A vessel that anticipates a delayed departure due to weather or sea conditions may advise NMFS of the anticipated delay when providing the basic notice described in paragraph (a)(2)(i) of this section. If departure is delayed beyond 36 hours from the time the original notice is given, the vessel must provide an additional notice of departure not less than 4 hours prior to departure, in order to enable NMFS to place an observer.

(B) *Optional notice—back-to-back fishing trips.* A vessel that intends to make back-to-back fishing trips (*i.e.,* trips with less than 24 hours between offloading from one trip and beginning another), may provide the basic notice described in paragraph (a)(2)(i) of this section for both trips, prior to making the first trip. A vessel that has given such notice is not required to give additional notice of the second trip.

(ii) *Cease fishing report.* Within 24 hours of ceasing the taking and retaining of groundfish, vessel owners, operators, or managers must notify NMFS or its designated agent that fishing has ceased. This requirement applies to any vessel that is required to carry an observer, or that is operating in a segment of the fleet that NMFS has identified as an active sampling unit.

(b) *Waiver.* The Northwest Regional Administrator may provide written notification to the vessel owner stating that a determination has been made to temporarily waive coverage requirements because of circumstances that are deemed to be beyond the vessel's control.

(c) *Procurement of observer services by catcher/processors, motherships, and Pacific whiting shoreside vessels that sort at sea.* Owners of vessels required to carry observers under provisions at paragraph (a)(1)(i) or (ii) of this section must arrange for observer services from an observer provider permitted by the North Pacific Groundfish Observer Program under 50 CFR 679.50(i), except that:

(1) Vessels are required to procure observer services directly from NMFS when NMFS has determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in lieu of an observer provided by a permitted observer provider.

(2) Vessels are required to procure observer services directly from NMFS and a permitted observer provider when NMFS has determined and given notification that the vessel must carry NMFS staff or individuals authorized by NMFS, in addition to an observer provided by a permitted observer provider.

(d) *Vessel responsibilities.* An operator of a vessel required to carry one or more observer(s) must provide:

(1) *Accommodations and food.* Provide accommodations and food that are:

(i) *At-sea processors.* Equivalent to those provided for officers, engineers, foremen, deck-bosses or other management level personnel of the vessel.

(ii) *Catcher vessels.* Equivalent to those provided to the crew.

(2) *Safe conditions.* Maintain safe conditions on the vessel for the protection of observer(s) including adherence to all USCG and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel, and provisions at §§ 600.725 and 600.746 of this chapter.

(3) *Observer communications.* Facilitate observer communications by:

(i) *Observer use of equipment.* Allowing observer(s) to use the vessel's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observer(s) or the U.S. or designated agent.

(ii) *Functional equipment.* Ensuring that the vessel's communications equipment, used by observers to enter and transmit data, is fully functional and operational.

(iii) *Hardware and software.* Pacific whiting vessels that are required to carry one or more NMFS-certified observers under provisions at paragraphs (a)(1)(i) or (ii) of this section must provide hardware and software pursuant to regulations at 50 CFR 679.50(g)(1)(iii)(B) and 50 CFR 679.50(g)(2)(iii), as follows:

(A) Providing for use by the observer a personal computer in working condition that contains a full Pentium 120 Mhz or greater capacity processing chip, at least 32 megabytes of RAM, at least 75 megabytes of free hard disk storage, a Windows 9x or NT compatible operating system, an operating mouse, and a 3.5-inch (8.9 cm) floppy disk drive. The associated computer monitor must have a viewable screen size of at least 14.1 inches (35.8 cm) and minimum display settings of 600 x 800 pixels. The computer equipment specified in this paragraph (A) must be connected to a communication device that provides a modem connection to the NMFS host computer and supports one or more of the following protocols: ITU V.22, ITU V.22bis, ITU V.32, ITU V.32bis, or ITU V.34. Processors that use a modem must have at least a 28.8kbs Hayes-compatible modem. The above-specified hardware and software requirements do not apply to processors that do not process groundfish.

(B) NMFS-supplied software. Ensuring that each vessel that is required to carry a NMFS-certified observer obtains the data entry software provided by the NMFS for use by the observer.

(4) *Vessel position.* Allow observer(s) access to, and the use of, the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(5) *Access.* Allow observer(s) free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(6) *Prior notification.* Notify observer(s) at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer, unless the observer specifically requests not to be notified.

(7) *Records.* Allow observer(s) to inspect and copy any state or Federal logbook maintained voluntarily or as required by regulation.

(8) *Assistance.* Provide all other reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

(i) Measuring decks, codends, and holding bins.

(ii) Providing the observer(s) with a safe work area.

(iii) Collecting bycatch when requested by the observer(s).

(iv) Collecting and carrying baskets of fish when requested by the observer(s).

(v) Allowing the observer(s) to collect biological data and samples.

(vi) Providing adequate space for storage of biological samples.

(9) *At-sea transfers to or from processing vessels.* Processing vessels must:

(i) Ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.

(ii) Notify observers at least 3 hours before observers are transferred, such that the observers can collect personal belongings, equipment, and scientific samples.

(iii) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.

(iv) Provide an experienced crew member to assist observers in the small boat or raft in which any transfer is made.

(e) *Sample station and operational*—(1) *Observer sampling station.* This paragraph contains the requirements for observer sampling stations. The vessel owner must provide an observer sampling station that complies with this section so that the observer can carry out required duties.

(i) *Accessibility.* The observer sampling station must be available to the observer at all times.

(ii) *Location.* The observer sampling station must be located within 4 m of the location from which the observer samples unsorted catch. Unobstructed passage must be provided between the observer sampling station and the location where the observer collects sample catch.

(iii) *Minimum work space aboard at-sea processing vessels.* The observer must have a working area of 4.5 square meters, including the observer's sampling table, for sampling and storage of fish to be sampled. The observer must be able to stand upright and have a work area at least 0.9 m deep in the area in front of the table and scale.

(iv) *Table aboard at-sea processing vessels.* The observer sampling station must include a table at least 0.6 m deep, 1.2 m wide and 0.9 m high and no more than 1.1 m high. The entire surface area of the table must be available for use by the observer. Any area for the observer sampling scale is in addition to the minimum space requirements for the table. The observer's sampling table must be secured to the floor or wall.

(v) *Diverter board aboard at-sea processing vessels.* The conveyor belt conveying unsorted catch must have a removable board (diverter board) to allow all fish to be diverted from the belt directly into the observer's sampling baskets. The diverter board must be located downstream of the scale used to weigh total catch. At least 1 m of accessible belt space, located downstream of the scale used to weigh total catch, must be available for the observer's use when sampling.

(vi) *Other requirement for at-sea processing vessels.* The sampling station must be in a well-drained area that includes floor grating (or other material that prevents slipping), lighting adequate for day or night sampling, and a hose that supplies fresh or sea water to the observer.

(vii) *Observer sampling scale.* The observer sample station must include a NMFS-approved platform scale (pursuant to requirements at 50 CFR 679.28(d)(5)) with a capacity of at least 50 kg located within 1 m of the observer's sampling table. The scale must be mounted so that the weighing surface is no more than 0.7 m above the floor.

(2) [Reserved]

§ 660.120 Trawl fishery—crossover provisions.

(a) *General.* In addition to the General provisions listed at § 660.60, subpart C, the crossover provisions of this section apply to vessels operating in the limited entry trawl fishery.

(b) *Operating in north-south management areas with different trip limits*—(1) *Minor Rockfish.*

(i) If a trawl vessel takes and retains minor shelf rockfish south of 40°10′N. lat., that vessel is also permitted to take and retain, possess, or land yellowtail rockfish up to its cumulative limits north of 40°10′N. lat., even if yellowtail rockfish is part of the landings from minor shelf rockfish taken and retained south of 40°10′N. lat. Widow rockfish is included in overall shelf rockfish limits for all gear groups.

(ii) If a trawl vessel takes and retains minor shelf rockfish north of 40°10′N. lat., that vessel is also permitted to take and retain, possess, or land chilipepper rockfish up to its cumulative limits south of 40°10′ N. lat., even if chilipepper rockfish is part of the landings from minor shelf rockfish taken and retained north of 40°10′ N. lat.

(2) *DTS complex.* Differential trawl trip limits for the "DTS complex" north

and south of latitudinal management lines may be specified in trip limits, Table 1 (North) and Table 1 (South) of this subpart. Vessels operating in the limited entry trawl fishery are subject to the crossover provisions in this paragraph when making landings that include any one of the four species in the "DTS complex."

(3) *Flatfish complex.* There are often differential trip limits for the flatfish complex (butter, curlfin, English, flathead, petrale, rex, rock, and sand soles, Pacific sanddab, and starry flounder) north and south of latitudinal management lines. Vessels operating in the limited entry trawl fishery are subject to the crossover provisions in this paragraph when making landings that include any one of the species in the flatfish complex.

§ 660.130 Trawl fishery—management measures.

(a) *General.* Limited entry trawl vessels include those vessels registered to a limited entry permit with a trawl endorsement. Most species taken in limited entry trawl fisheries will be managed with cumulative trip limits (*see* trip limits in Tables 1 (North) and 1 (South) of this subpart), size limits (*see* § 660.60(h)(5), subpart C), seasons (see Pacific whiting at § 660.131(b), subpart D), gear restrictions (see paragraph (b) of this section) and closed areas (*see* paragraph (e) of this section and §§ 660.70 through 660.79, subpart C). The trawl fishery has gear requirements and trip limits that differ by the type of trawl gear on board and the area fished. Cowcod retention is prohibited in all fisheries and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (*see* paragraph (e)(1) of this section and § 660.70, subpart C). The trip limits in Tables 1 (North) and 1 (South) of this subpart apply to vessels participating in the limited entry groundfish trawl fishery and may not be exceeded. Federal commercial groundfish regulations are not intended to supersede any more restrictive state commercial groundfish regulations relating to federally-managed groundfish.

(b) *Trawl gear requirements and restrictions.* Trawl nets may be fished with or without otter boards, and may use warps or cables to herd fish.

(1) *Codends.* Only single-walled codends may be used in any trawl. Double-walled codends are prohibited.

(2) *Mesh size.* Groundfish trawl gear must meet the minimum mesh size requirements in this paragraph. Mesh size requirements apply throughout the net. Minimum trawl mesh sizes are: Bottom trawl, 4.5 inches (11.4 cm); midwater trawl, 3.0 inches (7.6 cm). Minimum trawl mesh size requirements are met if a 20-gauge stainless steel wedge, less one thickness of the metal wedge, can be passed with only thumb pressure through at least 16 of 20 sets of two meshes each of wet mesh.

(3) *Chafing gear.* Chafing gear may encircle no more than 50 percent of the net's circumference. No section of chafing gear may be longer than 50 meshes of the net to which it is attached. Chafing gear may be used only on the last 50 meshes, measured from the terminal (closed) end of the codend. Except at the corners, the terminal end of each section of chafing gear on all trawl gear must not be connected to the net. (The terminal end is the end farthest from the mouth of the net.) Chafing gear must be attached outside any riblines and restraining straps. There is no limit on the number of sections of chafing gear on a net.

(4) *Large footrope trawl gear.* Large footrope gear is bottom trawl gear with a footrope diameter larger than 8 inches (20 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope). Fishing with bottom trawl gear with a footrope diameter greater than 19 inches (48 cm) (including rollers, bobbins, or other material encircling or tied along the length of the footrope) is prohibited anywhere in EFH within the EEZ, as defined by latitude/longitude coordinates at § 660.75, subpart C.

(5) *Small footrope trawl gear.* Small footrope gear is bottom trawl gear with a footrope diameter of 8 inches (20 cm) or smaller (including rollers, bobbins or other material encircling or tied along the length of the footrope). Other lines or ropes that run parallel to the footrope may not be augmented with material encircling or tied along their length such that they have a diameter larger than 8 inches (20 cm). For enforcement purposes, the footrope will be measured in a straight line from the outside edge to the opposite outside edge at the widest part on any individual part, including any individual disk, roller, bobbin, or any other device.

(i) *Selective flatfish trawl gear.* Selective flatfish trawl gear is a type of small footrope trawl gear. The selective flatfish trawl net must be a two-seamed net with no more than two riblines, excluding the codend. The breastline may not be longer than 3 ft (0.92 m) in length. There may be no floats along the center third of the headrope or attached to the top panel except on the riblines. The footrope must be less than 105 ft (32.26 m) in length. The headrope must be not less than 30 percent longer than the footrope. An explanatory diagram of a selective flatfish trawl net is provided as Figure 1 of part 660, subpart D.

(ii) [Reserved]

(6) *Midwater (or pelagic) trawl gear.* Midwater trawl gear must have unprotected footropes at the trawl mouth, and must not have rollers, bobbins, tires, wheels, rubber discs, or any similar device anywhere on any part of the net. The footrope of midwater gear may not be enlarged by encircling it with chains or by any other means. Ropes or lines running parallel to the footrope of midwater trawl gear must be bare and may not be suspended with chains or any other materials. Sweep lines, including the bottom leg of the bridle, must be bare. For at least 20 ft (6.15 m) immediately behind the footrope or headrope, bare ropes or mesh of 16-inch (40.6-cm) minimum mesh size must completely encircle the net. A band of mesh (a "skirt") may encircle the net under transfer cables, lifting or splitting straps (chokers), but must be: over riblines and restraining straps; the same mesh size and coincide knot-to-knot with the net to which it is attached; and no wider than 16 meshes.

(c) *Cumulative trip limits and prohibitions by limited entry trawl gear type.* Management measures may vary depending on the type of trawl gear (*i.e.,* large footrope, small footrope, selective flatfish, or midwater trawl gear) used and/or on board a vessel during a fishing trip, cumulative limit period, and the area fished. Trawl nets may be used on and off the seabed. For some species or species groups, Table 1 (North) and Table 1 (South) of this subpart provide cumulative and/or trip limits that are specific to different types of trawl gear: large footrope, small footrope (including selective flatfish), selective flatfish, midwater, and multiple types. If Table 1 (North) and Table 1 (South) of this subpart provide gear specific limits for a particular species or species group, it is unlawful to take and retain, possess or land that species or species group with limited entry trawl gears other than those listed.

(1) *Fishing with large footrope trawl gear.* It is unlawful for any vessel using large footrope gear to fish for groundfish shoreward of the RCAs defined at paragraph (e)(4) of this section and at §§ 660.70 through 660.74, subpart C. The use of large footrope gear is permitted seaward of the RCAs coastwide.

(2) *Fishing with small footrope trawl gear.* North of 40°10′ N. lat., it is unlawful for any vessel using small footrope gear (except selective flatfish gear) to fish for groundfish or have small footrope trawl gear (except selective

flatfish gear) onboard while fishing shoreward of the RCA defined at paragraph (d) of this section and at §§ 660.70 through 660.74, subpart C. South of 40°10′ N. lat., small footrope gear is required shoreward of the RCA. Small footrope gear is permitted seaward of the RCA coastwide.

(i) North of 40°10′ N. lat., selective flatfish gear is required shoreward of the RCA defined at paragraph (d) of this section and at §§ 660.70, through 660.74, subpart C. South of 40°10′N. lat., selective flatfish gear is permitted, but not required, shoreward of the RCA. The use of selective flatfish trawl gear is permitted seaward of the RCA coastwide.

(ii) [Reserved]

(3) *Fishing with midwater trawl gear.* North of 40°10′ N. lat., midwater trawl gear is permitted only for vessels participating in the primary Pacific whiting fishery (for details on the Pacific whiting fishery see § 660.131, subpart D.) South of 40°10′ N. lat., the use of midwater trawl gear is prohibited shoreward of the RCA and permitted seaward of the RCA.

(4) *More than one type of trawl gear on board.* The cumulative trip limits in Table 1 (North) or Table 1 (South) of this subpart must not be exceeded.

(i) The following restrictions apply to vessels operating north of 40°10′ N. lat.:

(A) A vessel may not have both groundfish trawl gear and non-groundfish trawl gear onboard simultaneously. A vessel may not have both bottom trawl gear and midwater trawl gear onboard simultaneously. A vessel may have more than one type of limited entry bottom trawl gear on board, either simultaneously or successively, during a cumulative limit period.

(B) If a vessel fishes exclusively with large or small footrope trawl gear during an entire cumulative limit period, the vessel is subject to the small or large footrope trawl gear cumulative limits and that vessel must fish seaward of the RCA during that limit period.

(C) If a vessel fishes exclusively with selective flatfish trawl gear during an entire cumulative limit period, then the vessel is subject to the selective flatfish trawl gear-cumulative limits during that limit period, regardless of whether the vessel is fishing shoreward or seaward of the RCA.

(D) If more than one type of bottom trawl gear (selective flatfish, large footrope, or small footrope) is on board, either simultaneously or successively, at any time during a cumulative limit period, then the most restrictive cumulative limit associated with the bottom trawl gear on board during that cumulative limit period applies for the entire cumulative limit period, regardless of whether the vessel is fishing shoreward or seaward of the RCA.

(E) If a vessel fishes both north and south of 40°10′ N. lat. with any type of small footrope gear onboard the vessel at any time during the cumulative limit period, the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear (*See* crossover provisions at § 660.120, subpart D.)

(F) Midwater trawl gear is allowed only for vessels participating in the primary whiting season.

(ii) The following restrictions apply to vessels operating south of 40°10′ N. lat.:

(A) A vessel may not have both groundfish trawl gear and non-groundfish trawl gear onboard simultaneously. A vessel may not have both bottom trawl gear and midwater trawl gear onboard simultaneously. A vessel may not have small footrope trawl gear and any other type of bottom trawl gear onboard simultaneously.

(B) For vessels using more than one type of trawl gear during a cumulative limit period, limits are additive up to the largest limit for the type of gear used during that period. (Example: If a vessel harvests 300-lb (136 kg) of chilipepper rockfish with small footrope-gear, it may harvest up to 11,700–lb (5,209 kg) of chilipepper rockfish with large footrope gear during the July and August cumulative period, because the largest cumulative limit for chilipepper rockfish during that period is 12,000–lb (5,443 kg) for large footrope gear.)

(C) If a vessel fishes both north and south of 40°10′ N. lat. with any type of small footrope gear onboard the vessel at any time during the cumulative limit period, the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear (*See* crossover provisions at § 660.120, subpart D.)

(d) *Sorting.* Under § 660.12 (a)(8), subpart C, it is unlawful for any person to "fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY applied." The States of Washington, Oregon, and California may also require that vessels record their landings as sorted on their state landing receipt.

(1) *Coastwide.* Widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, shortbelly rockfish, black rockfish, blue rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, shortspine and longspine thornyhead, Dover sole, arrowtooth flounder, petrale sole, starry flounder, English sole, other flatfish, lingcod, sablefish, Pacific cod, spiny dogfish, other fish, longnose skate, and Pacific whiting;

(2) *North of 40°10′ N. lat.* POP, yellowtail rockfish;

(3) *South of 40°10′ N. lat.* Minor shallow nearshore rockfish, minor deeper nearshore rockfish, California scorpionfish, chilipepper rockfish, bocaccio rockfish, splitnose rockfish, Pacific sanddabs, cowcod, bronzespotted rockfish and cabezon.

(e) *Groundfish conservation areas (GCAs) applicable to trawl vessels.* A GCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude. The latitude and longitude coordinates of the GCA boundaries are specified at §§ 660.70 through 660.74, subpart C. A vessel that is fishing within a GCA listed in this paragraph (d) with trawl gear authorized for use within a GCA may not have any other type of trawl gear on board the vessel. The following GCAs apply to vessels participating in the limited entry trawl fishery. Additional closed areas that specifically apply to the Pacific whiting fisheries are described at § 660.131(c), subpart D.

(1) *Cowcod conservation areas (CCAs).* Vessels using limited entry trawl gear are prohibited from fishing within the CCAs. *See* § 660.70 for the coordinates that define the CCAs. Limited entry trawl vessels may transit through the Western CCA with their gear stowed and groundfish on board only in a corridor through the Western CCA bounded on the north by the latitude line at 33°00.50′ N. lat., and bounded on the south by the latitude line at 32°59.50′ N. lat. It is unlawful to take and retain, possess, or land groundfish within the CCAs, except as authorized in this paragraph, when those waters are open to fishing.

(2) *Farallon islands.* Under California law, commercial fishing for all groundfish is prohibited between the shoreline and the 10 fm (18 m) depth contour around the Farallon Islands. (See § 660.70, subpart C)

(3) *Cordell Banks.* Commercial fishing for groundfish is prohibited in waters of depths less than 100-fm (183-m) around Cordell Banks as defined by specific latitude and longitude coordinates at § 660.70, subpart C.

(4) *Trawl rockfish conservation areas.* The trawl RCAs are closed areas, defined by specific latitude and longitude coordinates which are specified at §§ 660.70 through 660.74, subpart C. Boundaries for the trawl RCAs applicable to groundfish trawl vessels throughout the year are provided in the header to Table 1 (North) and Table 1 (South) of this subpart and may be modified by NMFS inseason pursuant to § 660.60(c), subpart C.

(i) It is unlawful to operate a vessel with trawl gear onboard within the trawl RCA, except for the purpose of continuous transiting, or when the use of trawl gear is authorized in this section. It is lawful to fish with groundfish trawl gear within the trawl RCA only under the following conditions: vessels fishing with midwater trawl gear on Pacific whiting trips during the primary whiting season, provided a valid declaration report has been filed with NMFS OLE, as required at § 660.12(d), subpart C; and vessels fishing with demersal seine gear between 38° N. lat. and 36° N. lat. shoreward of a boundary line approximating the 100 fm (183 m) depth contour as defined at § 660.73, subpart C, provided a valid declaration report has been filed.

(ii) Trawl vessels may transit through an applicable GCA, with or without groundfish on board, provided all groundfish trawl gear is stowed either: below deck; or if the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing; or remaining on deck uncovered if the trawl doors are hung from their stanchions and the net is disconnected from the doors. These restrictions do not apply to vessels fishing with midwater trawl gear for whiting during a primary season.

(iii) It is unlawful to take and retain, possess, or land groundfish taken with limited entry trawl gear within the trawl RCA, unless otherwise authorized in this section.

(iv) If a vessel fishes in the trawl RCA, it may not participate in any fishing on that trip that is prohibited within the trawl RCA. [For example, if a vessel fishes in the pink shrimp fishery within the RCA, the vessel cannot on the same trip fish in the DTS fishery seaward of the RCA.] Nothing in these Federal regulations supersedes any state regulations that may prohibit trawling shoreward of the fishery management area (3–200 nm).

(5) *Essential fish habitat conservation areas.* An EFHCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude at §§ 660.75 through 660.79, subpart C, where specified types of fishing are prohibited in accordance with § 660.12, subpart C. EFHCAs apply to vessels using bottom trawl gear or to vessels using "bottom contact gear," which is defined at § 660.11, subpart C, to include bottom trawl gear, among other gear types.

(i) The following EFHCAs apply to vessels operating within the West Coast EEZ with bottom trawl gear:

(A) *Seaward of a boundary line approximating the 700-fm (1280-m) depth contour.* Fishing with bottom trawl gear is prohibited in waters of depths greater than 700 fm (1280 m) within the EFH, as defined by specific latitude and longitude coordinates at §§ 660.75 and 660.76, subpart C.

(B) *Shoreward of a boundary line approximating the 100-fm (183-m) depth contour.* Fishing with bottom trawl gear with a footrope diameter greater than 8 inches (20 cm) is prohibited in waters shoreward of a boundary line approximating the 100-fm (183-m) depth contour, as defined by specific latitude and longitude coordinates at § 660.73, subpart C.

(C) *EFHCAs for all bottom trawl gear.* Fishing with bottom trawl gear is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at §§ 660.77 through 660.78, subpart C: Olympic 2, Biogenic 1, Biogenic 2, Grays Canyon, Biogenic 3, Astoria Canyon, Nehalem Bank/Shale Pile, Siletz Deepwater, Daisy Bank/Nelson Island, Newport Rockpile/Stonewall Bank, Heceta Bank, Deepwater off Coos Bay, Bandon High Spot, Rogue Canyon.

(D) *EFHCAs for all bottom trawl gear, except demersal seine gear.* Fishing with bottom trawl gear except demersal seine gear (defined at § 660.11, subpart C) is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at § 660.79, subpart C: Eel River Canyon, Blunts Reef, Mendocino Ridge, Delgada Canyon, Tolo Bank, Point Arena North, Point Arena South Biogenic Area, Cordell Bank/Biogenic Area, Farallon Islands/Fanny Shoal, Half Moon Bay, Monterey Bay/Canyon, Point Sur Deep, Big Sur Coast/Port San Luis, East San Lucia Bank, Point Conception, Hidden Reef/Kidney Bank (within Cowcod Conservation Area West), Catalina Island, Potato Bank (within Cowcod Conservation Area West), Cherry Bank (within Cowcod Conservation Area West), and Cowcod EFH Conservation Area East.

(ii) *EFHCAs for bottom contact gear, which includes bottom trawl gear.* Fishing with bottom contact gear, including bottom trawl gear is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at §§ 660.75 through 660.79, subpart C: Thompson Seamount, President Jackson Seamount, Cordell Bank (50 fm (91 m) isobath), Harris Point, Richardson Rock, Scorpion, Painted Cave, Anacapa Island, Carrington Point, Judith Rock, Skunk Point, Footprint, Gull Island, South Point, and Santa Barbara. Fishing with bottom contact gear is also prohibited within the Davidson Seamount EFH Area, which is defined with specific latitude and longitude coordinates at § 660.75, subpart C.

§ 660.131 Pacific whiting fishery management measures.

(a) *Sectors.* In order for a vessel to fish in a particular whiting fishery sector after May 11, 2009, that vessel must be registered for use with a sector-specific Pacific whiting vessel license under § 660.26, subpart C.

(1) The catcher/processor sector is composed of catcher/processors, which are vessels that harvest and process whiting during a calendar year.

(2) The mothership sector is composed of motherships and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, whiting during a calendar year.

(3) The shorebased sector is composed of vessels that harvest whiting for delivery to Pacific whiting shoreside first receivers. Notwithstanding the other provisions of 50 CFR part 660, subpart C or D, a vessel that is 75 feet or less LOA that harvests whiting and, in addition to heading and gutting, cuts the tail off and freezes the whiting, is not considered to be a catcher/processor nor is it considered to be processing fish. Such a vessel is considered a participant in the shorebased whiting sector, and is subject to regulations and allocations for that sector.

(b) *Pacific whiting seasons.*

(1) *Primary seasons.* The primary seasons for the whiting fishery are:

(i) For the shorebased sector, the period(s) when the large-scale target fishery is conducted (when trip limits under paragraph (b) of this section are not in effect);

(ii) For catcher/processors, the period(s) when at-sea processing is allowed and the fishery is open for the catcher/processor sector; and

(iii) For vessels delivering to motherships, the period(s) when at-sea processing is allowed and the fishery is open for the mothership sector.

(2) *Before and after the primary seasons.* Before and after the primary

seasons, trip landing or frequency limits may be imposed under § 660.60(c). The sectors are defined at § 660.60(a).

(3) *Different primary season start dates.* North of 40°30′ N. lat., different starting dates may be established for the catcher/processor sector, the mothership sector, catcher vessels delivering to shoreside processors north of 42° N. lat., and catcher vessels delivering to shoreside processors between 42° N. lat. through 40°30′ N. lat.

(i) *Procedures.* The primary seasons for the whiting fishery north of 40°30′ N. lat. generally will be established according to the procedures of the PCGFMP for developing and implementing harvest specifications and apportionments. The season opening dates remain in effect unless changed, generally with the harvest specifications and management measures.

(ii) *Criteria.* The start of a primary season may be changed based on a recommendation from the Council and consideration of the following factors, if applicable: Size of the harvest guidelines for whiting and bycatch species; age/size structure of the whiting population; expected harvest of bycatch and prohibited species; availability and stock status of prohibited species; expected participation by catchers and processors; environmental conditions; timing of alternate or competing fisheries; industry agreement; fishing or processing rates; and other relevant information.

(iii) *Primary whiting season start dates and duration.* After the start of a primary season for a sector of the whiting fishery, the season remains open for that sector until the quota is taken or a bycatch limit is reached and the fishery season for that sector is closed by NMFS. The starting dates for the primary seasons for the whiting fishery are as follows:

(A) Catcher/processor sector—May 15.

(B) Mothership sector—May 15.

(C) Shorebased sector

(*1*) North of 42° N. lat.—June 15;

(*2*) Between 42°–40°30′ N. lat.—April 1; and

(*3*) South of 40°30′ N. lat.—April 15.

(4) *Trip limits in the whiting fishery.* The "per trip" limit for whiting before and after the regular (primary) season for the shorebased sector is announced in Table 1 of this subpart, and is a routine management measure under § 660.60(c). This trip limit includes any whiting caught shoreward of 100-fm (183-m) in the Eureka, CA area. The "per trip" limit for other groundfish species before, during, and after the regular (primary) season are announced in Table 1 (North) and Table 1 (South) of this subpart and apply as follows:

(i) During the groundfish cumulative limit periods both before and after the primary whiting season, vessels may use either small and/or large footrope gear, but are subject to the more restrictive trip limits for those entire cumulative periods.

(ii) If, during a primary whiting season, a whiting vessel harvests a groundfish species other than whiting for which there is a midwater trip limit, then that vessel may also harvest up to another footrope-specific limit for that species during any cumulative limit period that overlaps the start or end of the primary whiting season.

(5) *Bycatch limits in the whiting fishery.* The bycatch limits for the whiting fishery may be established, adjusted, and used inseason to close a sector or sectors of the whiting fishery to achieve the rebuilding of an overfished or depleted stock. These limits are routine management measures under § 660.60(c), subpart C, and, as such, may be adjusted inseason or may have new species added to the list of those with bycatch limits. Closure of a sector or sectors when a bycatch limit is projected to be reached is an automatic action under § 660.60(d), subpart C.

(i) The whiting fishery bycatch limit is apportioned among the sectors identified in paragraph (a) of this section based on the same percentages used to allocate whiting among the sectors, established in § 660.55(i)(2), subpart C. The sector specific bycatch limits are: For catcher/processors 4.8 mt of canary rockfish, 95 mt of widow rockfish, and 8.5 mt of darkblotched rockfish; for motherships 3.3 mt of canary rockfish, 67 mt of widow rockfish, and 6.0 mt of darkblotched rockfish; and for shorebased 5.9 mt of canary rockfish, 117 mt of widow rockfish, and 10.5 mt of darkblotched rockfish.

(ii) The Regional Administrator may make available for harvest to the other sectors of the whiting fishery identified in § 660.131(a) of this subpart, the amounts of a sector's bycatch limit species remaining when a sector is closed because its whiting allocation or a bycatch limit has been reached or is projected to be reached. The remaining bycatch limit species shall be redistributed in proportion to each sector's initial whiting allocation. When considering redistribution of bycatch limits between the sectors of the whiting fishery, the Regional Administrator will take into consideration the best available data on total projected fishing impacts on the bycatch limit species, as well as impacts on other groundfish species.

(iii) If a bycatch limit is reached or is projected to be reached, the following action, applicable to the sector may be taken.

(A) Catcher/processor sector. Further taking and retaining, receiving, or at-sea processing of whiting by a catcher/processor is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a catcher/processor may continue to process whiting that was on board before at-sea processing was prohibited.

(B) Mothership sector. Further receiving or at-sea processing of whiting by a mothership is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a mothership may continue to process whiting that was on board before at-sea processing was prohibited. Whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the mothership sector.

(C) Shorebased sector. Whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the shorebased sector except as authorized under a trip limit specified under § 660.60(c), subpart C.

(iv) The Regional Administrator will announce in the **Federal Register** when a bycatch limit is reached, or is projected to be reached, specifying the action being taken as specified under paragraph (b)(5) of this section. The Regional Administrator will announce in the **Federal Register** any reapportionment of bycatch limit species. In order to prevent exceeding the bycatch limits or to avoid underutilizing the Pacific whiting resource, prohibitions against further taking and retaining, receiving, or at-sea processing of whiting, or reapportionment of bycatch limits species may be made effective immediately by actual notice to fishers and processors, by e-mail, Internet (*http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Whiting-Management/index.cfm*), phone, fax, letter, press release, and/or USCG Notice to Mariners (monitor channel 16 VHF), followed by publication in the **Federal Register.**

(6) *Pacific whiting allocation attainment and inseason allocation reapportionment.* (i) *Reaching an allocation.* If the whiting harvest guideline, commercial harvest guideline, or a sector's allocation is reached, or is projected to be reached, the following action(s) for the applicable sector(s) may be taken as provided under paragraph (b)(6)(iv) of this section and will remain in effect until

additional amounts are made available the next calendar year or under paragraph (b)(6)(ii) of this section.

(A) *Catcher/processor sector.* Further taking and retaining, receiving, or at-sea processing of whiting by a catcher/processor is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a catcher/processor may continue to process whiting that was on board before at-sea processing was prohibited.

(B) *Mothership sector.* Further receiving or at-sea processing of whiting by a mothership is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a mothership may continue to process whiting that was on board before at-sea processing was prohibited. Whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the mothership sector.

(C) *Shore-based sector coastwide.* Whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the shore-based sector except as authorized under a trip limit specified under § 660.60(c).

(D) *Shore-based south of 42° N. lat.* If 5 percent of the shore-based allocation for whiting is taken and retained south of 42° N. lat. before the primary season for the shore-based sector begins north of 42° N. lat., then a trip limit specified under § 660.60(c) may be implemented south of 42° N. lat. until the northern primary season begins, at which time the southern primary season would resume.

(ii) *Reapportionments.* That portion of a sector's allocation that the Regional Administrator determines will not be used by the end of the fishing year shall be made available for harvest by the other sectors, if needed, in proportion to their initial allocations, on September 15 or as soon as practicable thereafter. NMFS may release whiting again at a later date to ensure full utilization of the resource. Whiting not needed in the fishery authorized under § 660.50 may also be made available.

(iii) *Estimates.* Estimates of the amount of whiting harvested will be based on actual amounts harvested, projections of amounts that will be harvested, or a combination of the two. Estimates of the amount of Pacific whiting that will be used by shore-based processors by the end of the calendar year will be based on the best information available to the Regional Administrator from state catch and landings data, the testimony received at Council meetings, and/or other relevant information.

(iv) *Announcements.* The Regional Administrator will announce in the **Federal Register** when a harvest guideline, commercial harvest guideline, or an allocation of whiting is reached, or is projected to be reached, specifying the appropriate action being taken under paragraph (b)(6)(i) of this section. The Regional Administrator will announce in the **Federal Register** any reapportionment of surplus whiting to others sectors on September 15, or as soon as practicable thereafter. In order to prevent exceeding the limits or to avoid underutilizing the resource, prohibitions against further taking and retaining, receiving, or at-sea processing of whiting, or reapportionment of surplus whiting may be made effective immediately by actual notice to fishers and processors, by e-mail, internet (*http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Whiting-Management/index.cfm*), phone, fax, letter, press release, and/or USCG Notice to Mariners (monitor channel 16 VHF), followed by publication in the **Federal Register**, in which instance public comment will be sought for a reasonable period of time thereafter.

(c) *Closed areas.* Pacific whiting may not be taken and retained in the following portions of the fishery management area:

(1) *Klamath river salmon conservation zone.* The ocean area surrounding the Klamath River mouth bounded on the north by 41°38.80′ N. lat. (approximately 6 nm north of the Klamath River mouth), on the west by 124°23′ W. long. (approximately 12 nm from shore), and on the south by 41°26.80′ N. lat. (approximately 6 nm south of the Klamath River mouth).

(2) *Columbia river salmon conservation zone.* The ocean area surrounding the Columbia River mouth bounded by a line extending for 6 nm due west from North Head along 46°18′ N. lat. to 124°13.30′ W. long., then southerly along a line of 167 True to 46°11.10′ N. lat. and 124°11′ W. long. (Columbia River Buoy), then northeast along Red Buoy Line to the tip of the south jetty.

(3) *Ocean salmon conservation zone.* All waters shoreward of a boundary line approximating the 100 fm (183 m) depth contour. Latitude and longitude coordinates defining the boundary line approximating the 100 fm (183 m) depth contour are provided at § 660.73, subpart C. This closure will be implemented through automatic action, defined at § 660.60(d), subpart C, when NMFS projects the Pacific whiting fishery may take in excess of 11,000 Chinook within a calendar year.

(4) *Pacific whiting bycatch reduction areas (BRAs).* Vessels using limited entry midwater trawl gear during the primary whiting season may be prohibited from fishing shoreward of a boundary line approximating the 75-fm (137-m), 100-fm (183-m) or 150-fm (274-m) depth contours. Latitude and longitude coordinates for the boundary lines approximating the depth contours are provided at § 660.73, subpart C. Closures may be implemented inseason for a sector(s) through automatic action, defined at § 660.60(d), subpart C, when NMFS projects that a sector will exceed a bycatch limit specified for that sector before the sector's whiting allocation is projected to be reached.

(d) *Eureka area trip limits.* Trip landing or frequency limits may be established, modified, or removed under § 660.60, subpart C, or § 660.131, subpart D, specifying the amount of Pacific whiting that may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100 fathom (183 m) contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka area (from 43 00′ to 40 30′ N. lat.). Unless otherwise specified, no more than 10,000-lb (4,536 kg) of whiting may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100 fm (183 m) contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka management area (defined at § 660.11, subpart C).

(e) *At-sea processing.* Whiting may not be processed at sea south of 42°00′ N. lat. (Oregon-California border), unless by a waste-processing vessel as authorized under paragraph (i) of this section.

(f) *Time of day.* Pacific whiting may not be taken and retained by any vessel in the fishery management area south of 42°00′ N. lat. between 0001 hours to one-half hour after official sunrise (local time). During this time south of 42°00′ N. lat., trawl doors must be on board any vessel used to fish for whiting and the trawl must be attached to the trawl doors. Official sunrise is determined, to the nearest 5° lat., in The Nautical Almanac issued annually by the Nautical Almanac Office, U.S. Naval Observatory, and available from the U.S. Government Printing Office.

(g) *Additional restrictions on catcher/processors.* (1) A catcher/processor may receive fish from a catcher vessel, but that catch is counted against the catcher/processor allocation unless the catcher/processor has been declared as

a mothership under paragraph (g)(3) of this section.

(2) A catcher/processor may not also act as a catcher vessel delivering unprocessed whiting to another processor in the same calendar year.

(3) When renewing its limited entry permit each year under § 660.25, subpart C, the owner of a catcher/processor used to take and retain whiting must declare if the vessel will operate solely as a mothership in the whiting fishery during the calendar year to which its limited entry permit applies. Any such declaration is binding on the vessel for the calendar year, even if the permit is transferred during the year, unless it is rescinded in response to a written request from the permit holder. Any request to rescind a declaration must be made by the permit holder and granted in writing by the Regional Administrator before any unprocessed whiting has been taken on board the vessel that calendar year.

(h) *Pacific whiting first receivers.* (1) Pacific whiting shoreside first receivers and processors may receive groundfish species, other than Pacific Whiting, that is in excess of trip limits from a Pacific whiting shoreside vessel that is fishing under an EFP that authorizes the vessel to possess the catch.

(i) *Bycatch reduction and full utilization program for at-sea processors (optional).* If a catcher/processor or mothership in the whiting fishery carries more than one NMFS-approved observer for at least 90 percent of the fishing days during a cumulative trip limit period, then groundfish trip limits may be exceeded without penalty for that cumulative trip limit period, if the conditions in paragraph (h)(2) of this section are met. For purposes of this program, "fishing day" means a 24-hour period, from 0001 hours through 2400 hours, local time, in which fishing gear is retrieved or catch is received by the vessel, and will be determined from the vessel's observer data, if available. Changes to the number of observers required for a vessel to fish under in the bycatch reduction program will be announced prior to the start of the fishery, generally concurrent with the harvest specifications and management measures. Groundfish consumed on board the vessel must be within any applicable trip limit and recorded as retained catch in any applicable logbook or report. [**Note:** For a mothership, non-whiting groundfish landings are limited by the cumulative landings limits of the catcher vessels delivering to that mothership.]

(ii) [Reserved]

(2) *Conditions.* Conditions for participating in the voluntary full utilization program are as follows:

(i) All catch must be made available to the observers for sampling before it is sorted by the crew.

(ii) Any retained catch in excess of cumulative trip limits must either be: Converted to meal, mince, or oil products, which may then be sold; or donated to a bona fide tax-exempt hunger relief organization (including food banks, food bank networks or food bank distributors), and the vessel operator must be able to provide a receipt for the donation of groundfish landed under this program from a tax-exempt hunger relief organization immediately upon the request of an authorized officer.

(iii) No processor or catcher vessel may receive compensation or otherwise benefit from any amount in excess of a cumulative trip limit unless the overage is converted to meal, mince, or oil products. Amounts of fish in excess of cumulative trip limits may only be sold as meal, mince, or oil products.

(iv) The vessel operator must contact the NMFS enforcement office nearest to the place of landing at least 24 hours before landing groundfish in excess of cumulative trip limits for distribution to a hunger relief agency. Cumulative trip limits and a list of NMFS enforcement offices are found on the NMFS, Northwest Region homepage at *http://www.nwr.noaa.gov.*

(v) If the meal plant on board the whiting processing vessel breaks down, then no further overages may be retained for the rest of the cumulative trip limit period unless the overage is donated to a hunger relief organization.

(vi) Prohibited species may not be retained.

(vii) Donation of fish to a hunger relief organization must be noted in the transfer log (Product Transfer/Offloading Log (PTOL)), in the column for total value, by entering a value of "0" or "donation," followed by the name of the hunger relief organization receiving the fish. Any fish or fish product that is retained in excess of trip limits under this rule, whether donated to a hunger relief organization or converted to meal, must be entered separately on the PTOL so that it is distinguishable from fish or fish products that are retained under trip limits. The information on the Mate's Receipt for any fish or fish product in excess of trip limits must be consistent with the information on the PTOL. The Mate's Receipt is an official document that states who takes possession of offloaded fish, and may be a Bill of Lading, Warehouse Receipt, or other official document that tracks the transfer of offloaded fish or fish product. The Mate's Receipt and PTOL must be made available for inspection upon request of an authorized officer throughout the cumulative limit period during which such landings occurred and for 15 days thereafter.

(j) *Processing fish waste at sea.* A vessel that processes only fish waste (a "waste-processing vessel") is not considered a whiting processor and therefore is not subject to the allocations, seasons, or restrictions for catcher/processors or motherships while it operates as a waste-processing vessel. However, no vessel may operate as a waste-processing vessel 48 hours immediately before and after a primary season for whiting in which the vessel operates as a catcher/processor or mothership. A vessel must meet the following conditions to qualify as a waste-processing vessel:

(1) The vessel makes meal (ground dried fish), oil, or minced (ground flesh) product, but does not make, and does not have on board, surimi (fish paste with additives), fillets (meat from the side of the fish, behind the head and in front of the tail), or headed and gutted fish (head and viscera removed).

(2) The amount of whole whiting on board does not exceed the trip limit (if any) allowed under § 660.60(c), subpart C, or Tables 1 (North) or 1 (South) in subpart D.

(3) Any trawl net and doors on board are stowed in a secured and covered manner, and detached from all towing lines, so as to be rendered unusable for fishing.

(4) The vessel does not receive codends containing fish.

(5) The vessel's operations are consistent with applicable state and Federal law, including those governing disposal of fish waste at sea.

(k) *Additional requirements for participants in the Pacific whiting shoreside fisher*y—(1) *Pacific whiting shoreside first receiver responsibilities*—(i) *Weights and measures.* All groundfish weights reported on electronic fish tickets must be recorded from scales with appropriate weighing capacity that ensures accuracy for the amount of fish being weighed. For example: amounts of fish less than 1,000-lb (454 kg) should not be weighed on scales that have an accuracy range of 1,000-lb to 7,000-lb (454—3,175 kg) and are therefore not capable of accurately weighing amounts less than 1,000-lb (454 kg).

(ii) [Reserved]

(2) *Sorting requirements for the Pacific whiting shoreside fishery.* Fish delivered to Pacific whiting shoreside first receivers (including shoreside

processing facilities and buying stations that intend to transport catch for processing elsewhere) must be sorted, prior to first weighing after offloading from the vessel and prior to transport away from the point of landing, to the species groups specified in § 660.60(h)(6), subpart C, for vessels with limited entry permits. Prohibited species must be sorted according to the following species groups: Dungeness crab, Pacific halibut, Chinook salmon, Other salmon. Non-groundfish species must be sorted as required by the state of landing.

§ 660.140 Shorebased IFQ Program.

(a) *General.* The Shorebased IFQ Program requirements in § 660.140 will be effective beginning January 1, 2011, except for paragraphs (d)(4), (d)(6), and (d)(8) of this section, which are effective immediately. The Shorebased IFQ Program applies to qualified participants in the Pacific Coast Groundfish fishery and includes a system of transferable QS for most groundfish species or species groups, IBQ for Pacific halibut, and trip limits or set-asides for the remaining groundfish species or species groups. The IFQ Program is subject to area restrictions (GCAs, RCAs, and EFHCAs) listed at §§ 660.70 through 660.79, subpart C. The Shorebased IFQ Program may be restricted or closed as a result of projected overages within the Shorebased IFQ Program, the MS Coop Program, or the C/P Coop Program. As determined necessary by the Regional Administrator, area restrictions, season closures, or other measures will be used to prevent the trawl sector in aggregate or the individual trawl sectors (Shorebased IFQ, MS Coop, or C/P Coop) from exceeding an OY, or formal allocation specified in the PCGFMP or regulation at § 660.55, subpart C, or §§ 660.140, 660.150, or 660.160, subpart D.

(b) *Participation requirements.* [Reserved]

(1) *QS permit owners.* [Reserved]

(2) *IFQ vessels.* [Reserved]

(c) *IFQ species and allocations.*

(1) *IFQ species.* IFQ species are those groundfish species and Pacific halibut in the exclusive economic zone or adjacent state waters off Washington, Oregon and California, under the jurisdiction of the Pacific Fishery Management Council, for which QS and IBQ will be issued. QS and IBQ will specify designations for the species/species groups and area to which it applies. QS and QP species groupings and area subdivisions will be those for which OYs are specified in the Tables 1a through 2d, subpart C, and those for which there is an area-specific precautionary harvest policy. QS for remaining minor rockfish will be aggregated for the shelf and slope depth strata (nearshore species are excluded). The following are the IFQ species:

IFQ SPECIES

Roundfish
Lingcod.
Pacific cod.
Pacific whiting.
Sablefish north of 36° N. lat.
Sablefish south of 36° N. lat.
Flatfish
Dover sole.
English sole.
Petrale sole.
Arrowtooth flounder.
Starry flounder.
Other Flatfish stock complex.
Pacific halibut (IBQ) north of 40°10′.
Rockfish
Pacific ocean perch.
Widow rockfish.
Canary rockfish.
Chilipepper rockfish.
Bocaccio.
Splitnose rockfish.
Yellowtail rockfish.
Shortspine thornyhead north of 34°27′ N. lat.
Shortspine thornyhead south of 34°27′ N. lat.
Longspine thornyhead north of 34°27′ N. lat.
Cowcod.
Darkblotched.
Yelloweye.
Minor Rockfish North slope species complex.
Minor Rockfish North shelf species complex.
Minor Rockfish South slope species complex.
Minor Rockfish South shelf species complex.

(2) *IFQ program allocations.* Allocations for the Shorebased IFQ Program are determined for IFQ species as follows:

(i) For Pacific whiting, the Shorebased IFQ Program allocation is specified at § 660.55(i)(2), subpart C, 42 percent.

(ii) For Sablefish N. of 36° N. lat., the Shorebased IFQ Program allocation is the limited entry trawl allocation specified at § 660.55(h), subpart C, minus any set-asides for the mothership and C/P sectors for that species.

(iii) For IFQ species listed in the trawl/nontrawl allocation table, specified at § 660.55(c), subpart C, allocations are determined by applying the trawl column percent to the fishery harvest guideline minus any set-asides for the mothership and C/P sectors for that species and minus allocations for darkblotched rockfish, POP, and widow rockfish.

(iv) The remaining IFQ species (canary rockfish, bocaccio, cowcod, yelloweye rockfish, minor shelf rockfish N. of 40°10′ N. lat., and minor shelf rockfish S. of 40°10′ N. lat., and minor slope rockfish S. of 40°10′ N. lat.) are allocated through the biennial specifications and management measures process minus any set-asides for the mothership and C/P sectors for that species.

(v) For Pacific halibut N. of 40°10′ N. lat., the Shorebased IFQ Program allocation is specified at 660.55(m).

(vi) Annual sub-allocations of IFQ species to individual QS permits and QS accounts are based on the percent of QS or IBQ registered to the account and the amount of fish or bycatch mortality allocated to the Shorebased IFQ Program.

(d) *QS permits and QS accounts*—(1) *General.* In order to obtain QS or IBQ, a person must apply for a QS permit. NMFS will determine if the applicant is eligible to acquire QS or IBQ in compliance with the accumulation limits found at paragraph (d)(4) of this section. For those persons that are found to be eligible for a QS permit, NMFS will issue QS or IBQ and establish a QS account. QP or IBQ pounds will be issued annually at the start of the calendar year to a QS account based on the percent of QS or IBQ registered to the account and the amount of fish or bycatch mortality allocated to the Shorebased IFQ Program. QP or IBQ pounds will be issued to the nearest whole pound using standard rounding rules (i.e. decimal amounts from zero up to 0.5 round down and 0.5 up to 1.0 round up), except that issuance of QP for overfished species greater than zero but less than one pound will be rounded up to one pound in the first year of the Shorebased IFQ Program. QS or IBQ owners must transfer their QP or IBQ pounds from their QS account to a vessel account in order for those QP or IBQ pounds to be fished. QP or IBQ pounds must be transferred in whole pounds (i.e. no fraction of a QP or IBQ pound can be transferred). All QP or IBQ pounds in a QS account must be transferred to a vessel account by September 1 of each year.

(2) *Eligibility and registration.* [Reserved]

(3) *Renewal, change of permit ownership, and transfer.* [Reserved]

(4) *Accumulation limits*—(i) *QS and IBQ control limits.* QS and IBQ control limits are accumulation limits and are the amount of QS and IBQ that a person, individually or collectively, may own or control. QS and IBQ control limits are expressed as a percentage of the Shorebased IFQ Program's allocation.

(A) *Control limits for individual species.* No person may own or control, or have a controlling influence over, by

any means whatsoever an amount of QS or IBQ for any individual species that exceeds the Shorebased IFQ Program accumulation limits.

(B) *Control limit for aggregate nonwhiting QS holdings.* To determine how much aggregate nonwhiting QS a person holds, NMFS will convert the person's QS to pounds. This conversion will always be conducted using the trawl allocations applied to the 2010 OYs, until such time as the Council recommends otherwise. Specifically, NMFS will multiply each person's QS for each species by the shoreside trawl allocation for that species. The person's pounds for all nonwhiting species will be summed and divided by the shoreside trawl allocation of all nonwhiting species to calculate the person's share of the aggregate nonwhiting trawl quota. To determine the shoreside trawl allocation for the purpose of determining compliance with the aggregate nonwhiting control limit, for species that have specific trawl allocation percentages in Amendment 21, NMFS will apply the Amendment 21 trawl allocation percentages to (set forth at § 660.55) the 2010 OYs, and where applicable, will deduct the preliminary set-asides for the at-sea sectors from Amendment 21. For species that do not have specific trawl allocation percentages in Amendment 21, NMFS will apply a percentage based on the Northwest Fishery Science Center final report on 2010 estimated total fishing mortality of groundfish by sector, or, if the final report for 2010 is not available, based on the most recent report available.

(C) The Shorebased IFQ Program accumulation limits are as follows:

Species category	QS control limit (percent)
Non-whiting Groundfish Species	2.7
Lingcod—coastwide	2.5
Pacific Cod	12.0
Pacific whiting (shoreside)	10.0
Sablefish:	
N. of 36° (Monterey north)	3.0
S. of 36° (Conception area)	10.0
PACIFIC OCEAN PERCH	4.0
WIDOW ROCKFISH	5.1
CANARY ROCKFISH	4.4
Chilipepper Rockfish	10.0
BOCACCIO	13.2
Splitnose Rockfish	10.0
Yellowtail Rockfish	5.0
Shortspine Thornyhead:	
N. of 34°27′	6.0
S. of 34°27′	6.0
Longspine Thornyhead:	
N. of 34°27′	6.0
COWCOD	17.7
DARKBLOTCHED	4.5
YELLOWEYE	5.7
Minor Rockfish North:	
Shelf Species	5.0
Slope Species	5.0
Minor Rockfish South:	
Shelf Species	9.0
Slope Species	6.0
Dover sole	2.6
English Sole	5.0
Petrale Sole	3.0
Arrowtooth Flounder	10.0
Starry Flounder	10.0
Other Flatfish	10.0
Pacific Halibut (IBQ) N. of 40°10′	5.4

(ii) *Ownership—individual and collective rule.* The QS or IBQ that counts toward a person's accumulation limit will include:

(A) The QS or IBQ owned by that person, and

(B) That portion of the QS or IBQ owned by an entity in which that person has an economic or financial interest, where the person's share of interest in that entity will determine the portion of that entity's QS or IBQ that counts toward the person's limit.

(iii) *Control.* Control means, but is not limited to, the following:

(A) The person has the right to direct, or does direct, in whole or in part, the business of the entity to which the QS or IBQ are registered;

(B) The person has the right to limit the actions of or replace, or does limit the actions of or replace, the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity to which the QS or IBQ are registered;

(C) The person has the right to direct, or does direct, and/or the right to prevent or delay, or does prevent or delay, the transfer of QS or IBQ, or the resulting QP or IBQ pounds;

(D) The person, through loan covenants or any other means, has the right to restrict, or does restrict, and/or has a controlling influence over the day to day business activities or management policies of the entity to which the QS or IBQ are registered;

(E) The person, excluding banks and other financial institutions that rely on QS or IBQ as collateral for loans, through loan covenants or any other means, has the right to restrict, or does restrict, any activity related to QS or IBQ or QP or IBQ pounds, including,

but not limited to, use of QS or IBQ, or the resulting QP or IBQ pounds, or disposition of fish harvested under the resulting QP or IBQ pounds;

(F) The person, excluding banks and other financial institutions that rely on QS or IBQ as collateral for loans, has the right to control, or does control, the management of, or to be a controlling factor in, the entity to which the QS or IBQ, or the resulting QP or IBQ pounds, are registered;

(G) The person, excluding banks and other financial institutions that rely on QS or IBQ as collateral for loans, has the right to cause or prevent, or does cause or prevent, the sale, lease or other disposition of QS or IBQ, or the resulting QP or IBQ pounds; and

(H) The person has the ability through any means whatsoever to control or have a controlling influence over the entity to which QS or IBQ is registered.

(iv) *Trawl identification of ownership interest form.* Any person that owns a limited entry trawl permit and is applying for a QS permit shall document those persons that have an ownership interest in the limited entry trawl or QS permit greater than or equal to 2 percent. This ownership interest must be documented with SFD via the Trawl Identification of Ownership Interest Form. SFD will not issue a QS permit unless the Trawl Identification of Ownership Interest Form has been completed. Further, if SFD discovers through review of the Trawl Identification of Ownership Interest Form that a person owns or controls more than the accumulation limits and is not authorized to do so under paragraph (d)(4)(v) of this section, the person will be notified and the QS permit will be issued up to the accumulation limit specified in the QS or IBQ control limit table from paragraph (d)(4)(i) of this section. NMFS may request additional information of the applicant as necessary to verify compliance with accumulation limits.

(v) *Divestiture.* Accumulation limits will be calculated by first calculating the aggregate nonwhiting QS limit and then the individual species QS or IBQ control limits. For QS permit owners (including any person who has ownership interest in the owner named on the permit) that are found to exceed the accumulation limits during the initial issuance of QS permits, an adjustment period will be provided after which they will have to completely divest of QS or IBQ in excess of the accumulation limits. QS or IBQ will be issued for amounts in excess of accumulation limits only for owners of limited entry permits transferred to them by November 8, 2008, if such transfers of ownership have been registered with NMFS by November 30, 2008. The owner of any permit transferred after November 8, 2008, or if transferred earlier, not registered with NMFS by November 30, 2008, will only be eligible to receive an initial allocation for that permit of those QS or IBQ that are within the accumulation limits; any QS or IBQ in excess of the accumulation limits will be redistributed to the remainder of the initial recipients of QS or IBQ in proportion to each recipient's initial allocation of QS or IBQ for each species. Any person that qualifies for an initial allocation of QS or IBQ in excess of the accumulation limits will be allowed to receive that allocation, but must divest themselves of the excess QS or IBQ during years three and four of the IFQ program. Holders of QS or IBQ in excess of the control limits may receive and use the QP or IBQ pounds associated with that excess, up to the time their divestiture is completed. At the end of year 4 of the IFQ program, any QS or IBQ held by a person (including any person who has ownership interest in the owner named on the permit) in excess of the accumulation limits will be revoked and redistributed to the remainder of the of the QS or IBQ owners in proportion to the QS or IBQ holdings in year 5. No compensation will be due for any revoked shares.

(5) *Appeals.* [Reserved]

(6) *Fees.* The Regional Administrator is authorized to charge fees for administrative costs associated with the issuance of a QS permit consistent with the provisions given at § 660.25(f), subpart C.

(7) [Reserved]

(8) *Application requirements and initial issuance for QS permit and QS/IBQ*—(i) *Additional definitions.* The following definitions are applicable to paragraph (d)(8) of this section and apply to terms used for the purposes of application requirements and initial issuance of QS permits and QS/IBQ:

(A) *Nonwhiting trip* means a fishing trip where less than 50 percent by weight of all fish reported on the state landing receipt is whiting.

(B) *PacFIN* means the Pacific Fisheries Information Network of the Pacific States Marine Fisheries Commission.

(C) *Relative history* means the landings history of a permit for a species, year, and area subdivision, divided by the total fleet history of the sector for that species, year, and area subdivision, as appropriate, or, in the case of shoreside processors, the annual sum of the shoreside processor's whiting receipts divided by the aggregate annual sum of whiting received by all shoreside processors in that year. Relative history is expressed as a percent.

(D) *Shoreside processor* means an operation, working on U.S. soil, that takes delivery of trawl caught groundfish that has not been processed; and that thereafter engages that fish in shoreside processing. Entities that received fish that have not undergone at-sea processing or shoreside processing and sell that fish directly to consumers shall not be considered a processor for purposes of QS allocations. Shoreside processing is defined as either of the following:

(*1*) Any activity that takes place shoreside; and that involves: Cutting groundfish into smaller portions; or freezing, cooking, smoking, drying groundfish; or packaging that groundfish for resale into 100 pound units or smaller for sale or distribution into a wholesale or retail market.

(*2*) The purchase and redistribution in to a wholesale or retail market of live groundfish from a harvesting vessel.

(E) *Whiting trip* means a fishing trip where greater than or equal to 50 percent by weight of all fish reported on the state landing receipt is whiting.

(ii) *Eligibility criteria for QS permit and QS/IBQ.* Only the following persons are eligible to receive a QS permit or QS/IBQ:

(A) The owner of a valid trawl limited entry permit is eligible to receive a QS permit and its associated QS or IBQ amount. Any past landings history associated with the current limited entry trawl permit accrues to the current permit owner. NMFS will not recognize any person as the limited entry permit owner other than the person listed as limited entry permit owner in NMFS permit database. If a limited entry permit has history on state landing receipts and has been combined with a permit that has received or will receive a C/P endorsement, the trawl limited entry permit does not qualify for QS or IBQ.

(B) Shoreside processors that meet the recent participation requirement of having received deliveries of 1 mt or more of whiting from whiting trips in each of any two years from 1998 through 2004 are eligible for an initial issuance of whiting QS. NMFS will initially identify shoreside processors by reference to Pacific whiting shoreside first receivers recorded on fish tickets in the relevant PacFIN dataset on July 1, 2010, subject to correction as described in paragraph (d)(8)(iv)(G) of this section.

(iii) *Steps for QS and IBQ allocation formulas.* The QS and IBQ allocation

formulas are applied in the following steps:

(A) First, for each limited entry trawl permit owner, NMFS will determine a preliminary QS allocation for non-whiting trips.

(B) Second, for each limited entry trawl permit owner, NMFS will determine a preliminary QS allocation for whiting trips.

(C) Third, for each limited entry trawl permit owner, NMFS will combine the amounts resulting from paragraphs (d)(8)(iii)(A) and (B) of this section.

(D) Fourth, NMFS will reduce the results for limited entry trawl permit owners by 10 percent of non-whiting species as a set aside for Adaptive Management Program (AMP) and by 20 percent of whiting for the initial issuance of QS allocated to qualifying shoreside processors.

(E) Fifth, NMFS will determine the whiting QS allocation for qualifying shoreside processors from the 20 percent of whiting QS allocated to qualifying shoreside processors at initial issuance of QS.

(F) Sixth, for each limited entry trawl permit owner, NMFS will determine the Pacific halibut IBQ allocation.

(G) Seventh, for limited entry trawl permits transferred after November 8, 2008, or if transferred earlier, not registered with NMFS by November 30, 2008, for which NMFS determines the owners of such permits would exceed the accumulation limits specified at paragraph (d)(4) of this section based on the previous steps, NMFS will redistribute the excess QS or IBQ to other qualified QS permit owners within the accumulation limits.

(iv) *Allocation formula for specific QS and IBQ amounts*—(A) *Allocation formula rules.* Unless otherwise specified, the following rules will be applied to data for the purpose of calculating an initial allocation of QS and IBQ:

(*1*) For limited entry trawl permit owners, a permit will be assigned catch history or relative history based on the landing history of the vessel(s) associated with the permit at the time the landings were made.

(*2*) The relevant PacFIN dataset includes species compositions based on port sampled data and applied to data at the vessel level.

(*3*) Only landings of IFQ species which are caught in the exclusive economic zone or adjacent state waters off Washington, Oregon and California will be used for calculation of allocation formulas. For the purpose of allocation of IFQ species for which the QS or IBQ will be subdivided by area, catch areas have been assigned to landings of IFQ species reported on state landing receipts based on port of landing.

(*4*) History from limited entry permits that have been combined with a permit that may qualify for a C/P endorsement and which has shorebased permit history will not be included in the preliminary QS and IBQ allocation formula, other than in the determination of fleet history used in the calculation of relative history for permits that do not have a C/P endorsement.

(*5*) History of illegal landings and landings made under non-whiting EFPs that are in excess of the cumulative limits in place for the non-EFP fishery will not count toward the allocation of QS or IBQ.

(*6*) The limited entry permit's landings history includes the landings history of permits that have been previously combined with that permit.

(*7*) If two or more limited entry trawl permits have been simultaneously registered to the same vessel, NMFS will split the landing history evenly between all such limited entry trawl-endorsed permits during the time they were simultaneously registered to the vessel.

(*8*) Unless otherwise noted, the calculation for QS or IBQ allocation under paragraph (d)(8) of this section will be based on state landing receipts (fish tickets) as recorded in the relevant PacFIN dataset on July 1, 2010.

(*9*) For limited entry trawl permits, landings under provisional "A" permits that did not become "A" permits and "B" permits will not count toward the allocation of QS or IBQ, other than in the determination of fleet history used in the calculation of relative history for permits that do not have a C/P endorsement.

(*10*) For limited entry trawl permits, NMFS will calculate initial issuance of QS separately based on whiting trips and non-whiting trips, and will weigh each calculation according to initial issuance allocations between whiting trips and non-whiting trips, which are one-time allocations necessary for the formulas used during the initial issuance of QS to create a single Shorebased IFQ Program. The initial issuance allocations between whiting and non-whiting trips for canary rockfish, bocaccio, cowcod, yelloweye rockfish, minor shelf rockfish N. of 40°10′, minor shelf rockfish S. of 40°10′, and minor slope rockfish S. of 40°10′ will be determined through the biennial specifications process. The initial issuance allocations for the remaining IFQ species are as follows:

Species	Initial issuance allocation percentage	
	Non-whiting	Whiting
Lingcod	99.7%	0.3%
Pacific Cod	99.9%	0.1%
Pacific Whiting	0.1%	99.9%
Sablefish N. of 36° N. lat.	98.2%	1.8%
Sablefish S. of 36° N. lat.	100.0%	0.0%
PACIFIC OCEAN PERCH	remaining	17% or 30 mt, whichever is greater, to shorebased + at-sea whiting. If under rebuilding, 52% to shorebased + at-sea whiting.
WIDOW	remaining	If stock rebuilt, 10% or 500 mt, whichever is greater, to shorebased + at-sea whiting.
Chilipepper S. of 40°10′ N. lat.	100.0%	0.0%
Splitnose S. of 40°10′ N. lat.	100.0%	0.0%
Yellowtail N. of 40°10′ N. lat.	remaining	300 mt.
Shortspine N. of 34°27′ N. lat.	99.9%	0.1%
Shortspine S. of 34°27′ N. lat.	100.0%	0.0%
Longspine N. of 34°27′ N. lat.	100.0%	0.0%
DARKBLOTCHED	remaining	9% or 25 mt, whichever is greater, to shorebased + at-sea whiting.
Minor Slope Rockfish N. of 40°10′ N. lat	98.6%	1.4%
Dover Sole	100.0%	0.0%
English Sole	99.9%	0.1%

Species	Initial issuance allocation percentage	
	Non-whiting	Whiting
Petrale Sole	100.0%	0.0%
Arrowtooth Flounder	100.0%	0.0%
Starry Flounder	100.0%	0.0%
Other Flatfish	99.9%	0.1%

(B) *Preliminary QS allocation for nonwhiting trips.* NMFS will calculate the non-whiting preliminary QS allocation differently for different species groups, Groups 1 through 3.

(*1*) *Allocation formula species groups.* For the purposes of preliminary QS allocation, IFQ species will be grouped as follows:

(*i*) Group 1 includes lingcod, Pacific cod, Pacific whiting, sablefish north of 36° N. lat., sablefish south of 36° N. lat., Dover sole, English sole, petrale sole, arrowtooth flounder, starry flounder, other flatfish stock complex, chilipepper rockfish, splitnose rockfish, yellowtail rockfish, shortspine thornyhead north of 34°27′ N. lat., shortspine thornyhead south of 34°27′ N. lat., longspine thornyhead north of 34°27′ N. lat., minor rockfish north slope species complex, minor rockfish south slope species complex, minor rockfish north shelf species complex, and minor rockfish south shelf species complex.

(*ii*) Group 2 includes bocaccio, cowcod, darkblotched rockfish, Pacific ocean perch, widow rockfish, and yelloweye rockfish.

(*iii*) Group 3 includes canary rockfish.

(*2*) *Group 1 species:* The preliminary QS allocation process indicated in paragraph (d)(8)(iii)(A) of this section for Group 1 species follows a two-step process, one to allocate a pool of QS equally among all eligible limited entry permits and the other to allocate the remainder of the preliminary QS based on permit history. Through these two processes, preliminary QS totaling 100 percent for each Group 1 species will be allocated. In later steps this amount will be adjusted and reduced as indicated in paragraph (d)(8)(iii)(C) and (D), to determine the QS allocation.

(*i*) *QS to be allocated equally.* The pool of QS for equal allocation will be determined using the landings history from Federal limited entry groundfish permits that were retired through the Federal buyback program (*i.e.,* buyback permit) (70 FR 45695, August 8, 2005). The QS pool associated with the buyback permits will be the buyback permit history as a percent of the total fleet history for the allocation period. The calculation will be based on total absolute pounds with no dropped years and no other adjustments. The QS pool will be divided equally among qualifying limited entry permits for all QS species/species groups and areas in Group 1.

(*ii*) *QS to be allocated based on each permit's history.* The pool for QS allocation based on limited entry trawl permit history will be the QS remaining after subtracting out the QS allocated equally. This pool will be allocated to each qualifying limited entry trawl permit based on the permit's relative history from 1994 through 2003. For each limited entry trawl permit, NMFS will calculate a set of relative histories using the following methodology. First, NMFS will sum the permit's landings by each year for each Group 1 species/species group and area subdivision. Second, NMFS will divide each permit's annual sum for a particular species/species group and area subdivision by the shoreside limited entry trawl fleet's annual sum for the same species/species group and area subdivision. NMFS will then calculate a total relative history for each permit by species/species group and area subdivision by adding all relative histories for the permit together and subtracting the three years with the lowest relative history for the permit. The result for each permit by species/species group and areas subdivision will be divided by the aggregate sum of all total relative histories of all qualifying limited entry trawl permits for that species/species group and area subdivision. NMFS will then multiply the result from this calculation by the amount of QS in the pool to be allocated based on each permit's history.

(*3*) *Group 2 species:* The preliminary QS allocation step indicated in paragraph (d)(8)(iii)(A) of this section will be calculated for each limited entry trawl permit using a formula based on QS allocations for each limited entry trawl permit for 11 target species, areas of distribution of fishing effort as determined from 2003–2006 target species catch data from the PacFIN Coastwide Trawl Logbook Database, average bycatch ratios for each area as derived from West Coast Groundfish Observer Program (WCGOP) data from 2003 through 2006, and the non-whiting initial issuance allocation of the limited entry trawl allocation amounts for 2011 for each of the 11 target species. These data are used in a series of sequential steps to estimate the allocation of Group 2 species to each limited entry trawl permit. Paragraphs (d)(8)(iv)(B)(*3*)(*iii*) to (*vi*) of this section estimate the permit's total 2003–2006 target species by area. Paragraphs (d)(8)(iv)(B)(*3*)(*vii*) to (*xii*) of this section project Group 2 species bycatch amounts using 2003–2006 WCGOP observer ratios and the initial issuance allocation applied to the 2011 limited entry trawl allocation. Paragraphs (d)(8)(iv)(B)(*3*)(*xiv*) to (*xvii*) of this section convert these amounts into QS. As with Group 1 species, preliminary QS totaling 100 percent for each Group 2 species unit will be allocated and the amount of the allocations will be adjusted and reduced as indicated in paragraph (d)(8)(iii)(C) and (D) of this section to determine the QS allocation.

(*i*) The 11 target species are arrowtooth flounder, starry flounder, other flatfish, Dover sole, English sole, petrale sole, minor slope rockfish, shortspine thornyheads, longspine thornyheads, sablefish, and Pacific cod.

(*ii*) The 8 areas of distribution of fishing effort are defined latitudinally and by depth. The latitudinal areas are (a) north of 47°40 N. lat.; (b) between 47°40 N. lat. and 43°55′ N. lat.; (c) 43°55′ N. lat. and 40°10′ N. lat.; and (d) south of 40°10′ N. lat. Each latitudinal area is further divided by depth into areas shoreward and seaward of the trawl Rockfish Conservation Area as defined at § 660.130(e)(4) of this subpart.

(*iii*) For each limited entry trawl permit, NMFS will review the permit logbook data for that permit and sum target species catch recorded for the years 2003–2006, resulting in total target species catch in each area for each permit for the years 2003 through 2006 for all 11 target species in aggregate.

(*iv*) For each limited entry trawl permit, NMFS will also sum target species catch by area into total coastwide target species catch for each permit for the years 2003 through 2006 for all 11 target species in aggregate. For practicability, seaward or shoreward of the RCA as identified in the logbook data is defined as being deeper than or shallower than 115 fathoms, respectively.

(*v*) For each limited entry trawl permit, NMFS will divide logbook aggregate target species catch in each area (paragraph (d)(8)(iv)(B)(*3*)(*iii*) of this section) by the permit's total coastwide target species catch (paragraph (d)(8)(iv)(B)(*3*)(*iv*) of this section) to create a set of 8 area catch ratios for each permit. (Note: The sum of all area catch ratios equals 1 for each permit).

(*vi*) For limited entry trawl permits where the vessel registered to the permit did not submit logbooks showing any catch of the 11 target species for any of the years 2003 through 2006, NMFS will use the following formula to calculate area target catch ratios: (a) NMFS will sum by area all limited entry trawl permits' total logbook area target catches from paragraph (d)(8)(iv)(B)(*3*)(*iii*) of this section, (b) NMFS will sum coastwide all limited entry trawl permits' total logbook target catches across all areas from paragraph (d)(8)(iv)(B)(*3*)(*iv*) of this section, and (c) NMFS will divide these sums (i.e., a/b) to create average permit logbook area target catch ratios.

(*vii*) NMFS will calculate the 2011 non-whiting short term allocation amount for each of the 11 target species by multiplying the limited entry trawl allocation amounts for 2011 for each by the corresponding initial issuance allocation percentage for the non-whiting sector given in paragraph (d)(8)(iii)(A)(*10*) of this section or determined through the biennial specifications process, as applicable.

(*viii*) For each limited entry trawl permit, NMFS will obtain the percentage of the limited entry trawl permit initial QS allocation for each of the 11 target species resulting from paragraph (d)(8)(iv)(B)(*2*) of this section.

(*ix*) NMFS will calculate each limited entry trawl permit's projected non-whiting sector quota pounds for 2011 by multiplying the 2011 non-whiting sector initial issuance allocation amounts for each of the 11 target species from paragraph (d)(8)(iv)(B)(*3*)(*vii*) of this section by each permit's target species QS allocation percentage from paragraph (d)(8)(iv)(B)(*3*)(*viii*) of this section.

(*x*) For each limited entry trawl permit, NMFS will sum the projected quota pounds for the 11 target species from paragraph (d)(8)(iv)(B)(*3*)(*ix*) of this section to get a total projected weight of all 11 target species for the limited entry trawl permit.

(*xi*) For each limited entry trawl permit, NMFS will estimate the permit's total incidental catch of Group 2 species by area by multiplying the projected 2011 total weight of all 11 target species by the applicable area catch ratio for each area as calculated in either paragraph (d)(8)(iv)(B)(*3*)(*v*) of this section (permits with logbook data) or paragraph (d)(8)(iv)(B)(*3*)(*vi*) of this section (permits without logbook data).

(*xii*) NMFS will apply WCGOP average bycatch ratios for each Group 2 species (observed Group 2 species catch/total target species catch) by area. The WCGOP average bycatch ratios are as follows:

Area	Shoreward	Seaward
Bocaccio		
N. of 47°40′ N. lat.	.....	.....
43°55′ N. lat. to 47°40′ N. lat.	.....	.....
40°10′ N. lat. to 43°55′ N. lat.	.....	.....
S. of 40°10′ N. lat.	0.019013759	0.001794203
Cowcod		
N. of 47°40′ N. lat.	.....	.....
43°55′ N. lat. to 47°40′ N. lat.	.....	.....
40°10′ N. lat. to 43°55′ N. lat.	.....	.....
S. of 40°10′ N. lat.	0.001285088	0.000050510
Darkblotched		
N. of 47°40′ N. lat.	0.001560461	0.009950330
43°55′ N. lat. to 47°40′ N. lat.	0.002238054	0.018835786
40°10′ N. lat. to 43°55′ N. lat.	0.002184788	0.015025697
S. of 40°10′ N. lat.	0.000006951	0.004783988
Pacific ocean perch		
N. of 47°40′ N. lat.	0.001069954	0.019848047
43°55′ N. lat. to 47°40′ N. lat.	0.000110802	0.015831815
40°10′ N. lat. to 43°55′ N. lat.	0.000148715	0.001367645
S. of 40°10′ N. lat.	.....	.....
Widow		
N. of 47°40′ N. lat.	0.000132332	0.000065291
43°55′ N. lat. to 47°40′ N. lat.	0.000387346	0.000755163
40°10′ N. lat. to 43°55′ N. lat.	0.000175128	0.000008118
S. of 40°10′ N. lat.	0.001049485	0.000676828
Yelloweye		
N. of 47°40′ N. lat.	0.000334697	0.000006363
43°55′ N. lat. to 47°40′ N. lat.	0.000083951	0.000010980
40°10′ N. lat. to 43°55′ N. lat.	0.000128942	0.000006300
S. of 40°10′ N. lat.	0.000094029	.....

(*xiii*) For each limited entry trawl permit, NMFS will calculate projected Group 2 species amounts by area by multiplying the limited entry trawl permit's projected 2011 total weight of all target species by area from paragraph (d)(8)(iv)(B)(*3*)(*xi*) of this section by the applicable average bycatch ratio for each Group 2 species and corresponding area of paragraph (d)(8)(iv)(B)(*3*)(*xii*) of this section.

(*xiv*) For each limited entry trawl permit, NMFS will sum all area amounts for each Group 2 species from paragraph (d)(8)(iv)(B)(*3*)(*xiii*) of this section to calculate the total projected amounts of each Group 2 species for each limited entry trawl permit.

(*xv*) NMFS will sum all limited entry trawl permits' projected Group 2 species amounts from paragraph (d)(8)(iv)(B)(*3*)(*xiv*) of this section to calculate coastwide total projected amounts for each Group 2 species.

(*xvi*) NMFS will estimate preliminary QS for each limited entry trawl permit for each Group 2 species by dividing each limited entry trawl permit's total projected amount of each Group 2 species from paragraph (d)(8)(iv)(B)(*3*)(*xiv*) of this section by the coastwide total projected amount for that species from paragraph (d)(8)(iv)(B)(*3*)(*xv*) of this section.

(*4*) *Group 3 Species:* (*i*) The preliminary QS allocation step indicated in paragraph (d)(8)(iii)(A) of this section will be performed in two calculations that result in the division of preliminary QS allocation into two pools, one to allocate QS equally among all eligible limited entry permits, using the approach identified for Group 1 species in paragraph (d)(8)(iv)(B)(*2*)(*i*) of this section, and the other to allocate QS using a formula based on QS allocations for target species and areas fished, using the approach identified for Group 2 species in paragraph (d)(8)(iv)(B)(*3*) of this section, using the following WCGOP average bycatch rates:

CANARY

Area	Shoreward	Seaward
N. of 47°40′ N. lat.	0.008041898	0.000030522
43°55′ N. lat. to 47°40′ N. lat.	0.003081830	0.000142136
40°10′ N. lat. to 43°55′ N. lat.	0.008716148	0.000021431
S. of 40°10′ N. lat.	0.001581194	0.000009132

(*ii*) Through these two processes, preliminary QS totaling 100 percent for each species will be allocated. In later steps, this amount will be adjusted and reduced as indicated in paragraphs (d)(8)(iii)(C) and (D) of this section to determine the QS allocation. In combining the two QS pools for each permit, the equal allocation portion is weighted according to the process in paragraph (d)(8)(iv)(B)(*2*)(*i*) of this section, and the portion calculated based on allocations for target species and areas fished is weighted according to the process in (d)(8)(iv)(B)(*2*)(*ii*) of this section.

(C) *Preliminary QS allocation for whiting trips.* The preliminary QS allocation based on whiting trips as indicated in paragraph (d)(8)(iii)(B) of this section for limited entry trawl permits follows a two step process, one to allocate a pool of QS equally among all eligible limited entry permits and the other to allocate the remainder of the preliminary QS based on permit history. Through these two processes, preliminary QS totaling 100 percent for each species will be allocated. In later steps, this amount will be adjusted and reduced, as indicated in paragraphs (d)(8)(iii)(C) and (D) of this section, to determine the QS allocation.

(*1*) *QS to be allocated equally.* The pool of QS for equal allocation will be determined using the whiting trip landings history from Federal limited entry groundfish permits that were retired through the Federal buyback program (*i.e.,* buyback permit) (70 FR 45695, August 8, 2005). For each species, the whiting trip QS pool associated with the buyback permits will be the buyback permit history as a percent of the total fleet history for the allocation period. The calculation will be based on total absolute pounds with no dropped years and no other adjustments. The whiting trip QS pool associated with the buyback permits will be divided equally among all qualifying limited entry permits for each species.

(*2*) *QS to be allocated based on each permit's history.* The pool for QS allocation based on each limited entry trawl permit's history will be the QS remaining after subtracting out the QS associated with the buyback permits allocated equally.

(*i*) *Whiting QS allocated based on each permit's history.* Whiting QS based on each limited entry trawl permit's history will be allocated based on the permit's relative history from 1994 through 2003. For each limited entry trawl permit, NMFS will calculate a whiting relative history for each qualifying year, as follows. First, NMFS will sum the permit's history of landings of whiting from whiting trips for each year. Second, NMFS will divide each permit's annual sum of whiting from whiting trips by the shoreside limited entry trawl fleet's annual sum of whiting. NMFS will then calculate a total relative history for each permit by adding all relative histories for the permit together and subtracting the two years with the lowest relative history. NMFS will then divide the result for each permit by the total relative history for whiting of all qualifying limited entry trawl permits. The result from this calculation will then be multiplied by the amount of whiting QS in the pool to be allocated based on each permit's history.

(*ii*) *Other incidentally caught species QS allocation for eligible limited entry trawl permit owners.* Other incidentally caught species from the QS remaining after subtracting out the QS associated with the buyback permits will be allocated pro-rata based on each limited entry trawl permit's whiting QS from whiting trips. Pro-rata means a percent that is equal to the percent of whiting QS.

(D) *QS from limited entry permits calculated separately for non-whiting trips and whiting trips.* NMFS will calculate the portion of QS for each species which a permit receives based on non-whiting trips and whiting trips separately and will weight each preliminary QS in proportion to the initial issuance allocation percentage between whiting trips and non-whiting trips for that species in paragraph (d)(8)(iv)(A)(*10*) of this section or determined through the biennial specifications process, as applicable.

(*1*) *Nonwhiting trips.* To determine the amount of QS of each species for non-whiting trips for each limited entry trawl permit, NMFS will multiply the preliminary QS for the permit from paragraph (d)(8)(iii)(A) of this section for each species by the initial issuance

allocation percentage for that species for non-whiting trips.

(*2*) *Whiting trips.* To determine the amount of QS of each species for whiting trips for each limited entry trawl permit, NMFS will multiply the preliminary QS from paragraph (d)(8)(iii)(B) of this section for each species by the initial issuance allocation percentage for that species for whiting trips.

(E) *QS for each limited entry trawl permit.* For each limited entry trawl permit, NMFS will add the results for the permit from paragraphs (d)(8)(iv)(D)(*1*) and (D)(*2*) of this section in order to determine the total QS for each species on that permit.

(F) *Adjustment for AMP set-aside and shoreside processor initial issuance allocations.* NMFS will reduce the non-whiting QS allocation to each limited entry trawl permit by 10 percent, for a QS set-aside to AMP. NMFS will reduce the whiting QS allocation to each limited entry trawl permit by 20 percent for the initial QS allocation to shoreside processors.

(G) *Allocation of initial issuance of whiting QS for shoreside processors.* NMFS will calculate the amount of whiting QS available to shoreside processors from the 20 percent adjustment of whiting QS allocations in paragraph (d)(8)(iv)(F) of this section. For each eligible shoreside processor, whiting QS will be allocated based on the eligible shoreside processor's relative history from 1998 through 2004. Only the deliveries for which the shoreside processor is the first processor of the fish will be used in the calculation of whiting relative history.

(*1*) For each shoreside processor which has received deliveries of at least 1 mt of whiting from whiting trips in each of any two years from 1998 through 2004, NMFS will calculate a whiting relative history for each qualifying year, as follows. First, NMFS will sum the shoreside processor's receipts of whiting for each year. Second, NMFS will calculate the relative history for each year by dividing each shoreside processor's annual sum of whiting receipts by the aggregate annual sum of whiting received by all shoreside processors in that year. NMFS will then calculate a total relative history for each shoreside processor by adding all relative histories for the shoreside processor together and subtracting the two years with the lowest relative history. NMFS will then divide the result for each shoreside processor by the aggregate sum of all total relative histories for whiting by all qualifying shoreside processors. The result from this calculation will then be multiplied by 20 percent to determine the shoreside processor's whiting QS.

(*2*) For purposes of making an initial issuance of whiting QS to a shoreside processor, NMFS will attribute landing history to the Pacific whiting shoreside first receiver reported on the landing receipt (the entity responsible for filling out the state landing receipt) as recorded in the relevant PacFIN dataset on July 1, 2010. History may be reassigned to a shoreside processor not on the state landings receipt as described at paragraph (d)(8)(vi)(B) of this section.

(H) *Allocation of Pacific halibut IBQ for each limited entry trawl permit.* For each eligible limited entry trawl permit owner, NMFS will calculate Pacific halibut individual bycatch quota (IBQ) for the area north of 40°10′ N. lat. using a formula based on (a) QS allocations for each limited entry trawl permit for two target species, (b) areas of distribution of fishing effort as determined from 2003–2006 target species catch data from the PacFIN Coastwide Trawl Logbook Database, (c) average bycatch ratios for each area as derived from WCGOP data from 2003 through 2006, and (d) the non-whiting initial issuance allocation of the limited entry trawl allocation amounts for 2011 for arrowtooth and petrale sole. These data are used in a series of sequential steps to determine the allocation of IBQ to each limited entry trawl permit. Paragraphs (d)(8)(iv)(H)(*3*) to (*6*) of this section estimate the permit's total 2003–2006 target species by area. Paragraphs (d)(8)(iv)(H)(*7*) to (*13*) of this section project Pacific halibut bycatch amounts using 2003–2006 WCGOP observer ratios and the 2011 non-whiting initial issuance allocation of the limited entry trawl allocation amounts. Paragraphs (d)(8)(iv)(H)(*14*) to (*16*) of this section convert these amounts into QS.

(*1*) The target species are arrowtooth flounder and petrale sole.

(*2*) The four bycatch areas are defined latitudinally and by depth. The latitudinal areas are (a) north of 47°30′ N. lat., and (b) between 40°10′ N. lat. and 47°30′ N. lat. Each latitudinal area is further divided by depth into areas shoreward and seaward of the trawl Rockfish Conservation Area as defined at § 660.130(e)(4), subpart D.

(*3*) For each limited entry trawl permit, NMFS will review the permit logbook data for that permit and sum target species catch recorded for the years 2003–2006, resulting in total target species catch in each of the four areas for each permit for the years 2003 through 2006 for both target species in aggregate. For practicability, seaward or shoreward of the RCA as identified in the logbook data is defined as being deeper than or shallower than 115 fathoms, respectively.

(*4*) For each limited entry trawl permit, NMFS will also sum the target species catch by area into total aggregate target species catch for each permit for the years 2003 through 2006.

(*5*) For each limited entry trawl permit, NMFS will divide logbook aggregate target species catch in each area (paragraph (d)(8)(iv)(H)(*3*) of this section) by the sum of the permit's catch of each target species in all four bycatch areas (paragraph (d)(8)(iv)(H)(*4*) of this section) to create a set of area catch ratios for each permit. (Note: The sum of all four area catch ratios in aggregate equals 1 for each permit).

(*6*) For limited entry trawl permits where the vessel registered to the permit did not submit logbooks showing any catch of either of the two target species for any of the years 2003 through 2006, NMFS will use the following formula to calculate area target catch ratios: NMFS will sum by area all limited entry trawl permits' total logbook area target catches from paragraph (d)(8)(iv)(H)(*3*) of this section, and sum all limited entry trawl permits' total logbook target catches across all four areas from paragraph (d)(8)(iv)(H)(*4*) of this section; and divide these sums to create average permit logbook area target catch ratios.

(*7*) NMFS will calculate the 2011 non-whiting initial issuance allocation amount for each of the two target species by multiplying the limited entry trawl allocation amounts for 2011 for each by the corresponding initial issuance allocation percentage for the non-whiting sector given in paragraph (d)(8)(iv)(A)(*10*) of this section.

(*8*) For each limited entry trawl permit, NMFS will obtain the non-whiting portion of each limited entry trawl permit's initial QS allocations for each of the two target species resulting from paragraph (d)(8)(iv)(B)(*2*) of this section.

(*9*) NMFS will calculate each limited entry trawl permit's projected non-whiting sector quota pounds for the two target species for 2011 by multiplying the 2011 non-whiting sector short term allocation amounts for each of the target species by the permit's QS allocation percentage for the species from paragraph (d)(8)(iv)(H)(*8*) of this section.

(*10*) For each limited entry trawl permit, NMFS will sum the projected quota pounds for the two target species from paragraph (d)(8)(iv)(H)(*9*) of this section to get a total projected weight of the two target species for the limited entry trawl permit.

(*11*) For each limited entry trawl permit, NMFS will multiply the

projected 2011 total weight of the two target species by the applicable area catch ratio for each area as calculated in either paragraph (d)(8)(iv)(H)(*5*) of this section (permits with logbook data) or paragraph (d)(8)(iv)(H)(*6*) of this section (permits without logbook data).

(*12*) NMFS will apply WCGOP average halibut bycatch ratios (observed halibut catch/total of two target species catch) by area. The WCGOP average halibut bycatch ratios are as follows:

PACIFIC HALIBUT

Area	Shoreward	Seaward
N. of 47°30′ N. lat.	0.225737162	0.084214162
40°10′ N. lat. to 47°30′ N. lat.	0.086250913	0.033887839

(*13*) For each limited entry trawl permit, NMFS will calculate projected Pacific halibut amounts by area by multiplying the limited entry trawl permit's projected 2011 total weight of the two target species by area from paragraph (d)(8)(iv)(H)(*11*) of this section by the average bycatch ratio for the corresponding area of paragraph (d)(8)(iv)(H)(*12*) of this section.

(*14*) For each limited entry trawl permit, NMFS will sum all area amounts from paragraph (d)(8)(iv)(H)(*13*) of this section to calculate the total projected Pacific halibut amount for each limited entry trawl permit.

(*15*) NMFS will sum all limited entry trawl permits' projected Pacific halibut amounts from paragraph (d)(8)(iv)(H)(*14*) of this section to calculate aggregate total amounts of Pacific halibut.

(*16*) NMFS will estimate preliminary Pacific halibut IBQ for each limited entry trawl permit by dividing each limited entry trawl permit's total projected Pacific halibut amount from paragraph (d)(8)(iv)(H)(*14*) of this section by the aggregate total amounts of Pacific halibut from paragraph (d)(8)(iv)(H)(*15*) of this section.

(l) *Redistribution of QS and IBQ.* For each limited entry trawl permit transferred after November 8, 2008, or if transferred earlier, not registered with NMFS by November 30, 2008, for which NMFS determines that the owner of such permit would exceed the accumulation limits specified at paragraph (d)(4)(i) of this section based on calculation of the preceding allocation formulas for all limited entry trawl permits owned by such owner using the individual and collective rule described at § 660.140(d)(4)(ii), NMFS will redistribute the excess QS or IBQ to other qualified QS permit owners within the accumulation limits.

(v) *QS application.* Persons may apply for an initial issuance of QS and IBQ and a QS permit in one of two ways: Complete and submit a prequalified application received from NMFS, or complete and submit an application package. The completed application must be either postmarked or hand-delivered within normal business hours no later than November 1, 2010. If an applicant fails to submit a completed application by the deadline date, they forgo the opportunity to receive consideration for initial issuance of QS and IBQ and a QS permit.

(A) *Prequalified application.* A "prequalified application" is a partially pre-filled application where NMFS has preliminarily determined the landings history that may qualify the applicant for an initial issuance of QS and IBQ. The application package will include a prequalified application (with landings history), a Trawl Identification of Ownership Interest form, and any other documents NMFS believes are necessary to aid the limited entry permit owner in completing the QS application.

(*1*) For current trawl limited entry permit owners, NMFS will mail a prequalified application to all owners, as listed in the NMFS permit database at the time applications are mailed, that NMFS determines may qualify for QS or IBQ. NMFS will mail the application by certified mail to the current address of record in the NMFS permit database. The application will contain the basis of NMFS' calculation of the permit owner's QS and IBQ for each species/species group or area.

(*2*) For shoreside processors, NMFS will mail a prequalified application to those Pacific whiting shoreside first receivers with receipts of 1 mt or more of whiting from whiting trips in each of any two years from 1998 through 2004, as documented on fish tickets in the relevant PacFIN dataset on July 1, 2010. NMFS will mail the prequalified application by certified mail to the current address of record given by the state in which the entity is registered. For all qualified entities who meet the eligibility requirement at paragraph (d)(8)(ii)(B) of this section, the application will provide the basis of NMFS' calculation of the initial issuance of Pacific whiting QS.

(B) *Request for an application.* An owner of a current limited entry trawl permit or a Pacific whiting first receiver or shoreside processor that believes it is qualified for an initial issuance of QS and IBQ and does not receive a prequalified application, must complete an application package and submit the completed application to NMFS by the application deadline. Application packages are available on NMFS' Web site (*http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm*) or by contacting SFD. An application must include valid PacFIN data or other credible information that substantiates the applicant's qualification for an initial issuance of QS and IBQ.

(vi) *Corrections to the application.* If an applicant does not accept NMFS' calculation in the prequalified application either in part or whole, the applicant must identify in writing to NMFS which parts the applicant believes to be inaccurate, and must provide specific credible information to substantiate any requested corrections. The completed application and specific credible information must be provided to NMFS in writing by the application deadline. Written communication must either be post-marked or hand-delivered within normal business hours no later than November 1, 2010. Requests for corrections may only be granted for the following reasons:

(A) Errors in NMFS' use or application of data, including:

(*1*) Errors in NMFS' use or application of landings data from PacFIN;

(*2*) Errors in NMFS' use or application of state logbook data from PacFIN;

(*3*) Errors in NMFS' application of the QS or IBQ allocation formula;

(*4*) Errors in identification of the permit owner, permit combinations, or vessel registration as listed in NMFS permit database;

(*5*) Errors in identification of ownership information for the first receiver or the processor that first processed the fish; and

(*6*) Errors in NMFS' use or application of ownership interest information.

(B) *Reassignment of Pacific whiting landings history for shoreside*

processors. For shoreside processors, the landing history may be reassigned from the Pacific whiting shoreside first receive identified in the relevant PacFIN database to a shoreside processor that was in fact the first processor of the fish. In order for an applicant to request that landing history be reassigned, an authorized representative for the Pacific whiting shoreside first receiver identified on the state landing receipt must submit, by the application deadline date specified in paragraph (d)(8)(vii)(B) of this section for initial issuance of QS, a written request that the whiting landings history from the qualifying years be conveyed to a shoreside processor. The letter must be signed and dated by the authorized representative of the Pacific whiting shoreside first receiver named on the state landing receipt and signed and dated by the authorized representative of the shoreside processor to which the Pacific whiting landing history is requested to be reassigned. The letter must identify the dates of the landings history and the associated amounts that are requested to be reassigned, and include the legal name of the shoreside processor to which the Pacific whiting landing history is requested to be reassigned, their date of birth or tax identification number, business address, business phone number, fax number, and e-mail address. If any document exists that demonstrates that the shoreside processor to which the Pacific whiting landing history is requested to be reassigned was in fact the first processor of the fish, such documentation must be provided to NMFS. NMFS will review the information submitted and will make a determination as part of the IAD.

(vii) *Submission of the application and application deadline*—(A) *Submission of the application.* Submission of the complete, certified application includes, but is not limited to, the following:

(*1*) The applicant is required to sign and date the application and have the document notarized by a licensed Notary Public.

(*2*) The applicant must certify that they qualify to own QS and IBQ.

(*3*) The applicant must indicate they accept NMFS' calculation of initial issuance of QS and IBQ provided in the prequalified application, or provide credible information that demonstrates their qualification for QS and IBQ.

(*4*) The applicant is required to provide a complete Trawl Identification of Ownership Interest Form as specified at paragraph (d)(4)(iv) of this section.

(*5*) Business entities may be required to submit a corporate resolution or other credible documentation as proof that the representative of the entity is authorized to act on behalf of the entity; and

(*6*) NMFS may request additional information of the applicant as necessary to make an IAD on initial issuance of QS or IBQ.

(B) *Application deadline.* A complete, certified application must be either postmarked or hand-delivered within normal business hours to NMFS, Northwest Region, Permits Office, Bldg. 1, 7600 Sand Point Way, NE., Seattle, WA 98115, no later than November 1, 2010. NMFS will not accept or review any applications received or postmarked after the application deadline. There are no hardship exemptions for this deadline.

(viii) *Permit transfer during application period.* NMFS will not review or approve any request for a change in limited entry trawl permit owner at any time after either November 1, 2010 or the date upon which the application is received by NMFS, whichever occurs first, until a final decision is made by the Regional Administrator on behalf of the Secretary of Commerce regarding the QS and IBQ to be issued for that permit.

(ix) *Initial Administrative Determination (IAD).* NMFS will issue an IAD for all complete, certified applications received by the application deadline date. If NMFS approves an application for initial issuance of QS and IBQ, the applicant will receive a QS permit specifying the amounts of QS and IBQ for which the applicant has qualified and the applicant will be registered to a QS account. If NMFS disapproves or partially disapproves an application, the IAD will provide the reasons. As part of the IAD, NMFS will indicate whether the QS permit owner qualifies for QS or IBQ in amounts that exceed the accumulation limits and are subject to divestiture provisions given at paragraph (d)(4)(v) of this section, or whether the QS permit owner qualifies for QS or IBQ that exceed the accumulation limits and does not qualify to receive the excess under paragraph (d)(4)(v) of this section. If the applicant does not appeal the IAD within 30 calendar days of the date on the IAD, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(x) *Appeals.* For QS permits and QS/IBQ issued under this section, the appeals process and timelines are specified at § 660.25(g), subpart C. For the initial issuance of QS/IBQ and the QS permits, the bases for appeal are described in paragraph (d)(8)(vi) of this section. An additional basis for appeal for whiting QS based on shoreside processing is an allegation that the shoreside processor or Pacific whiting shoreside first receiver to which a QS permit and whiting QS have been assigned was not in fact the first processor of the fish included in the qualifying landings history. The appellant must submit credible information supporting the allegation that they were in fact the first shoreside processor for the fish in question. Items not subject to appeal include, but are not limited to, the accuracy of permit landings data or Pacific whiting shoreside first receiver landings data in the relevant PacFIN dataset on July 1, 2010.

(e) *Vessel accounts.* [Reserved]

(f) *First receiver site license.* [Reserved]

(g) *Retention requirements (whiting and non-whiting vessels).* [Reserved]

(h) *Observer requirements.* [Reserved]

(i) [Reserved]

(j) *Shoreside catch monitor requirements for IFQ first receivers.* [Reserved]

(k) *Catch weighing requirements.* [Reserved]

(l) *Gear switching.* [Reserved]

(m) *Adaptive management program.* [Reserved]

§ 660.150 Mothership (MS) Coop Program.

(a) *General.* The MS Coop Program requirements in this section will be effective beginning January 1, 2011, except for paragraphs (f)(3), (f)(5), (f)(6), (g)(3), (g)(5), and (g)(6) which are effective immediately. The MS Coop Program is a limited access program that applies to eligible harvesters and processors in the mothership sector of the Pacific whiting at-sea trawl fishery. Eligible harvesters and processors, including coop and non-coop fishery participants, must meet the requirements set forth in this section of the Pacific Coast groundfish regulations. In addition to the requirements of this section, the MS Coop Program is subject to the following groundfish regulations of subparts C and D:

(1) Pacific whiting seasons § 660.131(b), subpart D.

(2) Area restrictions specified for midwater trawl gear used to harvest Pacific whiting fishery specified at § 660.131(c), Subpart D for GCAs, RCAs, Salmon Conservation Zones, BRAs, and EFHCAs.

(3) Regulations set out in the following sections of subpart C: § 660.11 Definitions, § 660.12 Prohibitions, § 660.13 Recordkeeping and reporting, § 660.14 VMS requirements, § 660.15 Equipment requirements, § 660.16 Groundfish Observer Program, § 660.20

Vessel and gear identification, § 660.25 Permits, § 660.26 Pacific whiting vessel licenses, § 660.55 Allocations, § 660.60 Specifications and management measures, § 660.65 Groundfish harvest specifications, and §§ 660.70 through 660.79 Closed areas.

(4) Regulations set out in the following sections of subpart D: § 660.111 Trawl fishery definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.116 Trawl fishery observer requirements, § 660.120 Trawl fishery crossover provisions, § 660.130 Trawl fishery management measures, and § 660.131 Pacific whiting fishery management measures.

(5) The MS Coop Program may be restricted or closed as a result of projected overages within the MS Coop Program, the C/P Coop Program, or the Shorebased IFQ Program. As determined necessary by the Regional Administrator, area restrictions, season closures, or other measures will be used to prevent the trawl sectors in aggregate or the individual trawl sector (Shorebased IFQ, MS Coop, or C/P Coop) from exceeding an OY, or formal allocation specified in the PCGFMP or regulation at § 660.55, subpart C, or §§ 660.140, 660.150, or 660.160, subpart D.

(b) *Participation requirements.* [Reserved]

(1) *Mothership vessels.* [Reserved]

(2) *Mothership catcher vessels.* [Reserved]

(3) *MS Coop formation and failure.* [Reserved]

(c) *Inter-coop agreement.* [Reserved]

(d) *MS Coop Program species and allocations*—(1) *MS Coop Program species.* MS Coop Program Species are as follows:

(i) Species with formal allocations to the MS Coop Program are Pacific whiting, canary rockfish, darkblotched rockfish, Pacific Ocean perch, and widow rockfish;

(ii) Species with set-asides for the MS and C/P Coop Programs combined, as described in Tables 1d and 2d, subpart C.

(2) *Annual mothership sector sub-allocations.* [Reserved]

(i) *Mothership catcher vessel catch history assignments.* [Reserved]

(ii) *Annual coop allocations.* [Reserved]

(iii) *Annual non-coop allocation.* [Reserved]

(3) *Reaching an allocation or sub-allocation.* [Reserved]

(4) *Non-whiting groundfish species reapportionment.* [Reserved]

(5) *Announcements.* [Reserved]

(6) *Redistribution of annual allocation.* [Reserved]

(7) *Processor obligation.* [Reserved]

(8) *Allocation accumulation limits.* [Reserved]

(e) *MS coop permit and agreement.* [Reserved]

(f) *Mothership (MS) permit.*

(1) *General.* Any vessel that processes or receives deliveries as a mothership processor in the Pacific whiting fishery mothership sector must be registered to an MS permit. A vessel registered to an MS permit may receive fish from a vessel that fishes in an MS coop and/or may receive fish from a vessel that fishes in the non-coop fishery at the same time or during the same year.

(i) *Vessel size endorsement.* An MS permit does not have a vessel size endorsement. The endorsement provisions at § 660.25(b)(3)(iii), subpart C, do not apply to an MS permit.

(ii) *Restriction on C/P vessels operating as motherships.* Restrictions on a vessel registered to a limited entry permit with a C/P endorsement operating as a mothership are specified at § 660.160, subpart D.

(2) *Renewal, change of permit ownership, or vessel registration.* [Reserved]

(3) *Accumulation limits.*

(i) *MS permit usage limit.* [Reserved]

(ii) *Ownership—individual and collective rule.* The ownership that counts towards a person's accumulation limit will include:

(A) Any MS permit owned by that person, and

(B) That portion of any MS permit owned by an entity in which that person has an economic or financial interest, where the person's share of interest in that entity will determine the portion of that entity's ownership that counts toward the person's limit.

(iii) *[Reserved]*

(iv) *Trawl identification of ownership interest form.* Any person that is applying for an MS permit shall document those persons that have an ownership interest in the MS permit greater than or equal to 2 percent. This ownership interest must be documented with SFD via the Trawl Identification of Ownership Interest Form. SFD will not issue an MS Permit unless the Trawl Identification of Ownership Interest Form has been completed. NMFS may request additional information of the applicant as necessary to verify compliance with accumulation limits.

(4) *Appeals.* [Reserved]

(5) *Fees.* The Regional Administrator is authorized to charge fees for administrative costs associated with the issuance of an MS permit consistent with the provisions given at § 660.25(f), Subpart C.

(6) *Application requirements and initial issuance for MS permit*—(i) *Eligibility criteria for MS permit.* Only the current owner of a vessel that processed Pacific whiting in the mothership sector in the qualifying years is eligible to receive initial issuance of an MS permit, except that in the case of bareboat charterers, the charterer of the bareboat may receive an MS permit instead of the vessel owner. As used in this section, "bareboat charterer" means a vessel charterer operating under a bareboat charter, defined as a complete transfer of possession, command, and navigation of a vessel from the vessel owner to the charterer for the limited time of the charter agreement.

(ii) *Qualifying criteria for MS permit.* To qualify for initial issuance of an MS permit, a person must own, or operate under a bareboat charter, a vessel on which at least 1,000 mt of Pacific whiting was processed in the mothership sector in each year for at least two years between 1997 and 2003 inclusive.

(iii) *MS permit application.* Persons may apply for initial issuance of an MS permit in one of two ways: complete and submit a prequalified application received from NMFS, or complete and submit an application package. The completed application must be either postmarked or hand-delivered within normal business hours no later than November 1, 2010. If an applicant fails to submit a completed application by the deadline date, they forgo the opportunity to receive consideration for initial issuance of an MS permit.

(A) *Prequalified application.* A "prequalified application" is a partially pre-filled application where NMFS has preliminarily determined the processing history that may qualify the applicant for an initial issuance of an MS permit. NMFS will mail prequalified application packages to the owners or bareboat charterer of vessels which NMFS determines may qualify for an MS permit. NMFS will mail the application by certified mail to the current address of record in the NMFS permit database. The application will contain the basis of NMFS' calculation. The application package will include, but is not limited to: A prequalified application (with processing history), a Trawl Identification of Ownership Interest form, and any other documents NMFS believes are necessary to aid the owners of the vessel or charterer of the bareboat to complete the MS permit application.

(B) *Request for an application.* Any current owner or bareboat charterer of a vessel that the owner or bareboat charterer believes qualifies for initial issuance of an MS permit that does not

receive a prequalified application must complete an application package and submit the completed application to NMFS by the application deadline. Application packages are available on NMFS' Web site (*http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm*) or by contacting SFD. An application must include valid NORPAC data or other credible information that substantiates the applicant's qualification for initial issuance of an MS permit.

(iv) *Corrections to the application.* If the applicant does not accept NMFS' calculation in the prequalified application either in part or whole, in order for NMFS to reconsider NMFS' calculation, the applicant must identify in writing to NMFS which parts of the prequalified application that the applicant contends to be inaccurate, and must provide specific credible information to substantiate any requested corrections. The completed application and specific credible information must be provided to NMFS in writing by the application deadline. Written communication must be either post-marked or hand-delivered within normal business hours no later than November 1, 2010. Requests for corrections may only be granted for errors in NMFS' use or application of data, including:

(A) Errors in NMFS' use or application of data from NORPAC;

(B) Errors in NMFS' calculations; and

(C) Errors in the vessel registration as listed in the NMFS permit database, or in the identification of the mothership owner or bareboat charterer.

(v) *Submission of the application and application deadline*—(A) *Submission of the Application.* Submission of the complete, certified application includes, but is not limited to, the following:

(*1*) The applicant is required to sign and date the application and have the document notarized by a licensed Notary Public.

(*2*) The applicant must certify that they qualify to own an MS permit.

(*3*) The applicant must indicate they accept NMFS' calculation in the prequalified application, or provide credible information that demonstrates their qualification for an MS permit.

(*4*) The applicant is required to provide a complete Trawl Identification of Ownership Interest Form as specified at paragraph (f)(3)(iv) of this section.

(*5*) Business entities may be required to submit a corporate resolution or other credible documentation as proof that the representative of the entity is authorized to act on behalf of the entity;

(*6*) A bareboat charterer must provide credible evidence that demonstrates it was chartering the mothership vessel under a private contract during the qualifying years; and

(*7*) NMFS may request additional information of the applicant as necessary to make an IAD on initial issuance of an MS permit.

(B) *Application deadline.* A complete, certified application must be either postmarked or hand-delivered within normal business hours to NMFS, Northwest Region, Permits Office, Bldg. 1, 7600 Sand Point Way, NE., Seattle, WA 98115, no later than November 1, 2010. NMFS will not accept or review any applications received or postmarked after the application deadline. There are no hardship provisions for this deadline.

(vi) *Initial administrative determination (IAD).* NMFS will issue an IAD for all complete, certified applications received by the application deadline date. If NMFS approves an application for initial issuance of an MS permit, the applicant will receive an MS permit. If NMFS disapproves an application, the IAD will provide the reasons. If the applicant does not appeal the IAD within 30 calendar days of the date on the IAD, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(vii) *Appeals.* For MS permits issued under this section, the appeals process and timelines are specified at § 660.25(g), subpart C. For the initial issuance of an MS permit, the bases for appeal are described in paragraph (f)(6)(iv) of this section. Items not subject to appeal include, but are not limited to, the accuracy of data in the relevant NORPAC dataset on August 1, 2010.

(g) *Mothership catcher vessel (MS/CV)-endorsed permit*—(1) *General.* Any vessel that delivers whiting to a mothership processor in the Pacific whiting fishery mothership sector must be registered to an MS/CV-endorsed permit, except that a vessel registered to limited entry trawl permit without an MS/CV or C/P endorsement may fish for a coop with permission from the coop. Within the MS Coop Program, an MS/CV-endorsed permit may participate in a coop or in the non-coop fishery.

(i) *Catch history assignment.* NMFS will assign a catch history assignment to each MS/CV-endorsed permit. The catch history assignment is based on the catch history in the Pacific whiting mothership sector during the qualifying years of 1994 through 2003. The catch history assignment is expressed as a percentage of Pacific whiting of the total mothership sector allocation as described at paragraph (d)(2)(i) of this section. Catch history assignments will be issued to the nearest whole pound using standard rounding rules (i.e. decimal amounts from zero up to 0.5 round down and 0.5 up to 1.0 round up).

(ii) *Pacific whiting mothership sector allocation.* The catch history assignment allocation accrues to the coop to which the MS/CV-endorsed permit is tied through private agreement, or will be assigned to the non-coop fishery if the MS/CV-endorsed permit does not participate in the coop fishery.

(iii) *Non-severable.* The MS/CV endorsement and its catch history assignment are not severable from the limited entry trawl permit. An MS/CV endorsement and its catch history assignment are permanently affixed to the original qualifying limited entry permit, and cannot be transferred separately from the original qualifying limited entry permit.

(iv) *Renewal.* [Reserved]

(v) *Restrictions on processing by vessels registered to MS/CV-endorsed permits.* A vessel registered to an MS/CV-endorsed permit in a given year shall not engage in processing of Pacific whiting during that year.

(2) *Change of permit owner, vessel registration, vessel owner, or combination.* [Reserved]

(3) *Accumulation limits*—(i) *MS/CV-endorsed permit ownership limit.* No person shall own MS/CV-endorsed permits for which the collective Pacific whiting allocation total is greater than 20 percent of the total mothership sector allocation. For purposes of determining accumulation limits, NMFS requires that permit owners submit a complete trawl ownership interest form for the permit owner as part of annual renewal of an MS/CV-endorsed permit. An ownership interest form will also be required whenever a new permit owner obtains an MS/CV-endorsed permit as part of a permit transfer request. Accumulation limits will be determined by calculating the percentage of ownership interest a person has in any MS/CV-endorsed permit and the amount of the Pacific whiting catch history assignment given on the permit. Determination of ownership interest will be subject to the individual and collective rule.

(A) *Ownership—Individual and collective rule.* The Pacific whiting catch history assignment that applies to a person's accumulation limit will include:

(*1*) The catch history assignment on any MS/CV-endorsed permit owned by that person, and

(*2*) That portion of the catch history assignment on any MS/CV-endorsed

permit owned by an entity in which that person has an economic or financial interest, where the person's share of interest in that entity will determine the portion of that entity's catch history assignment that counts toward the person's limit.

(B) [Reserved]

(C) *Trawl identification of ownership interest form.* Any person that owns a limited entry trawl permit and is applying for an MS/CV endorsement shall document those persons that have an ownership interest in the permit greater than or equal to 2 percent. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form. SFD will not issue an MS/CV endorsement unless the Trawl Identification of Ownership Interest Form has been completed. NMFS may request additional information of the applicant as necessary to verify compliance with accumulation limits. Further, if SFD discovers through review of the Trawl Identification of Ownership Interest Form that a person owns more than the accumulation limits, the person will be subject to divestiture provisions specified in paragraph (g)(3)(i)(D) of this section.

(D) *Divestiture.* For MS/CV-endorsed permit owners that are found to exceed the accumulation limits during the initial issuance of MS/CV-endorsed permits, an adjustment period will be provided after which they will have to completely divest of ownership in permits that exceed the accumulation limits. Any person that NMFS determines, as a result of the initial issuance of MS/CV-endorsed permits, to own in excess of 20 percent of the total catch history assignment in the MS Coop Program applying the individual and collective rule described at § 660.150(g)(3)(i)(A) will be allowed to receive such permit(s), but must divest themselves of the excess ownership during years one and two of the MS Coop Program. Owners of such permit(s) may receive and use the MS/CV-endorsed permit(s), up to the time their divestiture is completed. At the end of year two of the MS Coop Program, any MS/CV-endorsed permits owned by a person (including any person who has ownership interest in the owner named on the permit) in excess of the accumulation limits will not be issued (renewed) until the permit owner complies with the accumulation limits.

(ii) [Reserved]

(4) *Appeals.* [Reserved]

(5) *Fees.* The Regional Administrator is authorized to charge a fee for administrative costs associated with the issuance of an MS/CV-endorsed permit, as provided at § 660.25(f), subpart C.

(6) *Application requirements and initial issuance for MS/CV endorsement*—(i) *Eligibility criteria for MS/CV endorsement.* Only a current trawl limited entry permit with a qualifying history of Pacific whiting deliveries in the MS Pacific whiting sector is eligible to receive an MS/CV endorsement. Any past catch history associated with the current limited entry trawl permit accrues to the permit. If a trawl limited entry permit is eligible to receive both a C/P endorsement and an MS/CV endorsement, the permit owner must choose which endorsement to apply for (*i.e.,* the owner of such a permit may not receive both a C/P and an MS/CV endorsement). NMFS will not recognize any other person as permit owner other than the person listed as permit owner in NMFS permit database.

(ii) *Qualifying criteria for MS/CV endorsement.* In order to qualify for an MS/CV endorsement, a qualifying trawl-endorsed limited entry permit must have been registered to a vessel or vessels that caught and delivered a cumulative amount of at least 500 mt of Pacific whiting to motherships between 1994 through 2003. The calculation will be based on the following:

(A) To determine a permit's qualifying catch history, NMFS will use documented deliveries to a mothership in Pacific whiting observer data as recorded in the relevant NORPAC dataset on August 1, 2010.

(B) The qualifying catch history will include any deliveries of Pacific whiting to motherships by vessels registered to limited entry trawl-endorsed permits that were subsequently combined to generate the current permit.

(C) If two or more limited entry trawl permits have been simultaneously registered to the same vessel, NMFS will divide the qualifying catch history evenly between all such limited entry trawl-endorsed permits during the time they were simultaneously registered to the vessel.

(D) History of illegal deliveries will not be included in the qualifying catch history.

(E) Deliveries made from Federal limited entry groundfish permits that were retired through the Federal buyback program will not be included in the qualifying catch history.

(F) Deliveries made under provisional "A" permits that did not become "A" permits and "B" permits will not be included in the qualifying catch history.

(iii) *Qualifying criteria for catch history assignment.* A catch history assignment will be specified as a percent on the MS/CV-endorsed permit. The calculation will be based on the following:

(A) For determination of a permit's catch history, NMFS will use documented deliveries to a mothership in Pacific whiting observer data as recorded in the relevant NORPAC dataset on August 1, 2010.

(B) NMFS will use relative history, which means the catch history of a permit for a year divided by the total fleet history for that year, expressed as a percent. NMFS will calculate relative history for each year in the qualifying period from 1994 through 2003 by dividing the total deliveries of Pacific whiting to motherships for the vessel(s) registered to the permit for each year by the sum of the total catch of Pacific whiting delivered to mothership vessel(s) for that year.

(C) NMFS will select the eight years with the highest relative history of Pacific whiting, unless the applicant requests a different set of eight years during the initial issuance and appeals process, and will add the relative histories for these years to generate the permit's total relative history. NMFS will then divide the permit's total relative history by the sum of all qualifying permits' total relative histories to determine the permit's catch history assignment, expressed as a percent.

(D) The total relative history will include any deliveries of Pacific whiting to motherships by vessels registered to limited entry trawl-endorsed permits that were subsequently combined to generate the current permit.

(E) If two or more limited entry trawl permits have been simultaneously registered to the same vessel, NMFS will split the catch history evenly between all such limited entry trawl-endorsed permits during the time they were simultaneously registered to the vessel.

(F) History of illegal deliveries will not be included in the calculation of a permit's catch history assignment or in the calculation of relative history for individual years.

(G) Deliveries made from Federal limited entry groundfish permits that were retired through the Federal buyback program will not be included in the calculation of a permit's catch history assignment other than for the purpose of calculating relative history for individual years.

(H) Deliveries made under provisional "A" permits that did not become "A" permits and "B" permits will not be included in the calculation of a permit's catch history assignment other than for the purpose of calculating relative history for individual years.

(iv) *MS/CV endorsement and catch history assignment application.* Persons may apply for an initial issuance of an MS/CV endorsement on a limited entry trawl permit and its associated catch history assignment in one of two ways: complete and submit a prequalified application received from NMFS, or complete and submit an application package. The completed application must be either postmarked or hand-delivered within normal business hours no later than November 1, 2010. If an applicant fails to submit a completed application by the deadline date, they forgo the opportunity to receive consideration for an initial issuance of an MS/CV endorsement and associated catch history assignment.

(A) *Prequalified application.* A "prequalified application" is a partially pre-filled application where NMFS has preliminarily determined the catch history that may qualify the applicant for an initial issuance of an MS/CV endorsement and associated catch history assignment. NMFS will mail prequalified application packages to the owners of current limited entry trawl permits, as listed in the NMFS permit database at the time applications are mailed, which NMFS determines may qualify for an MS/CV endorsement and associated catch history assignment. NMFS will mail the application by certified mail to the current address of record in the NMFS permit database. The application will contain the basis of NMFS' calculation. The application package will include, but is not limited to: a prequalified application (with landings history), a Trawl Identification of Ownership Interest form, and any other documents NMFS believes are necessary to aid the limited entry permit owner in completing the application.

(B) *Request for an application.* Any owner of a current limited entry trawl permit that does not receive a prequalified application that believes the permit qualifies for an initial issuance of an MS/CV endorsement and associated catch history assignment must complete an application package and submit the completed application to NMFS by the application deadline. Application packages are available on the NMFS Web site (*http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm*) or by contacting SFD. An application must include valid NORPAC data, copies of NMFS observer data forms, or other credible information that substantiates the applicant's qualification for an initial issuance of an MS/CV endorsement and associated catch history assignment.

(v) *Corrections to the application.* If the applicant does not accept NMFS' calculation in the prequalified application either in part or whole, in order for NMFS to reconsider NMFS' calculation, the applicant must identify in writing to NMFS which parts of the application that the applicant contends to be inaccurate, and must provide specific credible information to substantiate any requested corrections. The completed application and specific credible information must be provided to NMFS in writing by the application deadline. Written communication must be either post-marked or hand-delivered within normal business hours no later than November 1, 2010. Requests for corrections may only be granted for changes to the selection of the eight years with the highest relative history of whiting and errors in NMFS' use or application of data, including:

(A) Errors in NMFS' use or application of data from NORPAC;

(B) Errors in NMFS' calculations;

(C) Errors in the identification of the permit owner, permit combinations, or vessel registration as listed in the NMFS permit database; and

(D) Errors in NMFS' use or application of ownership interest information.

(vi) *Submission of the application and application deadline*—(A) *Submission of the application.* Submission of the complete, certified application includes, but is not limited to, the following:

(*1*) The applicant is required to sign and date the application and have the document notarized by a licensed Notary Public.

(*2*) The applicant must certify that they qualify to own an MS/CV-endorsed permit and associated catch history assignment.

(*3*) The applicant must indicate they accept NMFS' calculation of initial issuance of an MS/CV-endorsed permit and associated catch history assignment provided in the prequalified application, or provide credible information that demonstrates their qualification for an MS/CV-endorsed permit and associated catch history assignment.

(*4*) The applicant is required to provide a complete Trawl Identification of Ownership Interest Form as specified at paragraph (g)(3)(i)(C) of this section.

(*5*) Business entities may be required to submit a corporate resolution or other credible documentation as proof that the representative of the entity is authorized to act on behalf of the entity; and

(*6*) NMFS may request additional information of the applicant as necessary to make an IAD on initial issuance of an MS/CV-endorsed permit and associated catch history assignment.

(B) *Application deadline.* A complete, certified application must be either postmarked or hand-delivered within normal business hours to NMFS, Northwest Region, Permits Office, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115, no later than November 1, 2010. NMFS will not accept or review any applications received or postmarked after the application deadline. There are no hardship provisions for this deadline.

(vii) *Permit transfer during application period.* NMFS will not review or approve any request for a change in limited entry trawl permit owner at any time after either November 1, 2010 or the date upon which the application is received by NMFS, whichever occurs first, until a final decision is made by the Regional Administrator on behalf of the Secretary of Commerce on that permit.

(viii) *Initial Administrative Determination (IAD).* NMFS will issue an IAD for all complete, certified applications received by the application deadline date. If NMFS approves an application for initial issuance of an MS/CV-endorsed permit and associated catch history assignment, the applicant will receive an MS/CV endorsement on a limited entry trawl permit specifying the amounts of catch history assignment for which the applicant has qualified. If NMFS disapproves an application, the IAD will provide the reasons. If known at the time of the IAD, NMFS will indicate if the owner of the MS/CV-endorsed permit has ownership interest in catch history assignments that exceed the accumulation limits and are subject to divestiture provisions given at paragraph (g)(3)(i)(D) of this section. If the applicant does not appeal the IAD within 30 calendar days of the date on the IAD, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(ix) *Appeals.* For an MS/CV-endorsed permit and associated catch history assignment issued under this section, the appeals process and timelines are specified at § 660.25(g), subpart C. For the initial issuance of an MS/CV-endorsed permit and associated catch history assignment, the bases for appeal are described in paragraph (g)(6)(v) of this section. Items not subject to appeal include, but are not limited to, the accuracy of data in the relevant NORPAC dataset on August 1, 2010.

(h) *Non-coop fishery.* [Reserved]

(i) *Retention requirements.* [Reserved]

(j) *Observer requirements.* [Reserved]

(k) *Catch weighing requirements.* [Reserved]

(l) [Reserved]

§ 660.160 Catcher/processor (C/P) Coop Program.

(a) *General.* The C/P Coop Program requirements in § 660.160 will be effective beginning January 1, 2011, except for paragraphs (d)(5) and (d)(7) of this section, which are effective immediately. The C/P Coop Program is a limited access program that applies to vessels in the C/P sector of the Pacific whiting at-sea trawl fishery and is a single voluntary coop. Eligible harvesters and processors must meet the requirements set forth in this section of the Pacific Coast groundfish regulations. In addition to the requirements of this section, the C/P Coop Program is subject to the following groundfish regulations:

(1) Pacific whiting seasons § 660.131(b), subpart D.

(2) Area restrictions specified for midwater trawl gear used to harvest Pacific whiting fishery specified at § 660.131(c), subpart D for GCAs, RCAs, Salmon Conservation Zones, BRAs, and EFHCAs.

(3) Regulations set out in the following sections of subpart C: § 660.11 Definitions, § 660.12 Prohibitions, § 660.13 Recordkeeping and reporting, § 660.14 VMS requirements, § 660.15 Equipment requirements, § 660.16 Groundfish Observer Program, § 660.20 Vessel and gear identification, § 660.25 Permits, § 660.26 Pacific whiting vessel licenses, § 660.55 Allocations, § 660.60 Specifications and management measures, § 660.65 Groundfish harvest specifications, and §§ 660.70 through 660.79 Closed areas.

(4) Regulations set out in the following sections of subpart D: § 660.111 Trawl fishery definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.116 Trawl fishery observer requirements, § 660.120 Trawl fishery crossover provisions, § 660.130 Trawl fishery management measures, and § 660.131 Pacific whiting fishery management measures.

(5) The C/P Coop Program may be restricted or closed as a result of projected overages within the MS Coop Program, the C/P Coop Program, or the Shorebased IFQ Program. As determined necessary by the Regional Administrator, area restrictions, season closures, or other measures will be used to prevent the trawl sectors in aggregate or the individual trawl sector (Shorebased IFQ, MS Coop, or C/P Coop) from exceeding an OY, or formal allocation specified in the PCGFMP or regulation at § 660.55, subpart C, or §§ 660.140, 660.150, or 660.160, subpart D.

(b) *C/P Coop Program species and allocations*—(1) *C/P Coop Program species.* C/P Coop Program species are as follows:

(i) Species with formal allocations to the C/P Coop Program are Pacific whiting, canary rockfish, darkblotched rockfish, Pacific Ocean perch, widow rockfish;

(ii) Species with set-asides for the MS and C/P Programs combined, as described in Table 1d and 2d, subpart C.

(2) [Reserved]

(c) *C/P coop permit and agreement.* [Reserved]

(d) *C/P-endorsed permit*—(1) *General.* Any vessel participating in the C/P sector of the non-tribal primary Pacific whiting fishery during the season described at § 660.131(b) of this subpart must be registered to a valid limited entry permit with a C/P endorsement.

(i) *Non-severable.* A C/P endorsement is not severable from the limited entry trawl permit, and therefore, the endorsement may not be transferred separately from the limited entry trawl permit.

(ii) *Restriction on C/P vessel operating as a catcher vessel in the mothership sector.* A vessel registered to a C/P-endorsed permit cannot operate as a catcher vessel delivering unprocessed Pacific whiting to a mothership processor during the same calendar year it participates in the C/P sector.

(iii) *Restriction on C/P vessel operating as mothership.* A vessel registered to a C/P-endorsed permit cannot operate as a mothership during the same calendar year it participates in the C/P sector.

(2) *Eligibility and renewal for C/P-endorsed permit.* [Reserved.]

(3) *Change in permit ownership, vessel registration, vessel owner, transfer or combination.* [Reserved]

(4) *Appeals.* [Reserved]

(5) *Fees.* The Regional Administrator is authorized to charge fees for the administrative costs associated with review and issuance of a C/P endorsement consistent with the provisions at § 660.25(f), subpart C.

(6) [Reserved]

(7) *Application requirements and initial issuance for C/P endorsement*—(i) *Eligibility criteria for C/P endorsement.* Only current owners of a current limited entry trawl permit that has been registered to a vessel that participated in the C/P fishery during the qualifying period are eligible to receive a C/P endorsement. Any past catch history associated with the current limited entry trawl permit accrues to the current permit owner. NMFS will not recognize any other person as the limited entry permit owner other than the person listed as the limited entry permit owner in the NMFS permit database.

(ii) *Qualifying criteria for C/P endorsement.* In order to qualify for a C/P endorsement, a vessel registered to a valid trawl-endorsed limited entry permit must have caught and processed any amount of Pacific whiting during a primary catcher/processor season between 1997 through 2003. The calculation will be based on the following:

(A) Pacific Whiting Observer data recorded in the relevant NORPAC dataset on August 1, 2010, and NMFS permit data on limited entry trawl-endorsed permits will be used to determine whether a permit meets the qualifying criteria for a C/P endorsement.

(B) Only Pacific whiting regulated by this subpart that was taken with midwater (or pelagic) trawl gear will be considered for the C/P endorsement.

(C) Permit catch and processing history includes only the catch/processing history of Pacific whiting for a vessel when it was registered to that particular permit during the qualifying years.

(D) History of illegal landings will not count.

(E) Landings history from Federal limited entry groundfish permits that were retired through the Federal buyback program will not count.

(F) Landings under provisional "A" permits that did not become "A" permits and "B" permits will not count.

(iii) *C/P endorsement application.* Persons may apply for an initial issuance of a C/P endorsement in one of two ways: complete and submit a prequalified application received from NMFS, or complete and submit an application package. The completed application must be either postmarked or hand-delivered within normal business hours no later than November 1, 2010. If an applicant fails to submit a completed application by the deadline date, they forgo the opportunity to receive consideration for initial issuance of a C/P endorsement.

(A) *Prequalified application.* A "prequalified application" is a partially pre-filled application where NMFS has preliminarily determined the catch history that may qualify the applicant for an initial issuance of a C/P endorsement. NMFS will mail a prequalified application to all owners of current trawl limited entry permits, as listed in NMFS permit database at the time applications are mailed, which

NMFS determines may qualify for a C/P endorsement. NMFS will mail the application by certified mail to the current address of record in the NMFS permit database. The application will contain the basis of NMFS' calculation. The application package will include, but is not limited to: a prequalified application (with catch history) and any other documents NMFS believes are necessary to aid the limited entry permit owner in completing the application.

(B) *Request for an application.* Any owner of a current limited entry trawl permit that does not receive a prequalified application that believes the permit qualifies for an initial issuance of a C/P endorsement must complete an application package and submit the completed application to NMFS by the application deadline. Application packages are available on the NMFS Web site (*http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm*) or by contacting SFD. An application must include valid NORPAC data, copies of NMFS observer data forms, or other credible information that substantiates the applicant's qualification for initial issuance of a C/P endorsement.

(iv) *Corrections to the application.* If the applicant does not accept NMFS' calculation in the prequalified application either in part or whole, in order for NMFS to reconsider NMFS' calculation, the applicant must identify in writing to NMFS which parts of the application the applicant contends to be inaccurate, and must provide specific credible information to substantiate any requested corrections. The completed application and specific credible information must be provided to NMFS in writing by the application deadline. Written communication must be either post-marked or hand-delivered within normal business hours no later than November 1, 2010. Requests for corrections may only be granted for errors in NMFS' use or application of data, including:

(A) Errors in NMFS' use or application of data from NORPAC;

(B) Errors in NMFS' calculations; and

(C) Errors in the identification of the permit owner, permit combinations, or vessel registration as listed in the NMFS permit database.

(v) *Submission of the application and application deadline*—(A) *Submission of the Application.* Submission of the complete, certified application includes, but is not limited to, the following:

(*1*) The applicant is required to sign and date the application and have the document notarized by a licensed Notary Public.

(*2*) The applicant must certify that they qualify to own a C/P-endorsed permit.

(*3*) The applicant must indicate they accept NMFS' calculation of initial issuance of C/P endorsement provided in the prequalified application, or provide credible information that demonstrates their qualification for a C/P endorsement.

(*4*) Business entities may be required to submit a corporate resolution or other credible documentation as proof that the representative of the entity is authorized to act on behalf of the entity; and

(*5*) NMFS may request additional information of the applicant as necessary to make an IAD on initial issuance of a C/P endorsement.

(B) *Application deadline.* A complete, certified application must be either postmarked or hand-delivered within normal business hours to NMFS, Northwest Region, Permits Office, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115, no later than November 1, 2010. NMFS will not accept or review any applications received or postmarked after the application deadline. There are no hardship provisions for this deadline.

(vi) *Permit transfer during application period.* NMFS will not review or approve any request for a change in limited entry trawl permit owner at any time after either November 1, 2010 or the date upon which the application is received by NMFS, whichever occurs first, until a final decision is made by the Regional Administrator on behalf of the Secretary of Commerce.

(vii) *Initial Administrative Determination (IAD).* NMFS will issue an IAD for all complete, certified applications received by the application deadline date. If NMFS approves an application, the applicant will receive a C/P endorsement on a limited entry trawl permit. If NMFS disapproves an application, the IAD will provide the reasons. If the applicant does not appeal the IAD within 30 calendar days of the date on the IAD, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(viii) *Appeal.* For a C/P-endorsed permit issued under this section, the appeals process and timelines are specified at § 660.25(g), subpart C. For the initial issuance of a C/P-endorsed permit, the bases for appeal are described in paragraph (d)(7)(iv) of this section. Items not subject to appeal include, but are not limited to, the accuracy of data in the relevant NORPAC dataset on August 1, 2010.

(e) *Retention requirements.* [Reserved]

(f) *Observer requirements.* [Reserved]

(g) [Reserved]

(h) *Catch weighting requirements.* [Reserved]

Table 1 (North) to Part 660, Subpart D -- 2010 Trip Limits for Limited Entry Trawl Gear North of 40°10' N. Lat.
Other Limits and Requirements Apply -- Read § 660.10 - § 660.160 before using this table 08252010

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 48°10' N. lat.	shore - modified[7/] 200 fm line[6/]	shore - 200 fm line[6/]	shore - 150 fm line[6/]		shore - 200 fm line[6/]	shore - modified[7/] 200 fm line[6/]
2	48°10' N. lat. - 45°46' N. lat.	75 fm line[6/] - modified[7/] 200 fm line[6/]	75 fm line[6/] - 200 fm line[6/]	75 fm line[6/] - 150 fm line[6/]	100 fm line[6/] - 150 fm line[6/]	75 fm line[6/] - 200 fm line[6/]	75 fm line[6/] - modified[7/] 200 fm line[6/]
3	45°46' N. lat. - 40°10' N. lat.			75 fm line[6/] - 200 fm line[6/]	100 fm line[6/] - 200 fm line[6/]		
	Selective flatfish trawl gear is required shoreward of the RCA; all trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope and small footrope trawl gears (except for selective flatfish trawl gear) are prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season.						
	See § 660.60 and § 660.130 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
4	**Minor slope rockfish[2/] & Darkblotched rockfish**	6,000 lb/ 2 months		2,000 lb/ 2 months			
5	**Pacific ocean perch**	1,500 lb/ 2 months					
6	**DTS complex**						
7	Sablefish						
8	large & small footrope gear	20,000 lb/ 2 months		24,000 lb/ 2 months	21,000 lb/ 2 months		
9	selective flatfish trawl gear	9,000 lb/ 2 months					
10	multiple bottom trawl gear[8/]	9,000 lb/ 2 months					
11	Longspine thornyhead						
12	large & small footrope gear	24,000 lb/ 2 months					
13	selective flatfish trawl gear	5,000 lb/ 2 months					
14	multiple bottom trawl gear[8/]	5,000 lb/ 2 months					
15	Shortspine thornyhead						
16	large & small footrope gear	18,000 lb/2 months					
17	selective flatfish trawl gear	5,000 lb/ 2 months					
18	multiple bottom trawl gear[8/]	5,000 lb/ 2 months					
19	Dover sole						
20	large & small footrope gear	110,000 lb/ 2 months			100,000 lb/ 2 months		
21	selective flatfish trawl gear	65,000 lb/ 2 months					
22	multiple bottom trawl gear[8/]	65,000 lb/ 2 months					

TABLE 1 (North)

Table 1 (North). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
23	**Whiting**						
24	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.131 for season and trip limit details. -- After the primary whiting season: CLOSED.					
25	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					
26	**Flatfish** (except Dover sole)						
27	Arrowtooth flounder						
28	large & small footrope gear	150,000 lb/ 2 months					
29	selective flatfish trawl gear	90,000 lb/ 2 months					
30	multiple bottom trawl gear [8/]	90,000 lb/ 2 months					
31	Other flatfish [3/], English sole, starry flounder, & Petrale sole						
32	large & small footrope gear for Other flatfish [3/], English sole, & starry flounder	110,000 lb/ 2 months	110,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.		100,000 lb/ 2 months, no more than 6,300 lb/ 2 months of which may be petrale sole.		100,000 lb/ 2 months
33	large & small footrope gear for Petrale sole	9,500 lb/ 2 months					6,300 lb/ 2 months
34	selective flatfish trawl gear for Other flatfish [3/], English sole, & starry flounder	90,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.	60,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.		60,000 lb/ 2 months, no more than 6,300 lb/ 2 months of which may be petrale sole.		
35	selective flatfish trawl gear for Petrale sole						
36	multiple bottom trawl gear [8/]	90,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.	60,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.		60,000 lb/ 2 months, no more than 6,300 lb/ 2 months of which may be petrale sole.		
37	**Minor shelf rockfish [1/], Shortbelly, Widow & Yelloweye rockfish**						
38	midwater trawl for Widow rockfish	Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting, combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month. Mid-water trawl permitted in the RCA. See §660.131 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.					
39	large & small footrope gear	300 lb/ 2 months					
40	selective flatfish trawl gear	300 lb/ month		1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish			300 lb/ month
41	multiple bottom trawl gear [8/]	300 lb/ month		300 lb/ 2 months, no more than 200 lb/ month of which may be yelloweye rockfish			300 lb/ month

TABLE 1 (North) con't

Table 1 (North). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
42	**Canary rockfish**						
43	large & small footrope gear	CLOSED					
44	selective flatfish trawl gear	100 lb/ month		300 lb/ month		100 lb/ month	
45	multiple bottom trawl gear [8/]	CLOSED					
46	**Yellowtail**						
47	midwater trawl	Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month. Mid-water trawl permitted in the RCA. See §660.131 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.					
48	large & small footrope gear	300 lb/ 2 months					
49	selective flatfish trawl gear	2,000 lb/ 2 months					
50	multiple bottom trawl gear [8/]	300 lb/ 2 months					
51	**Minor nearshore rockfish & Black rockfish**						
52	large & small footrope gear	CLOSED					
53	selective flatfish trawl gear	300 lb/ month					
54	multiple bottom trawl gear [8/]	CLOSED					
55	**Lingcod** [4/]						
56	large & small footrope gear	1,200 lb/ 2 months		4,000 lb/ 2 months			
57	selective flatfish trawl gear			1,200 lb/2 months			
58	multiple bottom trawl gear [8/]						
59	**Pacific cod**	30,000 lb/ 2 months		70,000 lb/ 2 months			30,000 lb/ 2 months
60	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
61	**Other Fish** [5/]	Not limited					

TABLE 1 (North) con't

1/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish.
2/ Splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.
5/ "Other fish" are defined at § 660.11 and include sharks, skates (including longnose skate), ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
7/ The "modified" fathom lines are modified to exclude certain petrale sole areas from the RCA.
8/ If a vessel has both selective flatfish gear and large or small footrope gear on board during a cumulative limit period (either simultaneously or successively), the most restrictive cumulative limit for any gear on board during the cumulative limit period applies for the entire cumulative limit period.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 1 (South) to Part 660, Subpart D -- 2010 Trip Limits for Limited Entry Trawl Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.160 before using this table

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		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	South of 40°10' N. lat.	100 fm line[6/] - 150 fm line[6/ 7/]					
	All trawl gear (large footrope, selective flatfish trawl, midwater trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope trawl gear and midwater trawl gear are prohibited shoreward of the RCA.						
	See § 660.60 and § 660.130 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
2	**Minor slope rockfish[2/] & Darkblotched rockfish**						
3	40°10' - 38° N. lat.	15,000 lb/ 2 months					
4	South of 38° N. lat.	55,000 lb/ 2 months					
5	**Splitnose**						
6	40°10' - 38° N. lat.	15,000 lb/ 2 months					
7	South of 38° N. lat.	55,000 lb/ 2 months					
8	**DTS complex**						
9	Sablefish	22,000 lb/ 2 months			21,000 lb/ 2 months		
10	Longspine thornyhead	24,000 lb/ 2 months					
11	Shortspine thornyhead	18,000 lb/ 2 months					
12	Dover sole	110,000 lb/ 2 months			100,000 lb/ 2 months		
13	**Flatfish** (except Dover sole)						
14	Other flatfish[3/], English sole, & starry flounder	110,000 lb/ 2 months	110,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.		100,000 lb/ 2 months, no more than 6,300 lb/ 2 months of which may be petrale sole.		100,000 lb/ 2 months
15	Petrale sole	9,500 lb/ 2 months					6,300 lb/ 2 months
16	Arrowtooth flounder	10,000 lb/ 2 months					
17	**Whiting**						
18	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.131 for season and trip limit details. -- After the primary whiting season: CLOSED.					
19	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					

TABLE 1 (South)

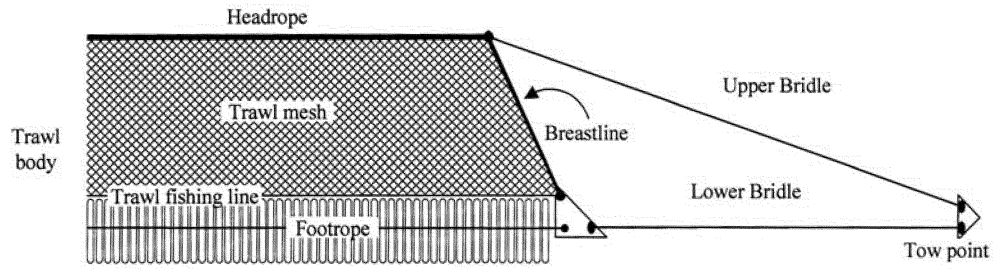
Table 1 (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
20	**Minor shelf rockfish[1/], Chilipepper, Shortbelly, Widow, & Yelloweye rockfish**						
21	large footrope or midwater trawl for Minor shelf rockfish & Shortbelly	300 lb/ month					
22	large footrope or midwater trawl for Chilipepper	12,000 lb/ 2 months			17,000 lb/ 2 months		
23	large footrope or midwater trawl for Widow & Yelloweye	CLOSED					
24	small footrope trawl for Minor Shelf, Shortbelly, Widow & Yelloweye	300 lb/ month					
25	small footrope trawl for Chilipepper	12,000 lb/ 2 months			17,000 lb/ 2 months		
26	**Bocaccio**						
27	large footrope or midwater trawl	300 lb/ 2 months					
28	small footrope trawl	CLOSED					
29	**Canary rockfish**						
30	large footrope or midwater trawl	CLOSED					
31	small footrope trawl	100 lb/ month		300 lb/ month		100 lb/ month	
32	**Cowcod**	CLOSED					
33	**Bronzespotted rockfish**	CLOSED					
34	**Minor nearshore rockfish & Black rockfish**						
35	large footrope or midwater trawl	CLOSED					
36	small footrope trawl	300 lb/ month					
37	**Lingcod[4/]**						
38	large footrope or midwater trawl	1,200 lb/ 2 months		4,000 lb/ 2 months			
39	small footrope trawl			1,200 lb/ 2 months			
40	**Pacific cod**	30,000 lb/ 2 months		70,000 lb/ 2 months			30,000 lb/ 2 months
41	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
42	**Other Fish[5/] & Cabezon**	Not limited					

TABLE 1 (South) con't

1/ Yellowtail is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.
2/ POP is included in the trip limits for minor slope rockfish
3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.
5/ Other fish are defined at § 660.11 and include sharks, skates (including longnose skate), ratfish, morids, grenadiers, and kelp greenling.
6/ The Rockfish Conservation Area is an area closed to fishing by particulary gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
7/ South of 34°27' N. lat., the RCA is 100 fm line - 150 fm line along the mainland coast; shoreline - 150 fm line around islands.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

FIGURE 1 TO PART 660, SUBPART D – DIAGRAM OF SELECTIVE FLATFISH TRAWL



Side view of trawl mouth

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Subpart E—West Coast Groundfish—Limited Entry Fixed Gear Fisheries

§ 660.210 Purpose and scope.

This subpart covers the Pacific Coast Groundfish limited entry fixed gear fishery.

§ 660.211 Fixed gear fishery—definitions.

These definitions are specific to the limited entry fixed gear fisheries covered in this subpart. General groundfish definitions are found at § 660.11, subpart C.

Daily Trip Limit (DTL) Fishery means a sablefish fishery that occurs both north and south of 36° N. lat. that is subject to trip limit restrictions including daily and/or weekly and/or bimonthly trip limits.

Limited entry fixed gear fishery means the fishery composed of vessels registered to limited entry permits with longline and pot/trap endorsements.

Sablefish primary fishery or sablefish tier limit fishery means, for the limited entry fixed gear sablefish fishery north of 36° N. lat, the fishery where vessels registered to at least one limited entry permit with both a gear endorsement for longline or trap (or pot) gear and a sablefish endorsement fish up to a specified tier limit and when they are not eligible to fish in the DTL fishery.

Sablefish primary season means, for the limited entry fixed gear sablefish fishery north of 36° N. lat, the period when vessels registered to at least one limited entry permit with both a gear endorsement for longline or trap (or pot) gear and a sablefish endorsement, are allowed to fish in the sablefish tier limit fishery described at § 660.231 of this subpart.

Tier limit means a specified amount of sablefish that may be harvested by a vessel registered to a limited entry fixed gear permit(s) with a Tier 1, Tier 2, and/or Tier 3 designation; a gear endorsement for longline or trap (or pot) gear; and a sablefish endorsement.

§ 660.212 Fixed gear fishery—prohibitions.

These prohibitions are specific to the limited entry fixed gear fisheries. General groundfish prohibitions are found at § 660.12, subpart C. In addition to the general groundfish prohibitions specified in § 660.12, subpart C, it is unlawful for any person to:

(a) *General.* (1) Possess, deploy, haul, or carry onboard a fishing vessel subject to subparts C and E a set net, trap or pot, longline, or commercial vertical hook-and-line as defined at § 660.11, subpart C, that is not in compliance with the gear restrictions in § 660.230, subpart E, unless such gear is the gear of another vessel that has been retrieved at sea and made inoperable or stowed in a manner not capable of being fished. The disposal at sea of such gear is prohibited by Annex V of the International Convention for the Prevention of Pollution From Ships, 1973 (Annex V of MARPOL 73/78).

(2) Take, retain, possess, or land more than a single cumulative limit of a particular species, per vessel, per applicable cumulative limit period, except for sablefish taken in the limited entry, fixed gear sablefish primary season from a vessel authorized to fish in that season, as described at § 660.231, subpart E.

(b) *Recordkeeping and reporting.* Fail to retain on board a vessel from which sablefish caught in the sablefish primary season is landed, and provide to an authorized officer upon request, copies of any and all reports of sablefish landings against the sablefish-endorsed permit's tier limit, or receipts containing all data, and made in the exact manner required by the applicable state law throughout the sablefish primary season during which such landings occurred and for 15 days thereafter.

(c) *Fishing in conservation areas.* (1) Operate a vessel registered to a limited entry permit with a longline or trap (pot) endorsement and longline and/or trap gear onboard in an applicable GCA (as defined at § 660.230(d)), except for purposes of continuous transiting, with all groundfish longline and/or trap gear stowed in accordance with § 660.212(a) or except as authorized in the groundfish management measures at § 660.230.

(2) Fish with bottom contact gear (as defined in § 660.11, subpart C) within the EEZ in the following areas (defined in §§ 660.78 and 660.79, subpart C): Thompson Seamount, President Jackson Seamount, Cordell Bank (50-fm (91-m) isobath), Harris Point, Richardson Rock, Scorpion, Painted Cave, Anacapa Island, Carrington Point, Judith Rock, Skunk Point, Footprint, Gull Island, South Point, and Santa Barbara.

(3) Fish with bottom contact gear (as defined in § 660.11, subpart C), or any other gear that is deployed deeper than 500-fm (914-m), within the Davidson Seamount area (defined in § 660.75, subpart C).

(d) *Sablefish fisheries.* (1) Take, retain, possess or land sablefish under the tier limits provided for the limited entry, fixed gear sablefish primary season, described in § 660.231(b), subpart E, from a vessel that is not registered to a limited entry permit with a sablefish endorsement.

(2) Take, retain, possess or land sablefish in the sablefish primary season, described at § 660.231(b), subpart E, unless the owner of the limited entry permit registered for use with that vessel and authorizing the vessel to fish in the sablefish primary season is on board that vessel. Exceptions to this prohibition are provided at § 660.231(b)(4)(i) and (ii).

(3) Process sablefish taken at-sea in the limited entry fixed gear sablefish primary fishery defined at § 660.231, subpart E, from a vessel that does not have a sablefish at-sea processing exemption, defined at § 660.25(b)(3)(iv)(D), subpart C.

§ 660.213 Fixed gear fishery—recordkeeping and reporting.

(a) *General.* General reporting requirements specified at § 660.13 (a) through (c), subpart C, apply to limited entry fixed gear fishery vessels.

(b) *Declaration reports for limited entry fixed gear fishery vessels.* Declaration reporting requirements for limited entry fixed gear fishery vessels are specified at § 660.13 (d), subpart C.

(c) *VMS requirements for limited entry fixed gear fishery vessels.* VMS requirements for limited entry fixed gear fishery vessels are specified at § 660.14, subpart C.

(d) *Retention of records.* (1) Any person landing groundfish must retain on board the vessel from which groundfish are landed, and provide to an authorized officer upon request, copies of any and all reports of groundfish landings containing all data, and in the exact manner, required by the applicable state law throughout the cumulative limit period during which a landing occurred and for 15 days thereafter.

(2) For participants in the sablefish primary season, the cumulative limit period to which this requirement applies is April 1 through October 31 or, for an individual permit holder, when that permit holder's tier limit is attained, whichever is earlier.

§ 660.216 Fixed gear fishery—observer requirements.

(a) *Observer coverage requirements.* When NMFS notifies the owner, operator, permit holder, or the manager of a catcher vessel, specified at § 660.16(c), subpart C, of any requirement to carry an observer, the catcher vessel may not be used to fish for groundfish without carrying an observer.

(b) *Notice of departure basic rule.* At least 24 hours (but not more than 36 hours) before departing on a fishing trip, a vessel that has been notified by NMFS that it is required to carry an observer, or that is operating in an active sampling unit, must notify NMFS (or its designated agent) of the vessel's intended time of departure. Notice will be given in a form to be specified by NMFS.

(1) *Optional notice—weather delays.* A vessel that anticipates a delayed departure due to weather or sea conditions may advise NMFS of the anticipated delay when providing the basic notice described in paragraph (b) of this section. If departure is delayed beyond 36 hours from the time the original notice is given, the vessel must provide an additional notice of departure not less than 4 hours prior to departure, in order to enable NMFS to place an observer.

(2) *Optional notice—back-to-back fishing trips.* A vessel that intends to make back-to-back fishing trips (*i.e.,* trips with less than 24 hours between offloading from one trip and beginning another), may provide the basic notice described in paragraph (b) of this section for both trips, prior to making the first trip. A vessel that has given such notice is not required to give additional notice of the second trip.

(c) *Cease fishing report.* Within 24 hours of ceasing the taking and retaining of groundfish, vessel owners, operators, or managers must notify NMFS or its designated agent that fishing has ceased. This requirement applies to any vessel that is required to carry an observer, or that is operating in a segment of the fleet that NMFS has identified as an active sampling unit.

(d) *Waiver.* The Northwest Regional Administrator may provide written notification to the vessel owner stating that a determination has been made to temporarily waive coverage requirements because of circumstances that are deemed to be beyond the vessel's control.

(e) *Vessel responsibilities*—(1) *Accommodations and food.* An operator of a vessel required to carry one or more observer(s) must provide accommodations and food that are Equivalent to those provided to the crew.

(2) *Safe conditions.* Maintain safe conditions on the vessel for the protection of observer(s) including adherence to all USCG and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel, and provisions at §§ 600.725 and 600.746 of this chapter.

(3) *Observer communications.* Facilitate observer communications by:

(i) *Observer use of equipment.* Allowing observer(s) to use the vessel's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observer(s) or the U.S. or designated agent.

(ii) *Functional equipment.* Ensuring that the vessel's communications equipment, used by observers to enter and transmit data, is fully functional and operational.

(4) *Vessel position.* Allow observer(s) access to, and the use of, the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(5) *Access.* Allow observer(s) free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(6) *Prior notification.* Notify observer(s) at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer, unless the observer specifically requests not to be notified.

(7) *Records.* Allow observer(s) to inspect and copy any state or Federal logbook maintained voluntarily or as required by regulation.

(8) *Assistance.* Provide all other reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

(i) Measuring decks, codends, and holding bins.

(ii) Providing the observer(s) with a safe work area.

(iii) Collecting bycatch when requested by the observer(s).

(iv) Collecting and carrying baskets of fish when requested by the observer(s).

(v) Allowing the observer(s) to collect biological data and samples.

(vi) Providing adequate space for storage of biological samples.

(f) *Sample station*—(1) *Observer sampling station.* This paragraph contains the requirements for observer sampling stations. The vessel owner must provide an observer sampling station that complies with this section so that the observer can carry out required duties.

(i) *Accessibility.* The observer sampling station must be available to the observer at all times.

(ii) *Location.* The observer sampling station must be located within 4 m of the location from which the observer samples unsorted catch. Unobstructed passage must be provided between the observer sampling station and the location where the observer collects sample catch.

(2) [Reserved]

§ 660.219 Fixed gear identification and marking.

(a) *Gear identification.* (1) Limited entry fixed gear (longline, trap or pot) must be marked at the surface and at each terminal end, with a pole, flag, light, radar reflector, and a buoy.

(2) A buoy used to mark fixed gear must be marked with a number clearly identifying the owner or operator of the vessel. The number may be either:

(i) If required by applicable state law, the vessel's number, the commercial fishing license number, or buoy brand number; or

(ii) The vessel documentation number issued by the USCG, or, for an undocumented vessel, the vessel registration number issued by the state.

(b) [Reserved]

§ 660.220 Fixed gear fishery—crossover provisions.

(a) *Operating in both limited entry and open access fisheries.* See provisions at § 660.60(h)(7), subpart C.

(b) *Operating in north-south management areas with different trip limits.* NMFS uses different types of management areas for West Coast groundfish management. One type of management area is the north-south management area, a large ocean area with northern and southern boundary lines wherein trip limits, seasons, and conservation areas follow a single theme. Within each north-south management area, there may be one or more conservation areas, detailed in §§ 660.60(h)(7) and 660.70 through 660.74, subpart C. The provisions within this paragraph apply to vessels operating in different north-south management areas. Trip limits for a species or a species group may differ in different north-south management areas along the coast. The following "crossover" provisions apply to vessels operating in different geographical areas that have different cumulative or "per trip" trip limits for the same species or species group. Such crossover provisions do not apply to species that are subject only to daily trip limits, or to the trip limits for black rockfish off Washington (*see* § 660.230(d)).

(1) Going from a more restrictive to a more liberal area. If a vessel takes and retains any groundfish species or species group of groundfish in an area where a more restrictive trip limit applies before fishing in an area where a more liberal trip limit (or no trip limit) applies, then that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(2) Going from a more liberal to a more restrictive area. If a vessel takes and retains a groundfish species or species group in an area where a higher trip limit or no trip limit applies, and takes and retains, possesses or lands the same species or species group in an area where a more restrictive trip limit applies, that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(3) Operating in two different areas where a species or species group is managed with different types of trip limits. During the fishing year, NMFS may implement management measures for a species or species group that set different types of trip limits (for example, per trip limits versus cumulative trip limits) for different areas. If a vessel fishes for a species or species group that is managed with different types of trip limits in two different areas within the same cumulative limit period, then that vessel is subject to the most restrictive overall cumulative limit for that species, regardless of where fishing occurs.

(4) Minor rockfish. Several rockfish species are designated with species-specific limits on one side of the 40°10′ N. lat. management line, and are included as part of a minor rockfish complex on the other side of the line. A vessel that takes and retains fish from a minor rockfish complex (nearshore, shelf, or slope) on both sides of a management line during a single cumulative limit period is subject to the more restrictive cumulative limit for that minor rockfish complex during that period.

(i) If a vessel takes and retains minor slope rockfish north of 40°10′ N. lat., that vessel is also permitted to take and retain, possess or land splitnose rockfish up to its cumulative limit south of 40°10′ N. lat., even if splitnose rockfish were a part of the landings from minor slope rockfish taken and retained north of 40°10′ N. lat.

(ii) If a vessel takes and retains minor slope rockfish south of 40°10′ N. lat., that vessel is also permitted to take and retain, possess or land POP up to its cumulative limit north of 40°10′ N. lat., even if POP were a part of the landings from minor slope rockfish taken and retained south of 40°10′ N. lat.

§ 660.230 Fixed gear fishery-management measures.

(a) *General.* Most species taken in limited entry fixed gear (longline and pot/trap) fisheries will be managed with cumulative trip limits (see trip limits in Tables 2 (North) and 2 (South) of this subpart), size limits (see § 660.60(h)(5)), seasons (see trip limits in Tables 2 (North) and 2 (South) of this subpart and sablefish primary season details in § 660.231), gear restrictions (see paragraph (b) of this section), and closed areas (see paragraph (d) of this section and §§ 660.70 through 660.79, subpart C). Cowcod retention is prohibited in all fisheries, and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph (d)(10) of this section and § 660.70, subpart C). Yelloweye rockfish and canary rockfish retention is prohibited in the limited entry fixed gear fisheries. Regulations governing and tier limits for the limited entry, fixed gear sablefish primary season north of 36° N. lat. are found in § 660.231, subpart E. Vessels not participating in the sablefish primary season are subject to daily or weekly sablefish limits in addition to cumulative limits for each cumulative limit period. Only one sablefish landing per week may be made in excess of the daily trip limit and, if the vessel chooses to make a landing in excess of that daily trip limit, then that is the only sablefish landing permitted for that week. The trip limit for black rockfish caught with hook-and-line gear also applies, see § 660.230(d). The trip limits in Table 2 (North) and Table 2 (South) of this subpart apply to vessels participating in the limited entry groundfish fixed gear fishery and may not be exceeded. Federal commercial groundfish regulations are not intended to supersede any more restrictive state commercial groundfish regulations relating to federally-managed groundfish.

(b) *Gear restrictions*—(1) Longline and pot or trap gear are authorized in the limited entry fixed gear fishery, providing the gear is in compliance with the restrictions set forth in this section, and gear marking requirements described in § 660.219 of this subpart.

(2) Vessels participating in the limited entry fixed gear fishery may also fish with open access gear subject to the gear restrictions at § 660.330(b), subpart F, but will be subject to the most restrictive trip limits for the gear used as specified at § 660.60(h)(7), subpart C.

(3) Limited entry fixed gear (longline, trap or pot gear) must be attended at least once every 7 days.

(4) Traps or pots must have biodegradable escape panels constructed with 21 or smaller untreated cotton twine in such a manner that an opening at least 8 inches (20.3 cm) in diameter results when the twine deteriorates.

(c) *Sorting Requirements.* (1) Under § 660.12(a)(8), subpart C, it is unlawful for any person to "fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY, if the vessel fished or landed in an area during a

time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY applied." The States of Washington, Oregon, and California may also require that vessels record their landings as sorted on their state landing receipts.

(2) For limited entry fixed gear, the following species must be sorted:

(i) Coastwide—widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, shortbelly rockfish, black rockfish, blue rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, shortspine and longspine thornyhead, Dover sole, arrowtooth flounder, petrale sole, starry flounder, English sole, other flatfish, lingcod, sablefish, Pacific cod, spiny dogfish, other fish, longnose skate, and Pacific whiting;

(ii) North of 40°10′ N. lat.—POP, yellowtail rockfish;

(iii) South of 40°10′ N. lat.—minor shallow nearshore rockfish, minor deeper nearshore rockfish, California scorpionfish, chilipepper rockfish, bocaccio rockfish, splitnose rockfish, Pacific sanddabs, cowcod, bronzespotted rockfish and cabezon.

(d) *Groundfish conservation areas applicable to limited entry fixed gear vessels.* A GCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude. The latitude and longitude coordinates of the GCA boundaries are specified at §§ 660.70 through 660.74, subpart C. A vessel that is authorized by this paragraph to fish within a GCA (*e.g.* fishing for "other flatfish" using no more than 12 hooks, "Number 2" or smaller), may not simultaneously have other gear on board the vessel that is unlawful to use for fishing within the GCA. The following GCAs apply to vessels participating in the limited entry fixed gear fishery.

(1) *North coast recreational yelloweye rockfish conservation area.* The latitude and longitude coordinates of the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA) boundaries are specified at § 660.70, subpart C. The North Coast Recreational YRCA is designated as an area to be avoided (a voluntary closure) by commercial fixed gear fishers.

(2) *North coast commercial yelloweye rockfish conservation area.* The latitude and longitude coordinates of the North Coast Commercial Yelloweye Rockfish Conservation Area (YRCA) boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the North Coast Commercial YRCA. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the North Coast Commercial YRCA. Limited entry fixed gear vessels may transit through the North Coast Commercial YRCA with or without groundfish on board.

(3) *South coast recreational yelloweye rockfish conservation area.* The latitude and longitude coordinates of the South Coast Recreational Yelloweye Rockfish Conservation Area (YRCA) boundaries are specified at § 660.70, subpart C. The South Coast Recreational YRCA is designated as an area to be avoided (a voluntary closure) by commercial fixed gear fishers.

(4) *Westport offshore recreational YRCA.* The latitude and longitude coordinates that define the Westport Offshore Recreational YRCA boundaries are specified at § 660.70, subpart C. The Westport Offshore Recreational YRCA is designated as an area to be avoided (a voluntary closure) by commercial fixed gear fishers.

(5) *Point St. George YRCA.* The latitude and longitude coordinates of the Point St. George YRCA boundaries are specified at § 660.70, Subpart C. Fishing with limited entry fixed gear is prohibited within the Point St. George YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the Point St. George YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the Point St. George YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Limited entry fixed gear vessels may transit through the Point St. George YRCA, at any time, with or without groundfish on board.

(6) *South Reef YRCA.* The latitude and longitude coordinates of the South Reef YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the South Reef YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the South Reef YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the South Reef YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Limited entry fixed gear vessels may transit through the South Reef YRCA, at any time, with or without groundfish on board.

(7) *Reading Rock YRCA.* The latitude and longitude coordinates of the Reading Rock YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the Reading Rock YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the Reading Rock YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the Reading Rock YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Limited entry fixed gear vessels may transit through the Reading Rock YRCA, at any time, with or without groundfish on board.

(8) *Point Delgada (North) YRCA.* The latitude and longitude coordinates of the Point Delgada (North) YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the Point Delgada (North) YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the Point Delgada (North) YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the Point Delgada (North) YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Limited entry fixed gear vessels may transit through the Point Delgada (North) YRCA, at any time, with or without groundfish on board.

(9) *Point Delgada (South) YRCA.* The latitude and longitude coordinates of the Point Delgada (South) YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the Point Delgada (South) YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the Point Delgada (South) YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the Point Delgada (South) YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Limited entry fixed gear vessels may transit through the Point Delgada (South) YRCA, at any time, with or without groundfish on board.

(10) *Cowcod Conservation Areas.* The latitude and longitude coordinates of the Cowcod Conservation Areas (CCAs) boundaries are specified at § 660.70, subpart C. It is unlawful to take and

retain, possess, or land groundfish within the CCAs, except for species authorized in this paragraph caught according to gear requirements in this paragraph, when those waters are open to fishing. Commercial fishing vessels may transit through the Western CCA with their gear stowed and groundfish on board only in a corridor through the Western CCA bounded on the north by the latitude line at 33°00.50′ N. lat., and bounded on the south by the latitude line at 32°59.50′ N. lat. Fishing with limited entry fixed gear is prohibited within the CCAs, except as follows:

(i) Fishing for "other flatfish" is permitted within the CCAs under the following conditions: When using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1-lb (0.45 kg) weights per line; and provided a valid declaration report as required at § 660.13(d), subpart C, has been filed with NMFS OLE.

(ii) Fishing for rockfish and lingcod is permitted shoreward of the 20 fm (37 m) depth contour within the CCAs when trip limits authorize such fishing, and provided a valid declaration report as required at § 660.13(d), subpart C, has been filed with NMFS OLE.

(11) *Nontrawl Rockfish Conservation Areas (RCA).* The nontrawl RCAs are closed areas, defined by specific latitude and longitude coordinates (specified at §§ 660.70 through 660.74, subpart C) designed to approximate specific depth contours, where fishing for groundfish with nontrawl gear is prohibited. Boundaries for the nontrawl RCA throughout the year are provided in the header to Table 2 (North) and Table 2 (South) of this subpart and may be modified by NMFS inseason pursuant to § 660.60(c), subpart C.

(i) It is unlawful to operate a vessel with limited entry nontrawl gear in the nontrawl RCA, except for the purpose of continuous transit, or when the use of limited entry nontrawl gear is authorized in this section. It is unlawful to take and retain, possess, or land groundfish taken with limited entry nontrawl gear within the nontrawl RCA, unless otherwise authorized in this section.

(ii) Limited entry nontrawl vessels may transit through the nontrawl RCA, with or without groundfish on board, provided all groundfish nontrawl gear is stowed either: Below deck; or if the gear cannot readily be moved, in a secured and covered manner, detached from all lines, so that it is rendered unusable for fishing.

(iii) The nontrawl RCA restrictions in this section apply to vessels registered to limited entry fixed gear permits fishing for species other than groundfish with nontrawl gear on trips where groundfish species are retained. Unless otherwise authorized in this section, a vessel may not retain any groundfish taken on a fishing trip for species other than groundfish that occurs within the nontrawl RCA. If a vessel fishes in a non-groundfish fishery in the nontrawl RCA, it may not participate in any fishing for groundfish on that trip that is prohibited within the nontrawl RCA. [For example, if a vessel fishes in the salmon troll fishery within the RCA, the vessel cannot on the same trip fish in the sablefish fishery outside of the RCA.]

(iv) It is lawful to fish within the nontrawl RCA with limited entry fixed gear only under the following conditions: when fishing for "other flatfish" off California (between 42° N. lat. south to the U.S./Mexico border) using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1-lb (0.91 kg) weights per line when trip limits authorize such fishing, provided a valid declaration report as required at § 660.13(d), subpart C, has been filed with NMFS OLE.

(12) *Farallon Islands.* Under California law, commercial fishing for all groundfish is prohibited between the shoreline and the 10 fm (18 m) depth contour around the Farallon Islands. An exception to this prohibition is that commercial fishing for "other flatfish" is permitted around the Farallon Islands using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1-lb (0.45-kg) weights per line. (*See* Table 2 (South) of this subpart.) For a definition of the Farallon Islands, *see* § 660.70, subpart C.

(13) *Cordell Banks.* Commercial fishing for groundfish is prohibited in waters of depths less than 100 fm (183 m) around Cordell Banks, as defined by specific latitude and longitude coordinates at § 660.70, subpart C. An exception to this prohibition is that commercial fishing for "other flatfish" is permitted around Cordell Banks using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1-lb (0.45-kg) weights per line.

(14) *Essential Fish Habitat Conservation Areas (EFHCA).* An EFHCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude at §§ 660.75 through 660.79, Subpart C, where specified types of fishing are prohibited in accordance with § 660.12, Subpart C. EFHCAs apply to vessels using "bottom contact gear," which is defined at § 660.11, Subpart C to include limited entry fixed gear (longline and pot/trap,) among other gear types. Fishing with all bottom contact gear, including longline and pot/trap gear, is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at §§ 660.75 through 660.79, subpart C: Thompson Seamount, President Jackson Seamount, Cordell Bank (50 fm (91 m) isobath), Harris Point, Richardson Rock, Scorpion, Painted Cave, Anacapa Island, Carrington Point, Judith Rock, Skunk Point, Footprint, Gull Island, South Point, and Santa Barbara. Fishing with bottom contact gear is also prohibited within the Davidson Seamount EFH Area, which is defined by specific latitude and longitude coordinates at § 660.75, subpart C.

(e) *Black rockfish fishery management.* The trip limit for black rockfish (*Sebastes melanops*) for commercial fishing vessels using hook-and-line gear between the U.S.-Canada border and Cape Alava (48°09.50′ N. lat.), and between Destruction Island (47°40′ N. lat.) and Leadbetter Point (46°38.17′ N. lat.), is 100 lbs (45 kg) or 30 percent, by weight of all fish on board, whichever is greater, per vessel per fishing trip. These per trip limits apply to limited entry and open access fisheries, in conjunction with the cumulative trip limits and other management measures in § 660.230, subpart E, and § 660.330, subpart F. The crossover provisions in § 660.60(h)(7), subpart C, do not apply to the black rockfish per-trip limits.

§ 660.231 Limited entry fixed gear sablefish primary fishery.

This section applies to the sablefish primary season for the limited entry fixed gear fishery north of 36° N. lat. Limited entry and open access fixed gear sablefish fishing outside of the sablefish primary season north of 36° N. lat. is governed by routine management measures imposed under §§ 660.230 and 660.232, subpart E.

(a) *Sablefish endorsement.* A vessel may not fish in the sablefish primary season for the limited entry fixed gear fishery, unless at least one limited entry permit with both a gear endorsement for longline or trap (or pot) gear and a sablefish endorsement is registered for use with that vessel. Permits with sablefish endorsements are assigned to one of three tiers, as described at § 660.25(b)(3)(iv), subpart C.

(b) *Sablefish primary season for the limited entry fixed gear fishery*—(1) *Season dates.* North of 36° N. lat., the

sablefish primary season for the limited entry, fixed gear, sablefish-endorsed vessels begins at 12 noon local time on April 1 and ends at 12 noon local time on October 31, or for an individual permit holder when that permit holder's tier limit has been reached, whichever is earlier, unless otherwise announced by the Regional Administrator through the routine management measures process described at § 660.60, subpart C. (2)

Gear type. During the season primary and when fishing against primary season cumulative limits, each vessel authorized to fish in that season under paragraph (a) of this section may fish for sablefish with any of the gear types, except trawl gear, endorsed on at least one of the permits registered for use with that vessel.

(3) *Cumulative limits.* (i) A vessel participating in the primary season will be constrained by the sablefish cumulative limit associated with each of the permits registered for use with that vessel. During the primary season, each vessel authorized to fish in that season under paragraph (a) of this section may take, retain, possess, and land sablefish, up to the cumulative limits for each of the permits registered for use with that vessel (*i.e.,* stacked permits). If multiple limited entry permits with sablefish endorsements are registered for use with a single vessel, that vessel may land up to the total of all cumulative limits announced in this paragraph for the tiers for those permits, except as limited by paragraph (b)(3)(ii) of this section. Up to 3 permits may be registered for use with a single vessel during the primary season; thus, a single vessel may not take and retain, possess or land more than 3 primary season sablefish cumulative limits in any one year. A vessel registered for use with multiple limited entry permits is subject to per vessel limits for species other than sablefish, and to per vessel limits when participating in the daily trip limit fishery for sablefish under § 660.232, subpart E. In 2009, the following annual limits are in effect: Tier 1 at 61,296-lb (27,803 kg), Tier 2 at 27,862-lb (12,638 kg), and Tier 3 at 15,921-lb (7,221 kg). For 2010 and beyond, the following annual limits are in effect: Tier 1 at 56,081-lb (25,437 kg), Tier 2 at 25,492-lb (11,562 kg), and Tier 3 at 14,567-lb (6,648 kg).

(ii) If a permit is registered to more than one vessel during the primary season in a single year, the second vessel may only take the portion of the cumulative limit for that permit that has not been harvested by the first vessel to which the permit was registered. The combined primary season sablefish landings for all vessels registered to that permit may not exceed the cumulative limit for the tier associated with that permit.

(iii) A cumulative trip limit is the maximum amount of sablefish that may be taken and retained, possessed, or landed per vessel in a specified period of time, with no limit on the number of landings or trips.

(iv) Incidental halibut retention north of Pt. Chehalis, WA (46° 53.30′ N. lat.). No halibut retention is allowed during the primary sablefish fishery in 2010.

(4) *Owner-on-board requirement.* Any person who owns or has ownership interest in a limited entry permit with a sablefish endorsement, as described at § 660.25(b)(3), subpart C, must be on board the vessel registered for use with that permit at any time that the vessel has sablefish on board the vessel that count toward that permit's cumulative sablefish landing limit. This person must carry government issued photo identification while aboard the vessel. A permit owner is not obligated to be on board the vessel registered for use with the sablefish-endorsed limited entry permit during the sablefish primary season if:

(i) The person, partnership or corporation had ownership interest in a limited entry permit with a sablefish endorsement prior to November 1, 2000. A person who has ownership interest in a partnership or corporation that owned a sablefish-endorsed permit as of November 1, 2000, but who did not individually own a sablefish-endorsed limited entry permit as of November 1, 2000, is not exempt from the owner-on-board requirement when he/she leaves the partnership or corporation and purchases another permit individually. A person, partnership, or corporation that is exempt from the owner-on-board requirement may sell all of their permits, buy another sablefish-endorsed permit within up to a year from the date the last permit was approved for transfer, and retain their exemption from the owner-on-board requirements. Additionally, a person, partnership, or corporation that qualified for the owner-on-board exemption, but later divested their interest in a permit or permits, may retain rights to an owner-on-board exemption as long as that person, partnership, or corporation purchases another permit by March 2, 2007. A person, partnership or corporation could only purchase a permit if it has not added or changed individuals since November 1, 2000, excluding individuals that have left the partnership or corporation, or that have died.

(ii) The person who owns or who has ownership interest in a sablefish-endorsed limited entry permit is prevented from being on board a fishing vessel because the person died, is ill, or is injured. The person requesting the exemption must send a letter to NMFS requesting an exemption from the owner-on-board requirements, with appropriate evidence as described at paragraph (b)(4)(ii)(A) or (B) of this section. All emergency exemptions for death, injury, or illness will be evaluated by NMFS and a decision will be made in writing to the permit owner within 60 calendar days of receipt of the original exemption request.

(A) Evidence of death of the permit owner shall be provided to NMFS in the form of a copy of a death certificate. In the interim before the estate is settled, if the deceased permit owner was subject to the owner-on-board requirements, the estate of the deceased permit owner may send a letter to NMFS with a copy of the death certificate, requesting an exemption from the owner-on-board requirements. An exemption due to death of the permit owner will be effective only until such time that the estate of the deceased permit owner has transferred the deceased permit owner's permit to a beneficiary or up to three years after the date of death as proven by a death certificate, whichever is earlier. An exemption from the owner-on-board requirements will be conveyed in a letter from NMFS to the estate of the permit owner and is required to be on the vessel during fishing operations.

(B) Evidence of illness or injury that prevents the permit owner from participating in the fishery shall be provided to NMFS in the form of a letter from a certified medical practitioner. This letter must detail the relevant medical conditions of the permit owner and how those conditions prevent the permit owner from being onboard a fishing vessel during the primary season. An exemption due to injury or illness will be effective only for the fishing year of the request for exemption, and will not be granted for more than three consecutive or total years. NMFS will consider any exemption granted for less than 12 months in a year to count as one year against the 3-year cap. In order to extend an emergency medical exemption for a succeeding year, the permit owner must submit a new request and provide documentation from a certified medical practitioner detailing why the permit owner is still unable to be onboard a fishing vessel. An emergency exemption will be conveyed in a letter from NMFS to the

permit owner and is required to be on the vessel during fishing operations.

§ 660.232 Limited entry daily trip limit (DTL) fishery for sablefish.

(a) *Limited entry DTL fisheries both north and south of 36° N. lat.*—(1) Before the start of the primary season for the sablefish tier limit fishery, all sablefish landings made by a vessel authorized by § 660.231(a) to fish in the primary season will be subject to the restrictions and limits of the limited entry daily and/or weekly trip limit (DTL) fishery for sablefish specified in this section and which is governed by routine management measures imposed under § 660.60(c), subpart C.

(2) Following the start of the primary season, all landings made by a vessel authorized by § 660.231(a) of this subpart to fish in the primary season will count against the primary season cumulative limit(s) associated with the permit(s) registered for use with that vessel. A vessel that is eligible to fish in the sablefish primary season may fish in the DTL fishery for sablefish once that vessels' primary season sablefish limit(s) have been taken, or after the end of the primary season, whichever occurs earlier. Any subsequent sablefish landings by that vessel will be subject to the restrictions and limits of the limited entry DTL fishery for sablefish for the remainder of the fishing year.

(3) No vessel may land sablefish against both its primary season cumulative sablefish limits and against the DTL fishery limits within the same 24 hour period of 0001 hours local time to 2400 hours local time. If a vessel has taken all of its tier limit except for an amount that is smaller than the DTL amount, that vessel's subsequent sablefish landings are automatically subject to DTL limits.

(4) Vessels registered for use with a limited entry, fixed gear permit that does not have a sablefish endorsement may fish in the limited entry, DTL fishery for as long as that fishery is open during the fishing year, subject to routine management measures imposed under § 660.60(c), Subpart C. DTL limits for the limited entry fishery north and south of 36° N. lat. are provided in Tables 2 (North) and 2 (South) of this subpart.

(b) [Reserved]

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Table 2 (North) to Part 660, Subpart E -- 2010 Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Lat.
Other Limits and Requirements Apply -- Read §§ 660.10 - 660.65 and §§ 660.210 - 660.232 before using this tabl 08252010

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[6/]:							
1	North of 46°16' N. lat.	shoreline - 100 fm line[6/]					
2	46°16' N. lat. - 45°03.83' N. lat.	30 fm line[6/] - 100 fm line[6/]					
3	45°03.83' N. lat. - 43°00' N. lat.	30 fm line[6/] - 125 fm line[6/ 7/]					
4	43°00' N. lat. - 42°00' N. lat.	20 fm line[6/] - 100 fm line[6/]					
5	42°00' N. lat. - 40°10' N. lat.	20 fm depth contour - 100 fm line[6/]					
See § 660.60 and § 660.230 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.							
6	**Minor slope rockfish [2/] & Darkblotched rockfish**	4,000 lb/ 2 months					
7	**Pacific ocean perch**	1,800 lb/ 2 months					
8	**Sablefish**	1,750 lb per week, not to exceed 7,000 lb/ 2 months			1,750 lb per week, not to exceed 8,500 lb/ 2 months		1,750 lb per week, not to exceed 8,000 lb/ 2 months
9	**Longspine thornyhead**	10,000 lb/ 2 months					
10	**Shortspine thornyhead**	2,000 lb/ 2 months					
11	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
12	**Arrowtooth flounder**						
13	**Petrale sole**						
14	**English sole**						
15	**Starry flounder**						
16	**Other flatfish[1/]**						
17	**Whiting**	10,000 lb/ trip					
18	**Minor shelf rockfish[2/], Shortbelly, Widow, & Yellowtail rockfish**	200 lb/ month					
19	**Canary rockfish**	CLOSED					
20	**Yelloweye rockfish**	CLOSED					
21	**Minor nearshore rockfish & Black rockfish**						
22	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]					
23	42° - 40°10' N. lat.	6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]	7,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish [3/]				
24	**Lingcod[4/]**	CLOSED		800 lb/ 2 months		400 lb/ month	CLOSED
25	**Pacific cod**	1,000 lb/ 2 months					
26	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
27	**Other fish[5/]**	Not limited					

TABLE 2 (North)

1/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
2/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.
5/ "Other fish" are defined at § 660.11 and include sharks, skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
7/ The 125 fm line restriction is in place all year, except on days when the directed halibut fishery is open. On those days the 100 fm line restriction is in effect.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 2 (South) to Part 660, Subpart E -- 2010 Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Lat.
Other Limits and Requirements Apply -- Read §§ 660.10 - 660.65 and §§ 660.210 - 660.232 before using this tabl 08252010

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
1	40°10' - 34°27' N. lat.	30 fm line[5/] - 150 fm line[5/]					
2	South of 34°27' N. lat.	60 fm line[5/] - 150 fm line[5/] (also applies around islands)					
	See § 660.60 and § 660.230 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
3	**Minor slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months					
4	**Splitnose**	40,000 lb/ 2 months					
5	**Sablefish**						
6	40°10' - 36° N. lat.	1,750 lb per week, not to exceed 7,000 lb/ 2 months			1,750 lb per week, not to exceed 8,500 lb/ 2 months		1,750 lb per week, not to exceed 8,000 lb/ 2 months
7	South of 36° N. lat.	400 lb/ day, or 1 landing per week of up to 1,500 lb				3,000 lb per week	
8	**Longspine thornyhead**	10,000 lb / 2 months					
9	**Shortspine thornyhead**						
10	40°10' - 34°27' N. lat.	2,000 lb/ 2 months					
11	South of 34°27' N. lat.	3,000 lb/ 2 months					
12	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
13	**Arrowtooth flounder**						
14	**Petrale sole**						
15	**English sole**						
16	**Starry flounder**						
17	**Other flatfish[1/]**						
18	**Whiting**	10,000 lb/ trip					
19	**Minor shelf rockfish[2/], Shortbelly, Widow rockfish, and Bocaccio (including Chilipepper between 40°10' - 34°27' N. lat.)**						
20	40°10' - 34°27' N. lat.	Minor shelf rockfish, shortbelly, widow rockfish, bocaccio & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb/ 2 months may be any species other than chilipepper.					
21	South of 34°27' N. lat.	3,000 lb/ 2 months	CLOSED	3,000 lb/ 2 months			
22	**Chilipepper rockfish**						
23	40°10' - 34°27' N. lat.	Chilipepper included under minor shelf rockfish, shortbelly, widow and bocaccio limits - - See above					
24	South of 34°27' N. lat.	2,000 lb/ 2 months, this opportunity only available seaward of the nontrawl RCA					
25	**Canary rockfish**	CLOSED					
26	**Yelloweye rockfish**	CLOSED					
27	**Cowcod**	CLOSED					
28	**Bronzespotted rockfish**	CLOSED					
29	**Bocaccio**						
30	40°10' - 34°27' N. lat.	Bocaccio included under Minor shelf rockfish, shortbelly, widow & chilipepper limits -- See above					
31	South of 34°27' N. lat.	300 lb/ 2 months	CLOSED	300 lb/ 2 months			

TABLE 2 (South)

Table 2 (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC	
32	**Minor nearshore rockfish & Black rockfish**							TABLE 2 (South)
33	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	600 lb/ 2 months	
34	Deeper nearshore							
35	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months		800 lb/ 2 months		
36	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months				
37	California scorpionfish	600 lb/ 2 months	CLOSED	600 lb/ 2 months	1,200 lb/ 2 months			
38	**Lingcod**[3/]	CLOSED		800 lb/ 2 months		400 lb/ month	CLOSED	
39	**Pacific cod**	1,000 lb/ 2 months						
40	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months			
41	**Other fish**[4/] **& Cabezon**	Not limited						

1/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

2/ POP is included in the trip limits for minor slope rockfish. Yellowtail is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ The minimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

4/ "Other fish" are defined at § 660.11 and include sharks, skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling.

5/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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Subpart F—West Coast Groundfish—Open Access Fisheries

§ 660.310 Purpose and scope.

This subpart covers the Pacific Coast Groundfish open access fishery. The open access fishery, as defined at § 660.11, Subpart C, is the fishery composed of commercial vessels using open access gear fished pursuant to the harvest guidelines, quotas, and other management measures specified for the harvest of open access allocations or governing the fishing activities of open access vessels.

§ 660.311 Open access fishery—definitions.

General definitions for the Pacific Coast groundfish fisheries are defined at § 660.11, subpart C. The definitions in this subpart are specific to the open access fishery covered in this subpart and are in addition to those specified at § 660.11, subpart C.

Closely tended for the purposes of this subpart means that a vessel is within visual sighting distance or within 0.25 nm (463 m) of the gear as determined by electronic navigational equipment.

§ 660.312 Open access fishery—prohibitions.

General groundfish prohibitions for the Pacific Coast groundfish fisheries are defined at § 660.12, subpart C. In addition to the general groundfish prohibitions, it is unlawful for any person to:

(a) *General.* (1) Take and retain, possess, or land groundfish in excess of the landing limit for the open access fishery without having a valid limited entry permit for the vessel affixed with a gear endorsement for the gear used to catch the fish.

(2) *Black rockfish fisheries.* Have onboard a commercial hook-and-line fishing vessel (other than a vessel operated by persons under § 660.60 (c)(1)(ii), subpart C), more than the amount of the trip limit set for black rockfish by § 660.330(e) while that vessel is fishing between the U.S.-Canada border and Cape Alava (48°09′30″ N. lat.), or between Destruction Island (47°40′00″ N. lat.) and Leadbetter Point (46°38′10″ N. lat.).

(b) *Gear.* (1) Possess, deploy, haul, or carry onboard a fishing vessel subject to this subpart a set net, trap or pot, longline, or commercial vertical hook-and-line that is not in compliance with the gear restrictions in § 660.330(b), subpart F, unless such gear is the gear of another vessel that has been retrieved at sea and made inoperable or stowed in a manner not capable of being fished. The disposal at sea of such gear is prohibited by Annex V of the International Convention for the Prevention of Pollution From Ships, 1973 (Annex V of MARPOL 73/78).

(2) Fish with dredge gear (defined in § 660.11) anywhere within EFH within the EEZ, as defined by latitude/longitude coordinates at § 660.75.

(3) Fish with beam trawl gear (defined in § 660.11) anywhere within EFH within the EEZ, as defined by latitude/longitude coordinates at § 660.75.

(4) Fish with bottom trawl gear with a footrope diameter greater than 19 inches (48 cm) (including rollers, bobbins, or other material encircling or tied along the length of the footrope) anywhere in EFH within the EEZ, as defined by latitude/longitude coordinates at § 660.75.

(c) *Fishing in conservation areas with open access gears.* (1) Operate a vessel with non-groundfish trawl gear onboard in any applicable GCA (as defined at § 660.330(d)) except for purposes of continuous transiting, with all trawl gear stowed in accordance with § 660.330(b), or except as authorized in the groundfish management measures published at § 660.330.

(2) Operate a vessel in an applicable GCA (as defined at § 660.330(d) that has

nontrawl gear onboard and is not registered to a limited entry permit on a trip in which the vessel is used to take and retain or possess groundfish in the EEZ, possess or land groundfish taken in the EEZ, except for purposes of continuous transiting, with all groundfish nontrawl gear stowed in accordance with § 660.330(b), or except as authorized in the groundfish management measures published at § 660.330.

(3) Fish with bottom contact gear (as defined in § 660.11, subpart C) within the EEZ in the following areas (defined in §§ 660.78 and 660.79): Thompson Seamount, President Jackson Seamount, Cordell Bank (50-fm (91-m) isobath), Harris Point, Richardson Rock, Scorpion, Painted Cave, Anacapa Island, Carrington Point, Judith Rock, Skunk Point, Footprint, Gull Island, South Point, and Santa Barbara.

(4) Fish with bottom contact gear (as defined in § 660.11, subpart C), or any other gear that is deployed deeper than 500-fm (914-m), within the Davidson Seamount area (defined in § 660.75).

§ 660.313 Open access fishery—recordkeeping and reporting.

(a) *General.* General reporting requirements specified at § 660.13(a) through (c) of subpart C apply to open access fisheries.

(b) *Declaration reports for vessels using nontrawl gear.* Declaration reporting requirements for open access vessels using nontrawl gear (all types of open access gear other than non-groundfish trawl gear) are specified at § 660.13(d).

(c) *Declaration reports for vessels using non-groundfish trawl gear.* Declaration reporting requirements for open access vessels using non-groundfish trawl gear are specified at § 660.13(d).

(d) *VMS requirements for open access fishery vessels.* VMS requirements for open access fishery vessels are specified at § 660.14, subpart C.

(e) *Retention of records.* Any person landing groundfish must retain on board the vessel from which groundfish is landed, and provide to an authorized officer upon request, copies of any and all reports of groundfish landings containing all data, and in the exact manner, required by the applicable state law throughout the cumulative limit period during which a landing occurred and for 15 days thereafter.

§ 660.316 Open access fishery—observer requirements.

(a) *Observer coverage requirements.* When NMFS notifies the owner, operator, permit holder, or the manager of a catcher vessel, specified at § 660.16(c), subpart C, of any requirement to carry an observer, the catcher vessel may not be used to fish for groundfish without carrying an observer.

(b) *Notice of departure—basic rule.* At least 24 hours (but not more than 36 hours) before departing on a fishing trip, a vessel that has been notified by NMFS that it is required to carry an observer, or that is operating in an active sampling unit, must notify NMFS (or its designated agent) of the vessel's intended time of departure. Notice will be given in a form to be specified by NMFS.

(1) *Optional notice—weather delays.* A vessel that anticipates a delayed departure due to weather or sea conditions may advise NMFS of the anticipated delay when providing the basic notice described in paragraph (b) of this section. If departure is delayed beyond 36 hours from the time the original notice is given, the vessel must provide an additional notice of departure not less than 4 hours prior to departure, in order to enable NMFS to place an observer.

(2) *Optional notice—back-to-back fishing trips.* A vessel that intends to make back-to-back fishing trips (*i.e.,* trips with less than 24 hours between offloading from one trip and beginning another), may provide the basic notice described in paragraph (b) of this section for both trips, prior to making the first trip. A vessel that has given such notice is not required to give additional notice of the second trip.

(c) *Cease fishing report.* Within 24 hours of ceasing the taking and retaining of groundfish, vessel owners, operators, or managers must notify NMFS or its designated agent that fishing has ceased. This requirement applies to any vessel that is required to carry an observer, or that is operating in a segment of the fleet that NMFS has identified as an active sampling unit.

(d) *Waiver.* The Northwest Regional Administrator may provide written notification to the vessel owner stating that a determination has been made to temporarily waive coverage requirements because of circumstances that are deemed to be beyond the vessel's control.

(e) *Vessel responsibilities*—(1) *Accommodations and food.* An operator of a vessel required to carry one or more observer(s) must provide accommodations and food that are Equivalent to those provided to the crew.

(2) *Safe conditions.* Maintain safe conditions on the vessel for the protection of observer(s) including adherence to all USCG and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel, and provisions at §§ 600.725 and 600.746 of this chapter.

(3) *Observer communications.* Facilitate observer communications by:

(i) *Observer use of equipment.* Allowing observer(s) to use the vessel's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observer(s) or the U.S. or designated agent.

(ii) *Functional equipment.* Ensuring that the vessel's communications equipment, used by observers to enter and transmit data, is fully functional and operational.

(4) *Vessel position.* Allow observer(s) access to, and the use of, the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(5) *Access.* Allow observer(s) free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(6) *Prior notification.* Notify observer(s) at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer, unless the observer specifically requests not to be notified.

(7) *Records.* Allow observer(s) to inspect and copy any state or Federal logbook maintained voluntarily or as required by regulation.

(8) *Assistance.* Provide all other reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

(i) Measuring decks, codends, and holding bins.

(ii) Providing the observer(s) with a safe work area.

(iii) Collecting bycatch when requested by the observer(s).

(iv) Collecting and carrying baskets of fish when requested by the observer(s).

(v) Allowing the observer(s) to collect biological data and samples.

(vi) Providing adequate space for storage of biological samples.

(f) *Sample station*—(1) *Observer sampling station.* This paragraph contains the requirements for observer sampling stations. The vessel owner must provide an observer sampling station that complies with this section so that the observer can carry out required duties.

(i) *Accessibility.* The observer sampling station must be available to the observer at all times.

(ii) *Location.* The observer sampling station must be located within 4 m of the location from which the observer samples unsorted catch. Unobstructed passage must be provided between the observer sampling station and the location where the observer collects sample catch.

§ 660.319 Open access fishery gear identification and marking.

(a) *Gear identification.* (1) Open access fixed gear (longline, trap or pot, set net and stationary hook-and-line gear, including commercial vertical hook-and-line gear) must be marked at the surface and at each terminal end, with a pole, flag, light, radar reflector, and a buoy.

(2) Open access commercial vertical hook-and-line gear that is closely tended as defined at § 660.311 of this subpart, may be marked only with a single buoy of sufficient size to float the gear.

(3) A buoy used to mark fixed gear under paragraph (a)(1) or (a)(2) of this section must be marked with a number clearly identifying the owner or operator of the vessel. The number may be either:

(i) If required by applicable state law, the vessel's number, the commercial fishing license number, or buoy brand number; or

(ii) The vessel documentation number issued by the USCG, or, for an undocumented vessel, the vessel registration number issued by the state.

(b) [Reserved]

§ 660.320 Open access fishery—crossover provisions.

(a) *Operating in both limited entry and open access fisheries.* See provisions at § 660.60, subpart C.

(b) *Operating in north-south management areas with different trip limits.* NMFS uses different types of management areas for West Coast groundfish management. One type of management area is the north-south management area, a large ocean area with northern and southern boundary lines wherein trip limits, seasons, and conservation areas follow a single theme. Within each north-south management area, there may be one or more conservation areas, detailed in §§ 660.11 and 660.70 through 660.74, subpart C. The provisions within this paragraph apply to vessels operating in different north-south management areas. Trip limits for a species or a species group may differ in different north-south management areas along the coast. The following "crossover" provisions apply to vessels operating in different geographical areas that have different cumulative or "per trip" trip limits for the same species or species group. Such crossover provisions do not apply to species that are subject only to daily trip limits, or to the trip limits for black rockfish off Washington (see § 660.330(e)).

(1) *Going from a more restrictive to a more liberal area.* If a vessel takes and retains any groundfish species or species group of groundfish in an area where a more restrictive trip limit applies before fishing in an area where a more liberal trip limit (or no trip limit) applies, then that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(2) *Going from a more liberal to a more restrictive area.* If a vessel takes and retains a groundfish species or species group in an area where a higher trip limit or no trip limit applies, and takes and retains, possesses or lands the same species or species group in an area where a more restrictive trip limit applies, that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(3) Operating in two different areas where a species or species group is managed with different types of trip limits. During the fishing year, NMFS may implement management measures for a species or species group that set different types of trip limits (for example, per trip limits versus cumulative trip limits) for different areas. If a vessel fishes for a species or species group that is managed with different types of trip limits in two different areas within the same cumulative limit period, then that vessel is subject to the most restrictive overall cumulative limit for that species, regardless of where fishing occurs.

(4) *Minor rockfish.* Several rockfish species are designated with species-specific limits on one side of the 40°10′ N. lat. management line, and are included as part of a minor rockfish complex on the other side of the line. A vessel that takes and retains fish from a minor rockfish complex (nearshore, shelf, or slope) on both sides of a management line during a single cumulative limit period is subject to the more restrictive cumulative limit for that minor rockfish complex during that period.

(i) If a vessel takes and retains minor slope rockfish north of 40°10′ N. lat., that vessel is also permitted to take and retain, possess or land splitnose rockfish up to its cumulative limit south of 40°10′ N. lat., even if splitnose rockfish were a part of the landings from minor slope rockfish taken and retained north of 40°10′ N. lat.

(ii) If a vessel takes and retains minor slope rockfish south of 40°10′ N. lat., that vessel is also permitted to take and retain, possess or land POP up to its cumulative limit north of 40°10′ N. lat., even if POP were a part of the landings from minor slope rockfish taken and retained south of 40°10′ N. lat.

(5) "*DTS complex*". There are often differential trawl trip limits for the "DTS complex" north and south of latitudinal management lines. Vessels operating in the limited entry trawl fishery are subject to the crossover provisions in paragraph (b) of this section when making landings that include any one of the four species in the "DTS complex."

§ 660.330 Open access fishery—management measures.

(a) *General.* Groundfish species taken in open access fisheries will be managed with cumulative trip limits (*see* trip limits in Tables 3 (North) and 3 (South) of this subpart), size limits (see § 660.60(h)(5)), seasons (*see* seasons in Tables 3 (North) and 3 (South) of this subpart), gear restrictions (see paragraph (b) of this section), and closed areas (*see* paragraph (d) of this section and §§ 660.70 through 660.79, subpart C). Unless otherwise specified, a vessel operating in the open access fishery is subject to, and must not exceed any trip limit, frequency limit, and/or size limit for the open access fishery. Cowcod retention is prohibited in all fisheries and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (*see* paragraph (d)(11) of this section and § 660.70, subpart C). Retention of yelloweye rockfish and canary rockfish is prohibited in all open access fisheries. For information on the open access daily/weekly trip limit fishery for sablefish, *see* § 660.332 and the trip limits in Tables 3 (North) and 3 (South) of this subpart. Open access vessels are subject to daily or weekly sablefish limits in addition to cumulative limits for each cumulative limit period. Only one sablefish landing per week may be made in excess of the daily trip limit and, if the vessel chooses to make a landing in excess of that daily trip limit, then that is the only sablefish landing permitted for that week. The trip limit for black rockfish caught with hook-and-line gear also applies, *see* paragraph (e) of this section. Open access vessels that fish with non-groundfish trawl gear or in the salmon troll fishery north of 40°10′ N. lat. are subject the cumulative limits and closed areas (except the pink shrimp fishery

which is not subject to RCA restrictions) listed in Tables 3 (North) and 3 (South) of this subpart. Federal commercial groundfish regulations are not intended to supersede any more restrictive state commercial groundfish regulations relating to federally managed groundfish.

(b) *Gear restrictions.* Open access gear includes longline, trap, pot, hook-and-line (fixed or mobile), setnet (anchored gillnet or trammel net, which are permissible south of 38° N. lat. only), spear and non-groundfish trawl gear (trawls used to target non-groundfish species: pink shrimp or ridgeback prawns, and, south of Pt. Arena, CA (38°57.50' N. lat.), California halibut or sea cucumbers). Restrictions for gears used in the open access fisheries are as follows:

(1) *Non-groundfish trawl gear.* Non-groundfish trawl gear is generally trawl gear used to target pink shrimp, ridgeback prawn, California halibut and sea cucumber and is exempt from the limited entry trawl gear restrictions at § 660.130(b). The following gear restrictions apply to non-groundfish trawl gear:

(i) Bottom trawl gear with a footrope diameter greater than 19 inches (48 cm) (including rollers, bobbins, or other material encircling or tied along the length of the footrope) is prohibited anywhere in EFH within the EEZ, as defined by latitude/longitude coordinates at § 660.75. unless such gear is the gear of another vessel that has been retrieved at sea and made inoperable or stowed in a manner not capable of being fished. The disposal at sea of such gear is prohibited by Annex V of the International Convention for the Prevention of Pollution From Ships, 1973 (Annex V of MARPOL 73/78).

(ii) [Reserved]

(2) *Fixed gear.* (i) Fixed gear (longline, trap or pot, set net and stationary hook-and-line gear, including commercial vertical hook-and-line gear) must be attended at least once every 7 days.

(ii) *Set nets.* Fishing for groundfish with set nets is prohibited in the fishery management area north of 38°00.00' N. lat.

(iii) *Traps or pots.* Traps must have biodegradable escape panels constructed with 21 or smaller untreated cotton twine in such a manner that an opening at least 8 inches (20.3 cm) in diameter results when the twine deteriorates.

(iv) *Spears.* Spears may be propelled by hand or by mechanical means.

(c) *Sorting.* Under § 660.12(a)(8), subpart C, it is unlawful for any person to "fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY applied." The States of Washington, Oregon, and California may also require that vessels record their landings as sorted on their state landing receipts. For open access vessels, the following species must be sorted:

(1) Coastwide—widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, shortbelly rockfish, black rockfish, blue rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, shortspine and longspine thornyhead, Dover sole, arrowtooth flounder, petrale sole, starry flounder, English sole, other flatfish, lingcod, sablefish, Pacific cod, spiny dogfish, longnose skate, other fish, Pacific whiting, and Pacific sanddabs;

(2) North of 40°10' N. lat.—POP, yellowtail rockfish;

(3) South of 40°10' N. lat.—minor shallow nearshore rockfish, minor deeper nearshore rockfish, chilipepper rockfish, bocaccio rockfish, splitnose rockfish, cowcod, bronzespotted rockfish and cabezon.

(d) *Groundfish conservation areas affecting open access vessels.* A GCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude. A vessel that is authorized by this paragraph to fish within a GCA (e.g. fishing for "other flatfish" using no more than 12 hooks, "Number 2" or smaller), may not simultaneously have other gear on board the vessel that is unlawful to use for fishing within the GCA. The following GCAs apply to vessels participating in the open access groundfish fishery.

(1) *North coast recreational yelloweye rockfish conservation area.* The latitude and longitude coordinates of the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA) boundaries are specified at § 660.70, subpart C. The North Coast Recreational YRCA is designated as an area to be avoided (a voluntary closure) by commercial fixed gear fishers.

(2) *North coast commercial yelloweye rockfish conservation area.* The latitude and longitude coordinates of the North Coast Commercial Yelloweye Rockfish Conservation Area (YRCA) boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the North Coast Commercial YRCA. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the North Coast Commercial YRCA. Open access vessels may transit through the North Coast Commercial YRCA with or without groundfish on board.

(3) *South coast recreational yelloweye rockfish conservation area.* The latitude and longitude coordinates of the South Coast Recreational Yelloweye Rockfish Conservation Area (YRCA) boundaries are specified at § 660.70, subpart C. The South Coast Recreational YRCA is designated as an area to be avoided (a voluntary closure) by commercial fixed gear fishers.

(4) *Westport offshore recreational YRCA.* The latitude and longitude coordinates that define the Westport Offshore Recreational YRCA boundaries are specified at § 660.70, subpart C. The Westport Offshore Recreational YRCA is designated as an area to be avoided (a voluntary closure) by commercial fixed gear fishers.

(5) *Point St. George YRCA.* The latitude and longitude coordinates of the Point St. George YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the Point St. George YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the Point St. George YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the Point St. George YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Open access vessels may transit through the Point St. George YRCA, at any time, with or without groundfish on board.

(6) *South Reef YRCA.* The latitude and longitude coordinates of the South Reef YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the South Reef YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the South Reef YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the South Reef YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Open access gear vessels may transit through the South Reef YRCA, at any time, with or without groundfish on board.

(7) *Reading Rock YRCA.* The latitude and longitude coordinates of the Reading Rock YRCA boundaries are

specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the Reading Rock YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the Reading Rock YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the Reading Rock YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Open access gear vessels may transit through the Reading Rock YRCA, at any time, with or without groundfish on board.

(8) *Point Delgada (North) YRCA.* The latitude and longitude coordinates of the Point Delgada (North) YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the Point Delgada (North) YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the Point Delgada (North) YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the Point Delgada (North) YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Open access gear vessels may transit through the Point Delgada (North) YRCA, at any time, with or without groundfish on board.

(9) *Point Delgada (South) YRCA.* The latitude and longitude coordinates of the Point Delgada (South) YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the Point Delgada (South) YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the Point Delgada (South) YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the Point Delgada (South) YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Open access gear vessels may transit through the Point Delgada (South) YRCA, at any time, with or without groundfish on board.

(10) *Salmon Troll Yelloweye Rockfish Conservation Area (YRCA).* The latitude and longitude coordinates of the Salmon Troll YRCA boundaries are specified in the groundfish regulations at § 660.70, subpart C, and in the salmon regulations at § 660.405. Fishing with salmon troll gear is prohibited within the Salmon Troll YRCA. It is unlawful for commercial salmon troll vessels to take and retain, possess, or land fish taken with salmon troll gear within the Salmon Troll YRCA. Open access vessels may transit through the Salmon Troll YRCA with or without fish on board.

(11) *Cowcod Conservation Areas (CCAs).* The latitude and longitude coordinates of the CCAs boundaries are specified at § 660.70, subpart C. It is unlawful to take and retain, possess, or land groundfish within the CCAs, except for species authorized in this paragraph caught according to gear requirements in this paragraph, when those waters are open to fishing. Commercial fishing vessels may transit through the Western CCA with their gear stowed and groundfish on board only in a corridor through the Western CCA bounded on the north by the latitude line at 33°00.50' N. lat., and bounded on the south by the latitude line at 32°59.50' N. lat. Fishing with open access gear is prohibited in the CCAs, except as follows:

(i) Fishing for "other flatfish" is permitted within the CCAs under the following conditions: when using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1-lb (0.45 kg) weights per line; and provided a valid declaration report as required at § 660.12(d), subpart C, has been filed with NMFS OLE.

(ii) Fishing for rockfish and lingcod is permitted shoreward of the 20 fm (37 m) depth contour within the CCAs when trip limits authorize such fishing, and provided a valid declaration report as required at § 660.12(d), subpart C, has been filed with NMFS OLE.

(12) *Nontrawl rockfish conservation areas for the open access fisheries.* The nontrawl RCAs are closed areas, defined by specific latitude and longitude coordinates (specified at §§ 660.70 through 660.74, subpart C) designed to approximate specific depth contours, where fishing for groundfish with nontrawl gear is prohibited. Boundaries for the nontrawl RCA throughout the year are provided in the open access trip limit tables, Table 3 (North) and Table 3 (South) of this subpart and may be modified by NMFS inseason pursuant to § 660.60(c).

(i) It is unlawful to operate a vessel in the nontrawl RCA that has nontrawl gear onboard and is not registered to a limited entry permit on a trip in which the vessel is used to take and retain or possess groundfish in the EEZ, or land groundfish taken in the EEZ, except for the purpose of continuous transiting, or when the use of nontrawl gear is authorized in part 660.

(ii) On any trip on which a groundfish species is taken with nontrawl open access gear and retained, the open access nontrawl vessel may transit through the nontrawl RCA only if all groundfish nontrawl gear is stowed either: Below deck; or if the gear cannot readily be moved, in a secured and covered manner, detached from all lines, so that it is rendered unusable for fishing.

(iii) The nontrawl RCA restrictions in this section apply to vessels taking and retaining or possessing groundfish in the EEZ, or landing groundfish taken in the EEZ. Unless otherwise authorized by part 660, a vessel may not retain any groundfish taken on a fishing trip for species other than groundfish that occurs within the nontrawl RCA. If a vessel fishes in a non-groundfish fishery in the nontrawl RCA, it may not participate in any fishing for groundfish on that trip that is prohibited within the nontrawl RCA. [For example, if a vessel fishes in the salmon troll fishery within the RCA, the vessel cannot on the same trip fish in the sablefish fishery outside of the RCA.]

(iv) Fishing for "other flatfish" off California (between 42° N. lat. south to the U.S./Mexico border) is permitted within the nontrawl RCA with fixed gear only under the following conditions: When using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1-lb (0.91 kg) weights per line when trip limits authorize such fishing; and provided a valid declaration report as required at § 660.12(d), subpart C, has been filed with NMFS OLE.

(13) *Non-groundfish trawl rockfish conservation areas for the open access non-groundfish trawl fisheries.* The non-groundfish trawl RCAs are closed areas, defined by specific latitude and longitude coordinates (specified at §§ 660.70 through 660.74, subpart C) designed to approximate specific depth contours, where fishing for groundfish with nontrawl gear is prohibited. Boundaries for the nontrawl RCA throughout the year are provided in the open access trip limit tables, Table 3 (North) and Table 3 (South) of this subpart and may be modified by NMFS in season pursuant to § 660.60(c).

(i) It is unlawful to operate a vessel in the non-groundfish trawl RCA with non-groundfish trawl gear onboard, except for the purpose of continuous transiting, or when the use of trawl gear is authorized in part 660. It is unlawful to take and retain, possess, or land groundfish taken with non-groundfish

trawl gear within the nontrawl RCA, unless otherwise authorized in part 660.

(ii) Non-groundfish trawl vessels may transit through the non-groundfish trawl RCA, with or without groundfish on board, provided all non-groundfish trawl gear is stowed either: Below deck; or if the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing; or remaining on deck uncovered if the trawl doors are hung from their stanchions and the net is disconnected from the doors.

(iii) The non-groundfish trawl RCA restrictions in this section apply to vessels taking and retaining or possessing groundfish in the EEZ, or landing groundfish taken in the EEZ. Unless otherwise authorized by Part 660, it is unlawful for a vessel to retain any groundfish taken on a fishing trip for species other than groundfish that occurs within the non-groundfish trawl RCA. If a vessel fishes in a non-groundfish fishery in the non-groundfish trawl RCA, it may not participate in any fishing on that trip that is prohibited within the non-groundfish trawl RCA. [For example, if a vessel fishes in the pink shrimp fishery within the RCA, the vessel cannot on the same trip fish in the DTS fishery seaward of the RCA.] Nothing in these Federal regulations supersedes any state regulations that may prohibit trawling shoreward of the fishery management area (3–200 nm).

(iv) It is lawful to fish with non-groundfish trawl gear within the non-groundfish trawl RCA only under the following conditions:

(A) Pink shrimp trawling is permitted in the non-groundfish trawl RCA when a valid declaration report as required at § 660.12(d), subpart C, has been filed with NMFS OLE. Groundfish caught with pink shrimp trawl gear may be retained anywhere in the EEZ and are subject to the limits in Table 3 (North) and Table 3 (South) of this subpart.

(B) When the shoreward line of the trawl RCA is shallower than 100 fm (183 m), vessels using ridgeback prawn trawl gear south of 34°27.00′ N. lat. may operate out to the 100 fm (183 m) boundary line specified at § 660.73 when a valid declaration report as required at § 660.12(d), subpart C, has been filed with NMFS OLE. Groundfish caught with ridgeback prawn trawl gear are subject to the limits in Table 3 (North) and Table 3 (South) of this subpart.

(14) *Farallon Islands.* Under California law, commercial fishing for all groundfish is prohibited between the shoreline and the 10 fm (18 m) depth contour around the Farallon Islands. An exception to this prohibition is that commercial fishing for "other flatfish" is permitted around the Farallon Islands using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1-lb (0.45 kg) weights per line. (See Table 2 (South) of this subpart.) For a definition of the Farallon Islands, see § 660.70, subpart C.

(15) *Cordell Banks.* Commercial fishing for groundfish is prohibited in waters of depths less than 100-fm (183-m) around Cordell Banks, as defined by specific latitude and longitude coordinates at § 660.70, subpart C. An exception to this prohibition is that commercial fishing for "other flatfish" is permitted around Cordell Banks using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1-lb (0.45 kg) weights per line.

(16) *Essential fish habitat conservation areas (EFHCA).* An EFHCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude at §§ 660.76 through 660.79, where specified types of fishing are prohibited in accordance with § 660.12, subpart C. EFHCAs apply to vessels using bottom trawl gear and or vessels using "bottom contact gear," which is defined at § 660.11, subpart C, and includes, but is not limited to: Beam trawl, bottom trawl, dredge, fixed gear, set net, demersal seine, dinglebar gear, and other gear (including experimental gear) designed or modified to make contact with the bottom.

(i) The following EFHCAs apply to vessels operating within the EEZ off the coasts of Washington, Oregon, and California with bottom trawl gear:

(A) Seaward of a boundary line approximating the 700-fm (1280-m) depth contour. Fishing with bottom trawl gear is prohibited in waters of depths greater than 700 fm (1280 m) within the EFH, as defined by specific latitude and longitude coordinates at §§ 660.75 and 660.76.

(B) Shoreward of a boundary line approximating the 100-m (183-m) depth contour. Fishing with bottom trawl gear with a footrope diameter greater than 8 inches (20 cm) is prohibited in waters shoreward of a boundary line approximating the 100-fm (183-m) depth contour, as defined by specific latitude and longitude coordinates at § 660.73.

(C) EFHCAs for all bottom trawl gear. Fishing with all bottom trawl gear is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at §§ 660.77 through 660.78: Olympic 2, Biogenic 1, Biogenic 2, Grays Canyon, Biogenic 3, Astoria Canyon, Nehalem Bank/Shale Pile, Siletz Deepwater, Daisy Bank/Nelson Island, Newport Rockpile/Stonewall Bank, Heceta Bank, Deepwater off Coos Bay, Bandon High Spot, Rogue Canyon.

(D) EFHCAs for all bottom trawl gear, except demersal seine gear. Fishing with all bottom trawl gear except demersal seine gear (defined at § 660.11, subpart C) is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at § 660.79: Eel River Canyon, Blunts Reef, Mendocino Ridge, Delgada Canyon, Tolo Bank, Point Arena North, Point Arena South Biogenic Area, Cordell Bank/Biogenic Area, Farallon Islands/Fanny Shoal, Half Moon Bay, Monterey Bay/Canyon, Point Sur Deep, Big Sur Coast/Port San Luis, East San Lucia Bank, Point Conception, Hidden Reef/Kidney Bank (within Cowcod Conservation Area West), Catalina Island, Potato Bank (within Cowcod Conservation Area West), Cherry Bank (within Cowcod Conservation Area West), and Cowcod EFH Conservation Area East.

(E) EFHCAs for bottom contact gear, which includes bottom trawl gear. Fishing with bottom contact gear is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at §§ 660.398–.399: Thompson Seamount, President Jackson Seamount, Cordell Bank (50-fm (91-m) isobath), Harris Point, Richardson Rock, Scorpion, Painted Cave, Anacapa Island, Carrington Point, Judith Rock, Skunk Point, Footprint, Gull Island, South Point, and Santa Barbara. Fishing with bottom contact gear is also prohibited within the Davidson Seamount EFH Area, which is defined by specific latitude and longitude coordinates at § 660.75, subpart C.

(ii) [Reserved]

(e) *Black rockfish fishery management.* The trip limit for black rockfish (*Sebastes melanops*) for commercial fishing vessels using hook-and-line gear between the U.S.-Canada border and Cape Alava (48°09.50′ N. lat.), and between Destruction Island (47°40′ N. lat.) and Leadbetter Point (46°38.17′ N. lat.), is 100-lbs (45 kg) or 30 percent, by weight of all fish on board, whichever is greater, per vessel per fishing trip. These per trip limits apply to limited entry and open access fisheries, in conjunction with the cumulative trip limits and other management measures in §§ 660.230 and 660.330. The crossover provisions in § 660.60(h)(7), subpart C, do not

apply to the black rockfish per-trip limits.

§ 660.332 Open access daily trip limit (DTL) fishery for sablefish.

(a) *Open access DTL fisheries both north and south of 36° N. lat.* Open access vessels may fish in the open access, daily trip limit fishery for as long as that fishery is open during the year, subject to the routine management measures imposed under § 660.60, subpart C.

(b) *Trip limits.* (1) Daily and/or weekly trip limits for the open access fishery north and south of 36° N. lat. are provided in Tables 3 (North) and 3 (South) of this subpart.

(2) Trip and/or frequency limits may be imposed in the limited entry fishery on vessels that are not participating in the primary season under § 660.60, subpart C.

(3) Trip and/or size limits to protect juvenile sablefish in the limited entry or open access fisheries also may be imposed at any time under § 660.60, subpart C.

(4) Trip limits may be imposed in the open access fishery at any time under § 660.60, subpart C.

§ 660.333 Open access non-groundfish trawl fishery—management measures.

(a) *General.* Groundfish taken with non-groundfish trawl gear by vessels engaged in fishing for pink shrimp, ridgeback prawns, California halibut, or sea cucumbers. Trip limits for groundfish retained in the ridgeback prawn, California halibut, or sea cucumber fisheries are in the open access trip limit table, Table 3 (South) of this subpart. Trip limits for groundfish retained in the pink shrimp fishery are in Tables 3 (North) and 3 (South) of this subpart. The table also generally describes the RCAs for vessels participating in these fisheries.

(b) *Participation in the ridgeback prawn fishery.* A trawl vessel will be considered participating in the ridgeback prawn fishery if:

(1) It is not registered to a valid Federal limited entry groundfish permit issued under § 660.25(b) for trawl gear; and

(2) The landing includes ridgeback prawns taken in accordance with California Fish and Game Code, section 8595, which states: "Prawns or shrimp may be taken for commercial purposes with a trawl net, subject to Article 10 (commencing with Section 8830) of Chapter 3."

(c) *Participation in the California halibut fishery.* (1) A trawl vessel will be considered participating in the California halibut fishery if:

(i) It is not registered to a valid Federal limited entry groundfish permit issued under § 660. 25(b) for trawl gear;

(ii) All fishing on the trip takes place south of Pt. Arena, CA (38°57.50' N. lat.); and

(iii) The landing includes California halibut of a size required by California Fish and Game Code section 8392, which states: "No California halibut may be taken, possessed or sold which measures less than 22 in (56 cm) in total length, unless it weighs 4-lb (1.8144 kg) or more in the round, 3 and one-half lbs (1.587 kg) or more dressed with the head on, or 3-lbs (1.3608 kg) or more dressed with the head off. Total length means the shortest distance between the tip of the jaw or snout, whichever extends farthest while the mouth is closed, and the tip of the longest lobe of the tail, measured while the halibut is lying flat in natural repose, without resort to any force other than the swinging or fanning of the tail."

(2) [Reserved]

(d) *Participation in the sea cucumber fishery.* A trawl vessel will be considered to be participating in the sea cucumber fishery if:

(1) It is not registered to a valid Federal limited entry groundfish permit issued under § 660. 25(b) for trawl gear;

(2) All fishing on the trip takes place south of Pt. Arena, CA (38°57.50′ N. lat.); and

(3) The landing includes sea cucumbers taken in accordance with California Fish and Game Code, section 8405, which requires a permit issued by the State of California.

(e) *Groundfish taken with non-groundfish trawl gear by vessels engaged in fishing for pink shrimp.* Notwithstanding § 660.60(h)(7), a vessel that takes and retains pink shrimp and also takes and retains groundfish in either the limited entry or another open access fishery during the same applicable cumulative limit period that it takes and retains pink shrimp (which may be 1 month or 2 months, depending on the fishery and the time of year), may retain the larger of the two limits, but only if the limit(s) for each gear or fishery are not exceeded when operating in that fishery or with that gear. The limits are not additive; the vessel may not retain a separate trip limit for each fishery.

Table 3 (North) to Part 660, Subpart F -- 2010 Trip Limits for Open Access Gears North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read §§ 660.10 - 660.65 and §§ 660.310 - 660.333 before using this table 08252010

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[6/]:							
1	North of 46°16' N. lat.	shoreline - 100 fm line[6/]					
2	46°16' N. lat. - 45°03.83' N. lat.	30 fm line[6/] - 100 fm line[6/]					
3	45°03.83' N. lat. - 43°00' N. lat.	30 fm line[6/] - 125 fm line[6/ 7/]					
4	43°00' N. lat. - 42°00' N. lat.	20 fm line[6/] - 100 fm line[6/]					
5	42°00' N. lat. - 40°10' N. lat.	20 fm depth contour - 100 fm line[6/]					
See § 660.60, § 660.330, and § 660.333 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.							
6	**Minor slope rockfish[1/] & Darkblotched rockfish**	Per trip, no more than 25% of weight of the sablefish landed					
7	**Pacific ocean perch**	100 lb/ month					
8	**Sablefish**	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months			300 lb/ day, or 1 landing per week of up to 950 lb, not to exceed 2,750 lb/ 2 months		
9	**Thornyheads**	CLOSED					
10	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
11	**Arrowtooth flounder**						
12	**Petrale sole**						
13	**English sole**						
14	**Starry flounder**						
15	**Other flatfish[2/]**						
16	**Whiting**	300 lb/ month					
17	**Minor shelf rockfish[1/], Shortbelly, Widow, & Yellowtail rockfish**	200 lb/ month					
18	**Canary rockfish**	CLOSED					
19	**Yelloweye rockfish**	CLOSED					
20	**Minor nearshore rockfish & Black rockfish**						
21	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]					
22	42° - 40°10' N. lat.	6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]	7,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish [3/]				
23	**Lingcod[4/]**	CLOSED		400 lb/ month			CLOSED
24	**Pacific cod**	1,000 lb/ 2 months					
25	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
26	**Other Fish[5/]**	Not limited					

TABLE 3 (North)

Table 3 (North). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
27	**SALMON TROLL** *(subject to RCAs when retaining any species of groundfish except for yellowtail rockfish and lingcod, as described below)*						
28	North	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. Salmon trollers may retain and land up to 1 lingcod per 15 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. This limit only applies during times when lingcod retention is allowed, and is not "CLOSED." This limit is within the per month limit for lingcod described in the table above, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.					
29	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*						
30	North	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (North) con't

1/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for minor shelf rockfish. Splitnose rockfish is included in the trip limits for minor slope rockfish.

2/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

5/ "Other fish" are defined at § 660.11 and include sharks, skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."

6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

7/ The 125 fm line restriction is in place all year, except on days when the directed halibut fishery is open. On those days the 100 fm line restriction is in effect.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart F -- 2010 Trip Limits for Open Access Gears South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read §§ 660.10 - 660.65 and §§ 660.310 - 660.333 before using this table 08252010

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
1	40°10' - 34°27' N. lat.	30 fm line[5/] - 150 fm line[5/]					
2	South of 34°27' N. lat.	60 fm line[5/] - 150 fm line[5/] (also applies around islands)					
	See § 660.60, § 660.330, and § 660.333 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
3	**Minor slope rockfish[1/] & Darkblotched rockfish**						
4	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed					
5	South of 38° N. lat.	10,000 lb/ 2 months					
6	**Splitnose**	200 lb/ month					
7	**Sablefish**						
8	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months			300 lb/ day, or 1 landing per week of up to 950 lb, not to exceed 2,750 lb/ 2 months		
9	South of 36° N. lat.	400 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 8,000 lb/ 2 months				400 lb/ day, or 1 landing per week of up to 2,500 lb	
10	**Thornyheads**						
11	40°10' - 34°27' N. lat.	CLOSED					
12	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
13	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
14	**Arrowtooth flounder**						
15	**Petrale sole**						
16	**English sole**						
17	**Starry flounder**						
18	**Other flatfish[2/]**						
19	**Whiting**	300 lb/ month					
20	**Minor shelf rockfish[1/], Shortbelly, Widow & Chilipepper rockfish**						
21	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED		200 lb/ 2 months	300 lb/ 2 months	
22	South of 34°27' N. lat.	750 lb/ 2 months			750 lb/ 2 months		
23	**Canary rockfish**	CLOSED					
24	**Yelloweye rockfish**	CLOSED					
25	**Cowcod**	CLOSED					
26	**Bronzespotted rockfish**	CLOSED					
27	**Bocaccio**						
28	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED		100 lb/ 2 months	200 lb/ 2 months	
29	South of 34°27' N. lat.	100 lb/ 2 months			100 lb/ 2 months		

TABLE 3 (South)

Table 3 (South). Continued

TABLE 3 (South) con't

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
30	**Minor nearshore rockfish & Black rockfish**						
31	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	600 lb/ 2 months
32	Deeper nearshore						
33	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months		800 lb/ 2 months	
34	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months			
35	California scorpionfish	600 lb/ 2 months	CLOSED	600 lb/ 2 months	1,200 lb/ 2 months		
36	**Lingcod**[3/]	CLOSED		400 lb/ month			CLOSED
37	**Pacific cod**	1,000 lb/ 2 months					
38	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
39	**Other Fish**[4/] **& Cabezon**	Not limited					
40	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**						
41	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**						
42	40°10' - 38° N. lat.	100 fm - modified 200 fm 6/	100 fm - 150 fm				100 fm - modified 200 fm 6/
43	38° - 34°27' N. lat.	100 fm - 150 fm					
44	South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands					
45		Groundfish: 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31).					
46	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*						
47	South	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

1/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish. POP is included in the trip limits for minor slope rockfish. Bronzespotted rockfish have a species specific trip limit.
2/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
3/ The size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.
4/ "Other fish" are defined at § 660.11 and include sharks, skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling.
5/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
6/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

BILLING CODE 3510–22–C

■ 5. Redesignate §§ 660.390 through 660.399, subpart G as §§ 660.70 through 660.79, subpart C, as follows:

Old section	New section
§ 660.390	§ 660.70
§ 660.391	§ 660.71
§ 660.392	§ 660.72
§ 660.393	§ 660.73
§ 660.394	§ 660.74
§ 660.395	§ 660.75
§ 660.396	§ 660.76
§ 660.397	§ 660.77
§ 660.398	§ 660.78
§ 660.399	§ 660.79

■ 6. In part 660, subpart K, redesignate Table 2 to part 660 as Table 3 to part 660, in subpart C.
■ 7. Remove Tables 1a through 2c and Tables 3 (North) through 5 (South) to part 660, subpart G.
■ 8. Remove Figure 1 to subpart G of part 660.
■ 9. Revise subpart G to part 660 to read as follows:

Subpart G—West Coast Groundfish—Recreational Fisheries

Sec.
660.350 Purpose and scope.
660.351 Recreational fishery—definitions.
660.352 Recreational fishery—prohibitions.
660.353 Recreational fishery—recordkeeping and reporting.
660.360 Recreational fishery—management measures.

Subpart G—West Coast Groundfish—Recreational Fisheries

§ 660.350 Purpose and scope.

This subpart covers the Pacific Coast Groundfish recreational fishery.

§ 660.351 Recreational fishery—definitions.

These definitions are specific to the recreational fisheries covered in this subpart. General groundfish definitions are defined at § 660.11, subpart C.

Bag limit means the number of fish available to an angler.

Boat limit means the number of fish available to for a vessel or boat.

Hook limit means a limit on the number of hooks on any given fishing line.

§ 660.352 Recreational fishery—prohibitions.

These prohibitions are specific to the recreational fisheries. General groundfish prohibitions are found at § 660.12, subpart C. In addition to the general groundfish prohibitions specified in § 600.12, subpart C, of this chapter, it is unlawful for any person to:

(a) Sell, offer to sell, or purchase any groundfish taken in the course of recreational groundfish fishing.

(b) Use fishing gear other than hook-and-line or spear for recreational fishing.

§ 660.353 Recreational fishery—recordkeeping and reporting.

Recordkeeping and reporting requirements at § 660.13 (a) through (c), subpart C, apply to the recreational fishery.

§ 660.360 Recreational fishery-management measures.

(a) *General.* Federal recreational groundfish regulations are not intended to supersede any more restrictive state recreational groundfish regulations relating to federally-managed groundfish. The bag limits include fish taken in both state and Federal waters.

(b) *Gear restrictions.* The only types of fishing gear authorized for recreational fishing are hook-and-line and spear. Spears may be propelled by hand or by mechanical means. More fishery-specific gear restrictions may be required by state as noted in paragraph (c) of this section (*e.g.* California's recreational "other flatfish" fishery).

(c) *State-specific recreational fishery management measures.* Federal recreational groundfish regulations are not intended to supersede any more restrictive State recreational groundfish regulations relating to federally-managed groundfish. Off the coast of Washington, Oregon, and California, boat limits apply, whereby each fisher aboard a vessel may continue to use angling gear until the combined daily limits of groundfish for all licensed and juvenile anglers aboard has been attained (additional state restrictions on boat limits may apply).

(1) *Washington.* For each person engaged in recreational fishing off the coast of Washington, the groundfish bag limit is 15 groundfish per day, including rockfish and lingcod, and is open year-round (except for lingcod). In the Pacific halibut fisheries, retention of groundfish is governed in part by annual management measures for Pacific halibut fisheries, which are published in the **Federal Register.** South of Leadbetter Point, WA to the Washington/Oregon border, when Pacific halibut are onboard the vessel, no groundfish may be taken and retained, possessed or landed, except sablefish and Pacific cod. The following sublimits and closed areas apply:

(i) *Recreational groundfish conservation areas off Washington*—(A) *North coast recreational yelloweye rockfish conservation area.* Recreational fishing for groundfish and halibut is prohibited within the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA). It is unlawful for recreational fishing vessels to take and retain, possess, or land groundfish taken with recreational gear within the North Coast Recreational YRCA. A vessel fishing in the North Coast Recreational YRCA may not be in possession of any groundfish. Recreational vessels may transit through the North Coast Recreational YRCA with or without groundfish on board. The North Coast Recreational YRCA is defined by latitude and longitude coordinates specified at § 660.70, subpart C.

(B) *South coast recreational yelloweye rockfish conservation area.* Recreational fishing for groundfish and halibut is prohibited within the South Coast Recreational YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land groundfish taken with recreational gear within the South Coast Recreational YRCA. A vessel fishing in the South Coast Recreational YRCA may not be in possession of any groundfish. Recreational vessels may transit through the South Coast Recreational YRCA with or without groundfish on board. The South Coast Recreational YRCA is defined by latitude and longitude coordinates specified at § 660.70, subpart C.

(C) *Westport offshore recreational yelloweye rockfish conservation area.* Recreational fishing for groundfish and halibut is prohibited within the Westport Offshore Recreational YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land groundfish taken with recreational gear within the Westport Offshore Recreational YRCA. A vessel fishing in the Westport Offshore Recreational YRCA may not be in possession of any groundfish. Recreational vessels may transit through the Westport Offshore Recreational YRCA with or without groundfish on board. The Westport Offshore Recreational YRCA is defined by latitude and longitude coordinates specified at § 660.70, subpart C.

(D) *Recreational rockfish conservation area.* Fishing for groundfish with recreational gear is prohibited within the recreational RCA. It is unlawful to take and retain, possess, or land groundfish taken with recreational gear within the recreational RCA. A vessel fishing in the recreational RCA may not be in possession of any groundfish. [For example, if a vessel fishes in the recreational salmon fishery within the RCA, the vessel cannot be in possession of groundfish while in the RCA. The vessel may, however, on the same trip fish for and retain groundfish shoreward of the RCA on the return trip to port.]

(*1*) Between the U.S. border with Canada and the Queets River, recreational fishing for groundfish is prohibited seaward of a boundary line approximating the 20-fm (37-m) depth contour from May 21 through September 30, except on days when the Pacific halibut fishery is open in this area. Days open to Pacific halibut recreational fishing off Washington are announced on the NMFS hotline at (206) 526–6667 or (800) 662–9825. Coordinates for the boundary line approximating the 20-fm (37-m) depth contour are listed in § 660.71, subpart C.

(*2*) Between the Queets River and Leadbetter Point, recreational fishing for groundfish is prohibited seaward of a boundary line approximating the 30-fm (55-m) depth contour from March 15 through June 15, except that recreational fishing for sablefish and Pacific cod is permitted within the recreational RCA from May 1 through June 15, and on days that the primary halibut fishery is open lingcod may be taken, retained and possessed seaward of the boundary line approximating the 30-fm (55-m) depth contour. Days open to Pacific halibut recreational fishing off Washington are announced on the NMFS hotline at (206) 526–6667 or (800) 662–9825. Retention of lingcod seaward of the boundary line approximating the 30-fm (55-m) depth contour south of 46°58′ N. lat. is prohibited on Fridays and Saturdays from July 1 through August 31. For additional regulations regarding the Washington recreational lingcod fishery, see paragraph (c)(1)(iii) of this section. Coordinates for the boundary line approximating the 30-fm (55-m) depth contour are listed in § 660.71.

(ii) *Rockfish.* In areas of the EEZ seaward of Washington that are open to recreational groundfish fishing, there is a 10 rockfish per day bag limit. Taking and retaining canary rockfish and yelloweye rockfish is prohibited.

(iii) *Lingcod.* In areas of the EEZ seaward of Washington that are open to recreational groundfish fishing and when the recreational season for lingcod is open, there is a bag limit of 2 lingcod per day, which may be no smaller than 22 in (56 cm) total length. The recreational fishing season for lingcod is open as follows:

(A) Between the U.S./Canada border to 48°10′ N. lat. (Cape Alava) (Washington Marine Area 4), recreational fishing for lingcod is open, for 2009, from April 16 through October 15, and for 2010, from April 16 through October 15.

(B) Between 48°10′ N. lat. (Cape Alava) and 46°16′ N. lat. (Washington/Oregon border) (Washington Marine Areas 1–3), recreational fishing for lingcod is open for 2009, from March 14 through October 17, and for 2010, from March 13 through October 16.

(2) *Oregon*—(i) *Recreational groundfish conservation areas off Oregon*—(A) *Stonewall Bank yelloweye rockfish conservation area.* Recreational fishing for groundfish and halibut is prohibited within the Stonewall Bank YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land groundfish taken with recreational gear within the Stonewall Bank YRCA. A vessel fishing in the Stonewall Bank YRCA may not be in possession of any groundfish. Recreational vessels may transit through the Stonewall Bank YRCA with or without groundfish on board. The Stonewall Bank YRCA is defined by latitude and longitude coordinates specified at § 660.70, subpart C.

(B) *Recreational rockfish conservation area.* Fishing for groundfish with recreational gear is prohibited within the recreational RCA, a type of closed area or GCA. It is unlawful to take and retain, possess, or land groundfish taken with recreational gear within the recreational RCA. A vessel fishing in the recreational RCA may not be in possession of any groundfish. [For example, if a vessel fishes in the recreational salmon fishery within the RCA, the vessel cannot be in possession of groundfish while in the RCA. The vessel may, however, on the same trip fish for and retain groundfish shoreward of the RCA on the return trip to port.] Off Oregon, from April 1 through September 30, recreational fishing for groundfish is prohibited seaward of a recreational RCA boundary line approximating the 40 fm (73 m) depth contour. Coordinates for the boundary line approximating the 40 fm (73 m) depth contour are listed at § 660.71.

(C) *Essential fish habitat conservation areas.* The Essential Fish Habitat Conservation Areas (EFHCAs) are closed areas, defined by specific latitude and longitude coordinates at §§ 660.76 through 660.79, where specified types of fishing are prohibited. Prohibitions applying to specific EFHCAs are found at § 660.12.

(ii) *Seasons.* Recreational fishing for groundfish is open from January 1 through December 31, subject to the closed areas described in paragraph (c) of this section.

(iii) *Bag limits, size limits.* The bag limits for each person engaged in recreational fishing in the EEZ seaward of Oregon are three lingcod per day, which may be no smaller than 22 in (56 cm) total length; and 10 marine fish per day, which excludes Pacific halibut, salmonids, tuna, perch species, sturgeon, sanddabs, flatfish, lingcod, striped bass, hybrid bass, offshore pelagic species and baitfish (herring, smelt, anchovies and sardines), but which includes rockfish, greenling, cabezon and other groundfish species. The bag limit for all flatfish is 25 fish per day, which excludes Pacific halibut, but which includes all soles, flounders and Pacific sanddabs. In the Pacific halibut fisheries, retention of groundfish is governed in part by annual management measures for Pacific halibut fisheries, which are published in the **Federal Register.** Between the Oregon border with Washington and Cape Falcon, when Pacific halibut are onboard the vessel, groundfish may not be taken and retained, possessed or landed, except sablefish and Pacific cod. Between Cape Falcon and Humbug Mountain, during days open to the Oregon Central Coast "all-depth" sport halibut fishery, when Pacific halibut are onboard the vessel, no groundfish may be taken and retained, possessed or landed, except sablefish and Pacific cod. "All-depth" season days are established in the annual management measures for Pacific halibut fisheries, which are published in the **Federal Register** and are announced on the NMFS halibut hotline, 1–800–662–9825. The minimum size limit for cabezon retained in the recreational fishery is 16-in (41-cm), and for greenling is 10-in (26-cm). Taking and retaining canary rockfish and yelloweye rockfish is prohibited at all times and in all areas.

(3) *California.* Seaward of California, California law provides that, in times and areas when the recreational fishery is open, there is a 20 fish bag limit for all species of finfish, within which no more than 10 fish of any one species may be taken or possessed by any one person. [**Note:** There are some exceptions to this rule. The following groundfish species are not subject to a bag limit: Petrale sole, Pacific sanddab and starry flounder.] For groundfish species not specifically mentioned in this paragraph, fishers are subject to the overall 20–fish bag limit for all species of finfish and the depth restrictions at paragraph (c)(3)(i) of this section. Recreational spearfishing for all federally-managed groundfish, except lingcod during January, February, March, and December, is exempt from closed areas and seasons, consistent with Title 14 of the California Code of Regulations. This exemption applies only to recreational vessels and divers provided no other fishing gear, except spearfishing gear, is on board the vessel. California state law may provide regulations similar to Federal

regulations for the following state-managed species: Ocean whitefish, California sheephead, and all greenlings of the genus Hexagrammos. Kelp greenling is the only federally-managed greenling. Retention of cowcod, yelloweye rockfish, and canary rockfish is prohibited in the recreational fishery seaward of California all year in all areas. For each person engaged in recreational fishing in the EEZ seaward of California, the following closed areas, seasons, bag limits, and size limits apply:

(i) *Recreational groundfish conservation areas off California.* A Groundfish Conservation Area (GCA), a type of closed area, is a geographic area defined by coordinates expressed in degrees latitude and longitude. The following GCAs apply to participants in California's recreational fishery.

(A) *Recreational rockfish conservation areas.* The recreational RCAs are areas that are closed to recreational fishing for groundfish. Fishing for groundfish with recreational gear is prohibited within the recreational RCA, except that recreational fishing for "other flatfish" is permitted within the recreational RCA as specified in paragraph (c)(3)(iv) of this section. It is unlawful to take and retain, possess, or land groundfish taken with recreational gear within the recreational RCA, unless otherwise authorized in this section. A vessel fishing in the recreational RCA may not be in possession of any species prohibited by the restrictions that apply within the recreational RCA. [For example, if a vessel fishes in the recreational salmon fishery within the RCA, the vessel cannot be in possession of rockfish while in the RCA. The vessel may, however, on the same trip fish for and retain rockfish shoreward of the RCA on the return trip to port.]

(*1*) Between 42° N. lat. (California/Oregon border) and 40°10.00′ N. lat. (North Region), recreational fishing for all groundfish (except "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of the 20-fm (37-m) depth contour along the mainland coast and along islands and offshore seamounts from May 15 through September 15; and is closed entirely from January 1 through May 14 and from September 16 through December 31 (*i.e.,* prohibited seaward of the shoreline).

(*2*) Between 40°10′ N. lat. and 38°57.50′ N. lat. (North-Central North of Point Arena Region), recreational fishing for all groundfish (except "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of the 20-fm (37-m) depth contour along the mainland coast and along islands and offshore seamounts from May 15 through August 15; and is closed entirely from January 1 through May 14 and from August 16 through December 31 (*i.e.,* prohibited seaward of the shoreline).

(*3*) Between 38°57.50′ N. lat. and 37°11′ N. lat. (North-Central South of Point Arena Region), recreational fishing for all groundfish (except "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of the boundary line approximating the 30-fm (55-m) depth contour along the mainland coast and along islands and offshore seamounts from June 13 through October 31; and is closed entirely from January 1 through June 12 and from November 1 through December 31 (*i.e.,* prohibited seaward of the shoreline). Closures around the Farallon Islands (*see* paragraph (c)(3)(i)(C) of this section) and Cordell Banks (*see* paragraph (c)(3)(i)(D) of this section) also apply in this area. Coordinates for the boundary line approximating the 30-fm (55-m) depth contour are listed in § 660.71.

(*4*) Between 37°11′ N. lat. and 36° N. lat. (Monterey South-Central Region), recreational fishing for all groundfish (except "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of a boundary line approximating the 40-fm (73-m) depth contour along the mainland coast and along islands and offshore seamounts from May 1 through November 15; and is closed entirely from January 1 through April 30 and from November 16 through December 31 (*i.e.,* prohibited seaward of the shoreline). Coordinates for the boundary line approximating the 40-fm (73-m) depth contour are specified in § 660.71.

(*5*) Between 36° N. lat. and 34°27′ N. lat. (Morro Bay South-Central Region), recreational fishing for all groundfish (except "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of a boundary line approximating the 40-fm (73-m) depth contour along the mainland coast and along islands and offshore seamounts from May 1 through November 15; and is closed entirely from January 1 through April 30 and from November 16 through December 31 (*i.e.,* prohibited seaward of the shoreline). Coordinates for the boundary line approximating the 40-fm (73-m) depth contour are specified in § 660.71.

(*6*) South of 34°27′ N. lat. (South Region), recreational fishing for all groundfish (except California scorpionfish as specified below in this paragraph and in paragraph (v) of this section and "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of a boundary line approximating the 60-fm (110-m) depth contour from March 1 through December 31 along the mainland coast and along islands and offshore seamounts, except in the CCAs where fishing is prohibited seaward of the 20-fm (37-m) depth contour when the fishing season is open (see paragraph (c)(3)(i)(B) of this section). Recreational fishing for all groundfish (except California scorpionfish and "other flatfish") is closed entirely from January 1 through February 28 (i.e., prohibited seaward of the shoreline). Recreational fishing for California scorpionfish south of 34°27′ N. lat. is prohibited seaward of a boundary line approximating the 40-fm (73-m) depth contour from January 1 through February 28, and seaward of the 60-fm (110-m) depth contour from March 1 through December 31, except in the CCAs where fishing is prohibited seaward of the 20-fm (37-m) depth contour when the fishing season is open. Coordinates for the boundary line approximating the 40-fm (73-m) and 60-fm (110-m) depth contours are specified in §§ 660.71 and 660.72.

(B) *Cowcod conservation areas.* The latitude and longitude coordinates of the Cowcod Conservation Areas (CCAs) boundaries are specified at § 660.70, subpart C. In general, recreational fishing for all groundfish is prohibited within the CCAs, except that fishing for "other flatfish" is permitted within the CCAs as specified in paragraph (c)(3)(iv) of this section. However, recreational fishing for the following species is permitted shoreward of the 20 fm (37 m) depth contour when the season for those species is open south of 34°27′ N. lat.: Minor nearshore rockfish, cabezon, kelp greenling, lingcod, California scorpionfish, and "other flatfish" (subject to gear requirements at paragraph (c)(3)(iv) of this section during January–February). [**Note:** California state regulations also permit recreational fishing for California sheephead, ocean whitefish, and all greenlings of the genus Hexagrammos shoreward of the 20 fm (37 m) depth contour in the CCAs when the season for the RCG complex is open south of 34°27′ N. lat.] It is unlawful to take and retain, possess, or land groundfish within the CCAs, except for species authorized in this section.

(C) *Farallon islands.* Under California state law, recreational fishing for groundfish is prohibited between the shoreline and the 10-fm (18-m) depth contour around the Farallon Islands, except that recreational fishing for "other flatfish" is permitted around the Farallon Islands as specified in paragraph (c)(3)(iv) of this section.

(*Note:* California state regulations also prohibit the retention of other greenlings of the genus Hexagrammos, California sheephead and ocean whitefish.) For a definition of the Farallon Islands, *see* § 660.70, subpart C.

(D) *Cordell Banks.* Recreational fishing for groundfish is prohibited in waters less than 100 fm (183 m) around Cordell Banks as defined by specific latitude and longitude coordinates at § 660.70, subpart C, except that recreational fishing for "other flatfish" is permitted around Cordell Banks as specified in paragraph (c)(3)(iv) of this section. [**Note:** California state regulations also prohibit fishing for all greenlings of the genus Hexagrammos, California sheephead and ocean whitefish.]

(E) *Point St. George yelloweye rockfish conservation area (YRCA).* Recreational fishing for groundfish is prohibited within the Point St. George YRCA, as defined by latitude and longitude coordinates at § 660.70, subpart C, on dates when the closure is in effect. The closure is not in effect at this time, and recreational fishing for groundfish is open within the Point St. George YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment.

(F) *South reef YRCA.* Recreational fishing for groundfish is prohibited within the South Reef YRCA, as defined by latitude and longitude coordinates at § 660.70, subpart C, on dates when the closure is in effect. The closure is not in effect at this time, and recreational fishing for groundfish is open within the South Reef YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment.

(G) *Reading Rock YRCA.* Recreational fishing for groundfish is prohibited within the Reading Rock YRCA, as defined by latitude and longitude coordinates at § 660.70, subpart C, on dates when the closure is in effect. The closure is not in effect at this time, and recreational fishing for groundfish is open within the Reading Rock YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment.

(H) *Point Delgada (North) YRCA.* Recreational fishing for groundfish is prohibited within the Point Delgada (North) YRCA, as defined by latitude and longitude coordinates at § 660.70, subpart C, on dates when the closure is in effect. The closure is not in effect at this time, and recreational fishing for groundfish is open within the Point Delgada (North) YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment.

(I) *Point Delgada (South) YRCA.* Recreational fishing for groundfish is prohibited within the Point Delgada (South) YRCA, as defined by latitude and longitude coordinates at § 660.70, subpart C, on dates when the closure is in effect. The closure is not in effect at this time, and recreational fishing for groundfish is open within the Point Delgada (South) YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment.

(J) *Essential fish habitat conservation areas.* The Essential Fish Habitat Conservation Areas (EFHCAs) are closed areas, defined by specific latitude and longitude coordinates at §§ 660.76 through 660.79, subpart C where specified types of fishing are prohibited. Prohibitions applying to specific EFHCAs are found at § 660.12, subpart C.

(ii) *RCG complex.* The California rockfish, cabezon, greenling complex (RCG Complex), as defined in state regulations (Section 1.91, Title 14, California Code of Regulations), includes all rockfish, kelp greenling, rock greenling, and cabezon. This category does not include California scorpionfish, also known as "sculpin".

(A) *Seasons.* When recreational fishing for the RCG complex is open, it is permitted only outside of the recreational RCAs described in paragraph (c)(3)(i) of this section.

(*1*) Between 42 °N. lat. (California/Oregon border) and 40°10′ N. lat. (North Region), recreational fishing for the RCG complex is open from May 15 through September 15 (*i.e.* it's closed from January 1 through May 14 and from September 16 through December 31).

(*2*) Between 40°10′ N. lat. and 38°57.50′ N. lat. (North Central North of Point Arena Region), recreational fishing for the RCG Complex is open from May 15 through August 15 (*i.e.* it's closed from January 1 through May 14 and May 16 through December 31).

(*3*) Between 38°57.50′ N. lat. and 37°11′ N. lat. (North Central South of Point Arena Region), recreational fishing for the RCG complex is open from June 13 through October 31 (*i.e.* it's closed from January 1 through June 12 and November 1 through December 31.

(*4*) Between 37°11′ N. lat. and 36° N. lat. (Monterey South-Central Region), recreational fishing for the RCG complex is open from May 1 through November 15 (*i.e.* it's closed from January 1 through April 30 and from November 16 through December 31).

(*5*) Between 36′ N. lat. and 34°27′ N. lat. (Morro Bay South-Central Region), recreational fishing for the RCG Complex is open from May 1 through November 15 (*i.e.* it's closed from January 1 through April 30 and from November 16 through December 31).

(*6*) South of 34°27′ N. lat. (South Region), recreational fishing for the RCG Complex is open from March 1 through December 31 (*i.e.* it's closed from January 1 through February 28.

(B) *Bag limits, hook limits.* In times and areas when the recreational season for the RCG Complex is open, there is a limit of 2 hooks and 1 line when fishing for rockfish. The bag limit is 10 RCG Complex fish per day coastwide. Retention of canary rockfish, yelloweye rockfish, bronzespotted and cowcod is prohibited. Within the 10 RCG Complex fish per day limit, no more than 2 may be bocaccio, no more than 2 may be greenling (kelp and/or other greenlings) and no more than 2 may be cabezon. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* The following size limits apply: Bocaccio may be no smaller than 10 in (25 cm) total length; cabezon may be no smaller than 15 in (38 cm) total length; and kelp and other greenling may be no smaller than 12 in (30 cm) total length.

(D) *Dressing/filleting.* Cabezon, kelp greenling, and rock greenling taken in the recreational fishery may not be filleted at sea. Rockfish skin may not be removed when filleting or otherwise dressing rockfish taken in the recreational fishery. The following rockfish filet size limits apply: Bocaccio filets may be no smaller than 5 in (12.8 cm) and brown-skinned rockfish fillets may be no smaller than 6.5 in (16.6 cm). "Brown-skinned" rockfish include the following species: Brown, calico, copper, gopher, kelp, olive, speckled, squarespot, and yellowtail.

(iii) *Lingcod*—(A) *Seasons.* When recreational fishing for lingcod is open, it is permitted only outside of the recreational RCAs described in paragraph (c)(3)(i) of this section.

(*1*) Between 42 °N. lat. (California/Oregon border) and 40°10.00′ N. lat. (North Region), recreational fishing for lingcod is open from May 15 through September 15 (*i.e.* it's closed from January 1 through May 14 and from September 16 through December 31).

(*2*) Between 40°10′ N. lat. and 38°57.50′ N. lat. (North Central North of Point Arena Region), recreational fishing for lingcod is open from May 15 through August 15 (*i.e.* it's closed from January 1 through May 14 and May 16 through December 31).

(*3*) Between 38°57.50′ N. lat. and 37°11′ N. lat. (North Central South of Point Arena Region), recreational fishing for lingcod is open from June 13 through October 31 (*i.e.* it's closed from January 1 through June 12 and November 1 through December 31.

(*4*) Between 37°11′ N. lat. and 36 °N. lat. (Monterey South–Central Region), recreational fishing for lingcod is open from May 1 through November 15 (*i.e.* it's closed from January 1 through April 30 and from November 16 through December 31).

(*5*) Between 36′ N. lat. and 34°27′ N. lat. (Morro Bay South-Central Region), recreational fishing for lingcod is open from May 1 through November 15 (*i.e.* it's closed from January 1 through April 30 and from November 16 through December 31).

(*6*) South of 34°27′ N. lat. (South Region), recreational fishing for lingcod is open from April 1 through November 30 (*i.e.* it's closed from January 1 through March 31 and from December 1 through 31).

(B) *Bag limits, hook limits.* In times and areas when the recreational season for lingcod is open, there is a limit of 2 hooks and 1 line when fishing for lingcod. The bag limit is 2 lingcod per day. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* Lingcod may be no smaller than 24 in (61 cm) total length.

(D) *Dressing/filleting.* Lingcod filets may be no smaller than 16 in (41 cm) in length.

(iv) "*Other flatfish*". Coastwide off California, recreational fishing for "other flatfish" is permitted both shoreward of and within the closed areas described in paragraph (c)(3)(i) of this section. "Other flatfish" are defined at § 660.11, subpart C, and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole. Recreational fishing for "other flatfish" is permitted within the closed areas. "Other flatfish," except Pacific sanddab, are subject to the overall 20-fish bag limit for all species of finfish, of which there may be no more than 10 fish of any one species. There is no season restriction or size limit for "other flatfish;" however, it is prohibited to filet "other flatfish" at sea.

(v) *California scorpionfish.* California scorpionfish predominately occur south of 40°10′ N. lat.

(A) *Seasons.* When recreational fishing for California scorpionfish is open, it is permitted only outside of the recreational RCAs described in paragraph (c)(3)(i) of this section.

(*1*) Between 40°10′ N. lat. and 37°11′ N. lat. (North Central Region), recreational fishing for California scorpionfish is open from June 1 through November 30 (*i.e.,* it's closed from January 1 through May 31 and from December 1 through December 31).

(*2*) Between 37°11′ N. lat. and 36° N. lat. (Monterey South Central Region), recreational fishing for California scorpionfish is open from May 1 through November 30 (*i.e.,* it's closed from January 1 through April 30 and from December 1 through December 31).

(*3*) Between 36° N. lat. and 34°27′ N. lat. (Morro Bay South Central Region), recreational fishing for California scorpionfish is open from May 1 through November 30 (*i.e.,* it's closed from January 1 through April 30 and from December 1 through December 31).

(*4*) South of 34°27′ N. lat. (South Region), recreational fishing for California scorpionfish is open from January 1 through December 31.

(B) *Bag limits, hook limits.* South of 40°10.00′ N. lat., in times and areas where the recreational season for California scorpionfish is open, the bag limit is 5 California scorpionfish per day. California scorpionfish do not count against the 10 RCG Complex fish per day limit. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* California scorpionfish may be no smaller than 10 in (25 cm) total length.

(D) *Dressing/Filleting.* California scorpionfish filets may be no smaller than 5 in (12.8 cm) and must bear an intact 1 in (2.6 cm) square patch of skin.

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Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1217

Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order; Proposed Rules

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1217

[Document Number AMS–FV–10–0015; PR–A1]

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Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on a proposed Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order (Order). Softwood lumber is used in products like flooring, siding and framing. The program would be financed by an assessment on softwood lumber domestic manufacturers and importers and would be administered by a board of industry members selected by the Secretary of Agriculture (Secretary). The initial assessment rate would be $0.35 per thousand board feet of softwood lumber shipped within or imported to the United States. The purpose of the program would be to strengthen the position of softwood lumber in the marketplace, maintain and expand markets for softwood lumber, and develop new uses for softwood lumber within the United States. A referendum would be held among eligible domestic manufacturers and importers to determine whether they favor implementation of the program prior to it going into effect. This rule also announces the Agricultural Marketing Service's (AMS) intent to request approval by the Office of Management and Budget (OMB) of new information collection requirements to implement the program.

DATES: Comments must be received by November 30, 2010. Pursuant to the Paperwork Reduction Act (PRA), comments on the information collection burden that would result from this proposal must be received by November 30, 2010.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments may be submitted on the Internet at: *http://www.regulations.gov* or to the Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 0632–S, Stop 0244, Washington, DC 20250–0244; facsimile: (202) 205–2800. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection, including name and address, if provided, in the above office during regular business hours or it can be viewed at *http://www.regulations.gov.*

Pursuant to the PRA, comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, should be sent to the above address. In addition, comments concerning the information collection should also be sent to the Desk Office for Agriculture, Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 831, Beavercreek, Oregon 97004; telephone: (503) 632–8848; facsimile (503) 632–8852; or electronic mail: *Maureen.Pello@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued pursuant to the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the OMB.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act, a person subject to an order may file a written petition with the U.S. Department of Agriculture (USDA) stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

This rule invites comments on a proposed industry-funded research, promotion, and information program for softwood lumber. Softwood lumber is used in products like flooring, siding and framing. The program would be financed by an assessment on softwood lumber domestic manufacturers and importers and would be administered by a board of industry members selected by the Secretary. The initial assessment rate would be $0.35 per thousand board feet of softwood lumber shipped within or imported to the United States. Entities that domestically ship or import less than 15 million board feet per fiscal year would be exempt from the payment of assessments. Additionally, no entity would pay assessments on the first 15 million board feet of softwood lumber shipped domestically or imported during the year. Exports from the United States would also be exempt from assessments. The purpose of the program would be to strengthen the position of softwood lumber in the marketplace, maintain and expand markets for softwood lumber, and develop new uses for softwood lumber within the United States.

A referendum would be held among eligible domestic manufacturers and importers to determine whether they favor implementation of the program prior to it going into effect. The proposal was submitted to USDA by the Blue Ribbon Commission (BRC), a committee of 21 chief executive officers and heads of businesses that domestically manufacture and import softwood lumber. This rule also announces AMS's intent to request approval by the OMB of new information collection requirements to implement the program.

Authority in 1996 Act

The proposed Order is authorized under the 1996 Act which authorizes USDA to establish agricultural commodity research and promotion orders which may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. These programs

are designed to maintain and expand markets and uses for agricultural commodities. As defined under section 513(1)(D) of the 1996 Act, agricultural commodities include the products of forestry, which includes softwood lumber.

The 1996 Act provides for a number of optional provisions that allow the tailoring of orders for different commodities. Section 516 of the 1996 Act provides permissive terms for orders, and other sections provide for alternatives. For example, section 514 of the 1996 Act provides for orders applicable to (1) producers, (2) first handlers and others in the marketing chain as appropriate, and (3) importers (if imports are subject to assessments). Section 516 states that an order may include an exemption of de minimis quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports.

In addition, section 518 of the 1996 Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under the order. An order also may provide for its approval in a referendum based upon different voting patterns. Section 515 provides for establishment of a board or council from among producers, first handlers and others in the marketing chain as appropriate, and importers, if imports are subject to assessment.

Industry Background

The softwood lumber industry is comprised of sawmills that make products from softwood trees. Softwoods include the botanical group of trees that have needle-like or scale-like leaves, or conifers. Softwood lumber includes certain products manufactured from softwoods (or coniferous trees). Softwood lumber is used in products like flooring, siding, and framing.

Softwood lumber sizes are identified by the thickness and width of the board when it is first cut from the log. This is known as "rough cut" when the wood is still green and wet. Once the wood dries, it shrinks. After the wood dries, the surface of the board is smoothed to make the wood a uniform size. This is known as "planing" the wood. Once planed, the wood is considered finished. In the industry, the term nominal is used to describe the size of the rough cut board, prior to finishing. For example, a 2 x 4 board is a nominal size. The actual size of a 2 x 4 board is 1.5 inches in thickness by 3.5 inches in width. The length of the board is typically the actual length. Usually there is a ½ inch difference in measurements over 2 inches and ¼ inch difference in measurements less than 2 inches. For purposes of the proposed Order and the tables in this rule, nominal sizes are used. One nominal board foot is a unit of measurement of softwood lumber represented by a board 12-inches long, 12-inches wide, and 1-inch thick or its cubic equivalent. A board foot calculation for softwood lumber 1 inch or more in thickness is based on its nominal thickness and width by the actual length. Softwood lumber with a nominal thickness of less than 1 inch is calculated as 1 inch.

Regional U.S. Timber Production [1]

According to USDA's Forest Service, the main species of softwoods in the southern United States are pines that grow fast and can be sold for lumber in 25 to 30 years. Southern pines are often treated with preservatives. About a third of the region's lumber is sold to treaters for further processing (*i.e.,* apply preservatives).[2]

Most of the northern U.S. softwood lumber industry is in Maine where the predominant species are white spruce and balsam fir. These trees are typically used for light framing such as wall studs. Second growths of red pine planted in the 1930s and later have been harvested by a few firms in the lake States. Red pine is also easy to treat and much of it is processed. White pine trees are also prevalent in the northern United States. They are used for paneling, millwork, and joinery. Millwork includes woodwork that has been made at a mill, and joinery is the trade of constructing articles by joining together pieces of wood.

The bulk of timber production in the western United States is on the coast of the Pacific Northwest. Douglas fir and hemlock trees dominate while farther south in northern California, redwood trees, suitable for outdoor structures like fences, siding and decks, are common. East of these regions, ponderosa pine dominates and is used for millwork and joinery. Northern Idaho and Montana contain lodgepole pine and other species suitable for light framing.

U.S. Softwood Lumber Output by Region [3]

According to USDA's Forest Service, for 2007–2008, total output (production) of softwood lumber by U.S. sawmills averaged about 29.5 billion board feet annually. Of the 29.5 billion board feet, 12.6 billion board feet were from the U.S. South, 14.4 billion board feet were from the U.S. West, and 2.5 billion board feet were from the Northeast and Lake States. Data for the western States is from the Western Wood Products Association [4] and data for the other two regions is from the U.S. Census Bureau.[5]

Softwood Lumber Markets [6]

The residential market is the largest consumer of softwood lumber in the United States. This includes single and multifamily homes, mobile homes, and remodeling. The residential market accounted for 75 percent of the total U.S. softwood lumber market in 2006 and 63 percent of the market in 2009. Table 1 below shows this data from 2003 through 2009.

TABLE 1—U.S. SOFTWOOD LUMBER MARKETS FROM 2003–2009 VOLUME

[Billion board feet]

	Single family homes	Multi-family homes	Mobile homes	Residential remodeling	Non-residential, buildings	Non-residential, other	Industrial and other	Total U.S.
2003	20.2	1.7	1.1	19.3	3.6	0.6	10.2	56.7
2004	22.2	1.8	1.1	20.3	3.9	0.5	11.1	60.8

[1] Spelter, H., D. McKeever, D. Toth, Profile 2009: Softwood Sawmills in the United States, USDA, p. 7.

[2] Micklewright, J.T., Wood preservation statistics, American Wood Preservers Assocation, p. 25.

[3] Spelter, McKeever and Toth, Profile 2009, p. 15.

[4] Western Wood Products Association, 2008 Statistical Yearbook, p. 32.

[5] U.S. Census Bureau, 2009, Construction, *http://www.census.gov/mcd/.*

[6] Spelter, McKeever and Toth, Profile 2009, p. 2–5.

TABLE 1—U.S. SOFTWOOD LUMBER MARKETS FROM 2003–2009 VOLUME—Continued

[Billion board feet]

	Single family homes	Multi-family homes	Mobile homes	Residential remodeling	Non-residential, buildings	Non-residential, other	Industrial and other	Total U.S.
2005	24.5	1.9	1.2	20.9	3.8	0.6	11.7	64.6
2006	21.3	1.9	0.9	21.4	3.6	0.6	11.3	61.0
2007	14.9	1.7	0.8	19.7	4.0	0.6	11.4	53.1
2008	8.4	1.4	0.6	17.5	3.9	0.6	9.6	42.0
2009	5.3	0.7	0.4	14.2	3.6	0.6	7.8	32.6
Shares (percent)								
2003	36	3	2	34	6	1	18	
2004	36	3	2	33	6	1	18	
2005	38	3	2	32	6	1	18	
2006	35	3	2	35	6	1	18	
2007	28	3	1	37	8	1	21	
2008	20	3	1	42	9	1	23	
2009	16	2	1	44	11	2	24	

During normal economic conditions, single family homes comprise the largest share of the softwood lumber market in the United States. Single family home use rose from 20.2 billion board feet in 2003 to 24.5 billion board feet in 2005 and fell to 5.3 billion board feet in 2009. Single family homes comprised 38 percent of the market for softwood lumber in 2005 and 16 percent of the market by 2009.

Home building is cyclical in nature (follows a pattern of highs and lows) as compared to other end uses for softwood lumber. Residential remodeling and other uses experienced downturns between 2006 and 2009, but less severe than the market for single family homes. Softwood lumber used for residential remodeling fell from 21.4 billion board feet in 2006 to 14.2 billion board feet in 2009. As a percentage of softwood lumber market share, residential remodeling rose from 35 percent in 2006 to 44 percent in 2009.

Export Markets [7]

Export markets are another outlet for softwood lumber. Two decades ago, U.S. exports were about seven times greater than they were in recent years, but a strong U.S. dollar from the mid-1990s onward helped to reduce exports. Additionally, different size and grade standards for softwood lumber in export markets complicate production when log sizes have to be converted from imperial units (feet) to metric (meters). Most manufacturers have thus focused on North American sales. However, in slow periods such as in recent years, efforts have been made to supply export markets to the extent possible.

Competition [8]

Softwood lumber competes with several alternative products. Steel and concrete dominate larger residential and nonresidential projects. Brick, concrete, and vinyl are often used in low-rise residential and nonresidential buildings. Within the last decade, wood-plastic composite lumber has become popular for outdoor decking, railing, trim, and fencing. Other wood-based products such as laminated veneer are becoming more popular in place of softwood lumber.

Imports

According to U.S. Department of Commerce, Census Bureau, Foreign Trade Statistics data [9], imports of softwood lumber from 2007 through 2009 averaged about 13 billion board feet annually. During those years, imports from Canada averaged 12 billion board feet annually, comprising about 92 percent of total imports; imports from western Europe averaged 434 million board feet annually, comprising about 3 percent of total imports; and imports from Chile averaged 255 million board feet annually, comprising about 2 percent of total imports. Imports from other countries accounted for the remaining 3 percent of total imports for 2007 through 2009.

Price and Cost Trends [10]

Prices in the lumber industry can change rapidly in response to shifts in demand or supply. Prices are set competitively, with many buyers and sellers bidding in a business that tends to be cyclical in nature. As shown in Table 2 below, revenue for the State of Oregon per thousand board feet was about $309 in 2003, rose to $420 in 2004, and fell to $219 in 2008. In comparison, revenue for the State of Georgia per thousand board feet was about $323 in 2003, rose to $418 in 2005, and fell to $262 in 2008.

TABLE 2—TYPICAL SAWMILL OPERATING COSTS 2003–2008

	Oregon		Georgia	
	Costs ($ per thousand board feet)	Revenue ($ per thousand board feet)	Costs ($ per thousand board feet)	Revenue ($ per thousand board feet)
2003	295	309	311	323
2004	330	420	335	378
2005	349	370	349	418
2006	335	316	349	330

[7] Spelter, McKeever and Toth, Profile 2009, p. 15.

[8] Ibid., p. 15.

[9] *http://www.fas.usda.gov/gats;* accessed 5/1/10.

[10] Spelter, McKeever and Toth, Profile 2009, p. 5–6.

TABLE 2—TYPICAL SAWMILL OPERATING COSTS 2003–2008—Continued

	Oregon		Georgia	
	Costs ($ per thousand board feet)	Revenue ($ per thousand board feet)	Costs ($ per thousand board feet)	Revenue ($ per thousand board feet)
2007	297	260	300	269
2008	238	219	328	262

Several factors contributed to the revenue changes shown in Table 2. Some mills in the interior western United States were forced to close because of constraints on the availability of timber. A dispute with Canada over lumber imports that resulted in a 15 percent export levy for some U.S.-bound shipments and quotas on others after October 2006 impacted supply.

Wood, labor, and operating costs also impact revenue. The cost of wood in the United States is negotiated between buyers and sellers. Companies often enter into long-term supply contracts with timber owners where the price is negotiated quarterly based on sales and market conditions. Labor is the second biggest component of lumber costs. According to the U.S. Department of Labor, U.S. wages have increased about 3 percent per year during this decade.[11] At the same time, labor productivity in sawmilling has increased by a like amount leaving unit labor costs flat. The other main cost for sawmills is energy, but most mills use their own residues to generate heat for their drying needs. This has lessened the impact of rising energy prices on sawmills. As shown in Table 2, total operating costs in Oregon per thousand board feet averaged $295 in 2003, rose to $349 in 2005, and fell to $238 in 2008. In comparison, total operating costs in Georgia per thousand board feet averaged $311 in 2003, rose to $349 in 2005 and 2006, and fell to $328 in 2008.

Need for a Program

The softwood lumber industry is experiencing one of the worst markets in history. The collapse of the housing market caused prices to fall from $404 per thousand board feet in 2004 to $222 per thousand board feet in 2009.[12] Competition from other building products like cement and vinyl has also helped to reduce demand for softwood lumber.

Additionally, at the request of the U.S. and Canadian governments, the U.S. Endowment for Forestry and Communities (Endowment) and the Binational Softwood Lumber Council (BSLC) were formed in 2006 in accordance with the 2006 Softwood Lumber Agreement. The Endowment is a non-profit organization that works with public and private sectors to advance the interests of the forestry community. The Endowment conducted a study to assess the feasibility of a softwood lumber research and promotion program. In the past, the industry attempted voluntary efforts to promote forest products, but they were sporadic, underfunded, and narrowly targeted. These campaigns did not last long enough to succeed. The Endowment recommended to the industry that Canadian and U.S. companies pursue a shared vision and achieve broad agreement on creating a unified softwood lumber research and promotion program. In 2008, the Endowment held an industry meeting in Seattle, Washington, to discuss the merits of such a program and obtain industry feedback.

As a result of the Endowment's efforts, the BRC was subsequently formed to pursue an industry research and promotion program. The BRC is comprised of 21 members representing the United States and Canada. Funding and support for the BRC's efforts come from the BSLC, a non-profit organization whose mission is to promote increased cooperation between the U.S. and Canadian softwood lumber industries and to strengthen and expand markets for softwood lumber products in both countries. The BRC submitted an initial proposal for a program to USDA in February 2010.

The BRC proposed a program that would be financed by an assessment on softwood lumber domestic manufacturers and importers and administered by a board of industry members selected by the Secretary. The initial assessment rate would be $0.35 per thousand board feet shipped within or imported to the United States and could be increased up to a maximum of $0.50 per thousand board feet. Entities that domestically ship or import less than 15 million board feet would be exempt along with shipments exported outside of the United States. Larger entities would not pay assessments on the first 15 million board feet shipped or imported. The purpose of the program would be to strengthen the position of softwood lumber in the marketplace, maintain and expand markets for softwood lumber, and develop new uses for softwood lumber within the United States. A referendum would be held among eligible domestic manufacturers and importers to determine whether they favor implementation of the program prior to it going into effect. A majority of domestic manufacturers and importers by both number and volume represented in the referendum would have to support the program for it to be implemented. The specific provisions of the program are discussed below.

Provisions of Proposed Program

Definitions

Pursuant to section 513 of the 1996 Act, §§ 1217.1 through 1217.30 of the proposed Order define certain terms that would be used throughout the Order. Several of the terms are common to all research and promotion programs authorized under the 1996 Act while other terms are specific to the proposed softwood lumber Order.

Section 1217.1 would define the term "Act" to mean the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425), and any amendments thereto.

Section 1217.2 would define the term "Blue Ribbon Commission" to mean the 21-member committee representing businesses that manufacture softwood lumber in the United States or import softwood lumber to the United States formed to pursue an industry research, promotion, and information program. As specified in proposed § 1217.41, the BRC would conduct the initial nominations for the Softwood Lumber Board and submit them to the Secretary. This would be the only role of the BRC under the program.

[11] U.S. Department of Labor, Bureau of Labor Statistics, 2009, Employment cost index, Washington, DC, *http://data.bls.gov/PDQ/outside.jsp?survey=ci.* Accessed 3/27/09.

[12] Price data was obtained from Random Lengths Publications, Inc., and is a framing composite price that is designed as a broad measure of price movement in the lumber market. (*http://www.randomlengths.com.*)

Section 1217.3 would define the term "Board" or "Softwood Lumber Board" to mean the administrative body established pursuant to § 1217.40, or such other name as recommended by the Board and approved by the Secretary.

Section 1217.4 would define the term "board foot" or "BF" to mean a unit of measurement of softwood lumber represented by a board 12-inches long, 12-inches wide, and 1-inch thick or its cubic equivalent. A board foot calculation for softwood lumber 1 inch or more in thickness is based on its nominal thickness and width by the actual length. Softwood lumber with a nominal thickness of less than 1 inch is calculated as 1 inch.

The term "nominal" means the size by which softwood lumber is known and sold in the marketplace. As previously mentioned, it differs from the actual size and is based on the thickness and width of a board when it is first cut from a log, or rough cut, prior to drying and planing. Nominal size would be defined in § 1217.16 of the Order. The term "planing" means the act of smoothing the surface of a board to make the wood a uniform size and would be defined in § 1217.20 of the Order.

Section 1217.6 would define the term "Customs" to mean the United States Customs and Border Protection or U.S. Customs Service, an agency of the United States Department of Homeland Security.

Section 1217.8 would define the term "domestic manufacturer" to mean any person who is a first handler and is engaged in the manufacturing, sale and shipment of softwood lumber in the United States during a fiscal period and who owns, or shares the ownership and risk of loss of manufacturing of softwood lumber or a person who is engaged in the business of manufacturing, or causes to be manufactured, sold and shipped such softwood lumber in the United States beyond personal use. The term would not include any person who re-manufactures softwood lumber that had already been subject to assessment under the Order.

Section 1217.9 would define the term "export" to mean to manufacture and ship softwood lumber from within the United States to locations outside of the United States.

Section 1217.10 would define the term "fiscal period" or "fiscal year" to mean a calendar year from January 1 through December 31, or other period as recommended by the Board and approved by the Secretary.

Section 1217.12 would define the term "information" to mean activities or programs designed to disseminate the results of research, new and existing marketing programs, new and existing marketing strategies, new and existing uses and applications, and to enhance the image of softwood lumber and the forests from which it comes. This would include consumer education, which would mean any action taken to provide information to, and broaden the understanding of, the general public regarding softwood lumber. This would also include industry information, which would mean information and programs that would enhance the image of the softwood lumber industry.

Section 1217.13 would define the term "manufacture" to mean the process of transforming softwood logs into softwood lumber.

Section 1217.14 would define the term "manufacturer for the U.S. market" to mean domestic manufacturers and importers of softwood lumber. Such importers may not have manufactured the softwood lumber, but would be importing softwood lumber that had been manufactured from softwood logs. The term is intended to facilitate equity between the domestic and importing members of the softwood lumber industry.

Section 1217.15 would define the term "marketing" to mean the sale or other disposition of softwood lumber in interstate, foreign, or intrastate commerce. The sale or disposition of softwood lumber within a State would constitute marketing.

Section 1217.18 would define the terms "part" and "subpart." The term "part" would mean the Softwood Lumber Research, Promotion, Consumer Education, and Industry Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order would be a "subpart" of the part.

Section 1217.21 would define the terms programs, plans and projects to mean research, promotion and information programs, plans, or projects established under the Order.

Section 1217.22 would define the term "promotion" to mean any action taken, including paid advertising, public relations and other communications, and promoting the results of research, that presents a favorable image of softwood lumber and the forests from which it comes to the public and to any and all consumers and those who influence consumption of softwood lumber with the intent of improving the perception, markets and competitive position of softwood lumber and stimulating sales of softwood lumber.

Section 1217.23 would define the term "research" to mean any activity that advances the position of softwood lumber in the marketplace that includes any type of test, study, or analysis designed to advance the image, desirability, use, marketability, sales, product development, or quality of softwood lumber; new applications; improving softwood lumber's position in building and fire codes; softwood lumber product testing and safety; and evaluating the effectiveness of market development and promotion efforts including life cycle studies, forestry, sustainable forest management, environmental preferability, competitiveness, efficiency, pest and disease control, water quality and other management aspects of forestry and the forests from which softwood lumber originates.

Section 1217.25 would define the term "softwood lumber" to mean all softwood lumber and softwood lumber products described in section 804(a) within Title VIII (Softwood Lumber Act of 2008 or SLA of 2008) of the Tariff Act of 1930 (19 U.S.C. 1202–1683g), as amended by section 3301 of the Food, Conservation and Energy Act of 2008 (Pub. L. 110–246, enacted June 18, 2008). An interim final rule issued by Customs and effective on September 18, 2008 (73 FR 49934; August 25, 2008), prescribed an importer declaration program and entry requirements applicable to such softwood lumber and softwood lumber products. The declaration program and entry requirements were required under section 803 of the SLA of 2008. Section 804 of the SLA of 2008 sets forth the scope of softwood lumber and softwood lumber products covered by that Act. Accordingly, all softwood lumber and softwood lumber products classified under subheading 4407.10.00, 4409.10.10, 4409.10.20, or 4409.10.90 of the Harmonized Tariff Schedule of the United States (HTSUS) are subject to the importer declaration program and entry requirements and would be covered under this Order and are described in the following paragraphs: [13]

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces,

[13] The HTS numbers referred to in this discussion are as of January 1, 2008.

whether or not planed, sanded, or finger-jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded, or finger-jointed;

(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces, whether or not planed, sanded, or finger jointed; and

(5) Coniferous drilled and notched lumber and angle cut lumber.

In addition, any product classified under subheading 4409.10.05 of the HTSUS that is continually shaped along its end and or side edges, and unless excepted or excluded from the importer declaration requirement, softwood lumber products that are stringers, radius cut box-spring frame components, fence pickets, truss components, pallet components, and door and window frame parts classified under subheading 4418.90.46.95, 4421.90.70.40, or 4421.90.97.40 of the HTSUS are covered under the SLA of 2008 and would be covered under the Order.

The following are not subject to the importer declaration program under section 803 of the SLA of 2008 (*see* section 804(b)) because they are defined as excluded from the program and would thus not be covered under this Order:

(1) Trusses and truss kits, properly classified under subheading 4418.90 of the HTSUS;

(2) I–Joist beams;

(3) Assembled box-spring frames;

(4) Pallets and pallet kits, properly classified under subheading 4415.20 of the HTSUS;

(5) Garage doors;

(6) Edge-glued wood, properly classified under subheading 4421.90.97.40 of the HTSUS;

(7) Complete door frames;

(8) Complete window frames;

(9) Furniture;

(10) Articles brought into the United States temporarily and for which an exemption from duty is claimed under subchapter XIII of chapter 98 of the HTSUS; and

(11) Household and personal effects.

Also, the following products are not subject to the importer declaration program established under section 803 of the SLA of 2008 (*see* section 804(c)) because they are defined as excepted from the program:

(1) Stringers (pallet components used for runners), if the stringers have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, and properly classified under subheading 4421.90.97.40 of the HTSUS;

(2) Box-spring frame kits, if the kits contain two wooden side rails, two wooden end (or top) rails; and varying numbers of wooden slats; and the side rails and the end rails are radius-cut at both ends. Box spring frame kits must be individually packaged, and contain the exact number of wooden components needed to make the box-spring frame described on the entry documents, with no further processing required. None of the components contained in the package may exceed 1 inch in actual thickness or 83 inches in length.

(3) Radius-cut box-spring-frame components, not exceeding 1 inch in actual thickness or 83 inches in length, ready for assembly without further processing, if radius cuts are present on both ends of the boards and are substantial cuts so as to completely round one corner.

(4) Fence pickets requiring no further processing and properly classified under subheading 4421.90.70 of the HTSUS, 1 inch or less in actual thickness, up to 8 inches wide, and 6 feet or less in length, and having finials or decorative cuttings that clearly identify them as fence pickets (in the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring ¾ of an inch or more).

(5) Softwood lumber originating in the United States that is exported to another country for minor processing and imported into the United States if the processing occurring in another country is limited to kiln drying, planing to create smooth-to-size board, and sanding; and the importer establishes to Customs' satisfaction upon entry that the softwood lumber originated in the United States.

(6) Any softwood lumber or softwood lumber product that originated in the United States, if the importer, exporter, foreign manufacturer or original domestic manufacturer establishes to Customs' satisfaction upon entry that the softwood lumber entered and documented as originating in the United States was first manufactured in the United States.

(7) Softwood lumber or softwood lumber products contained in a single family home package or kit, regardless of classification under the HTSUS, if the importer declares that the following requirements have been met: (i) The package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint; (ii) The package or kit contains all necessary internal and external doors and windows, nails, screws, glue, subfloor, sheathing, beams, posts, and connectors, and if included in the purchase contract, the decking, trim, drywall and roof shingles specified in the plan, design or blueprint; (iii) Prior to importation, the package or kit is sold to a United States retailer that sells complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and the contract is signed by a customer not affiliated with the importer; and (iv) Softwood lumber products entered as part of the package or kit, whether in a single entry or multiple entries on multiple days, and are to be used solely for the construction of the single family home specified by the home design plan, or blueprint matching the Customs import entry.

For each entry of softwood lumber products contained in a single family home package for which the importer declares that these four requirements are met, the importer must retain and make available to Customs upon request the following documentation:

(1) A copy of the appropriate home design plan, or blueprint matching the Customs entry in the United States;

(2) A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;

(3) A listing of all parts in the package or kit being entered into the United States that conforms to the home design package being imported; and

(4) If a single contract involves multiple entries, an identification of all of the items required to be listed under item (3) that are included in each individual shipment.

The reporting and recordkeeping burden for the information required by Customs has been approved by the OMB and is addressed in the referenced Custom's interim final rule.

Section 1217.26 would define the term "softwood" to mean one of the botanical groups of trees that have needle-like or scale-like leaves, or conifers.

Sections 1217.5, 1217.7, 1217.11, 1217.17, 1217.19, 1217.24, 1217.27, 1217.28, 1217.29, and 1217.30 would define the terms "conflict of interest," "Department or UDSA," "importer," "Order," "person," "Secretary," "State," "suspend," "terminate," and "United States," respectively. The definitions are the same as those specified in section 513 of the Act.

Establishment of the Board

Pursuant to section 515 of the 1996 Act, §§ 1217.40 through 1217.47 of the proposed Order would detail the establishment and membership of the proposed Softwood Lumber Board, nominations and appointments, the term of office, removal and vacancies, procedure, reimbursement and attendance, powers and duties, and prohibited activities.

Section 1217.40 would specify the Board establishment and membership. The Board would be composed of manufacturers for the U.S. market who manufacture and domestically ship or import 15 million board feet or more of softwood lumber in the United States during a fiscal period. Seats on the Board would be apportioned based on the volume of softwood lumber manufactured and shipped within the United States by domestic manufacturers and the volume of softwood lumber imported into the United States.

The Board would be composed of 18 or 19 members, depending upon whether an additional importer member was appointed to the Board. Twelve members would be domestic manufacturers and would be allocated to three regions in the United States based on the volume of softwood lumber manufactured in and shipped from the respective region. Of the 12 members, 6 would be from the U.S. South Region, 5 would be from the U.S. West Region, and 1 member would be from the Northeast and Lake States Region and any other part of the United States not included in the southern and western regions. Specific areas within each domestic region would be specified in § 1217.40(b)(1) of the proposed Order.

Six members would be importers who import the majority of their softwood lumber from two regions in Canada and would be allocated based on the volume of softwood lumber imported from those two respective regions. Of the six Canadian importers, four would represent the Canadian West Region and two would represent the Canadian East Region. Specific areas within each Canadian region would be specified in § 1217.40(b)(2) of the proposed Order. Any additional 19th member would represent a region representing all countries except Canada.

The volume of softwood lumber imported from other countries besides Canada is relatively low, averaging about 8 percent of total imports from 2007 through 2009. However, all entities paying assessments to the Board would have the opportunity to be represented on the Board. Thus, the BRC recommended that, if the Secretary, at the request of the Board or on his or her own, determines that it would be consistent with the provisions of the Act, the Secretary could appoint an additional importer to the Board to represent the region outside of the regions specified for Canada. Nominees would be solicited as prescribed for other regions, and all the names of eligible candidates would be submitted to the Secretary for consideration. Such nominees would have to certify that the majority of their softwood lumber is imported from the region (which would include imports from all countries except Canada).

The BRC also opted to have no alternate Board members. It wants to ensure that industry members who seek representation and serve on the Board are committed to their service and participate in all Board meetings.

Every 5 years, but no more often than once every 3 years, the Board must review, based on a 3-year average, the geographical distribution of the volume of softwood lumber manufactured and shipped within the United States by domestic manufacturers and the volume of softwood lumber imported into the United States. If warranted, the Board would recommend to the Secretary that the Board membership be reapportioned appropriately to reflect such changes. The distribution of volumes between regions also shall be considered. Any changes in Board composition would be implemented by the Secretary through rulemaking.

Section 1217.41 of the proposed Order would specify Board nominations and appointments. The initial nominations would be submitted to the Secretary by the BRC. The BRC would publicize the nomination process, using trade press or other means it deems appropriate, and outreach to all manufacturers for the U.S. market who domestically ship and/or import 15 million board feet or more of softwood lumber per fiscal year. The BRC would use regional caucuses, mail or other methods to solicit potential nominees and would work with USDA to help ensure that all interested persons are apprised of the nomination process. The BRC would submit the nominations to the Secretary and recommend two nominees for each Board position. The Secretary would select the members of the Board from the nominations submitted by the BRC.

Regarding subsequent nominations, the Board would solicit nominations as described in the preceding paragraph. Nominees would have the opportunity to provide the Board a short background statement outlining their qualifications and desire to serve on the Board. They must domestically ship and/or import 15 million board feet or more of softwood lumber per fiscal year. Entities that are both a domestic manufacturer and an importer could seek nomination to the Board and vote in the nomination process described below as either a domestic manufacturer or an importer, but not both. Such nominees who domestically manufacture the majority of their softwood lumber could seek nomination and vote as a domestic manufacturer, and such nominees who import the majority of their softwood lumber could seek nomination and vote as an importer.

Domestic manufacturers who manufacture softwood lumber in more than one region could seek nomination in only the region in which they manufacture the majority of their softwood lumber. The names of domestic manufacturer nominees would be placed on a ballot by region. The ballots along with the background statements would be mailed to domestic manufacturers in each respective region for a vote. Domestic manufacturers who manufacture softwood lumber in more than one region could only vote in the region in which they manufacture the majority of their softwood lumber. The votes would be tabulated for each region with the nominee receiving the highest number of votes at the top of the list in descending order by vote. The top two candidates for each position would be submitted to the Secretary.

Importer nominees would certify that the majority of their softwood lumber was imported from the respective region for which they were seeking representation on the Board. They would provide documentation to verify this if requested by the Board. The names of importer nominees would then be placed on a ballot by region. The ballots along with the background statements would be mailed to importers in each respective region for a vote. Importers who import softwood lumber from more than one region could only vote in the region from which they import the majority of their softwood lumber. The votes would be tabulated for each region with the nominee receiving the highest number of votes at

the top of the list in descending order by vote. The top two candidates for each position would then be submitted to the Secretary.

The Board would submit nominations to the Secretary at least 6 months before the new Board term begins. The Secretary would select the members of the Board from the nominations submitted by the Board.

The BRC also recommended that no two Board members be employed by a single corporation, company, partnership, or any other legal entity. This is to ensure that no one entity has control on the Board.

In order to provide the Board flexibility, the Board could recommend to the Secretary modifications to its nomination procedures. Any such modifications would be implemented through rulemaking by the Secretary.

Section 1217.42 of the proposed Order would specify the term of office. With the exception of the initial Board, each Board member would serve a three-year term or until the Secretary selected his or her successor. Each term of office would begin on January 1 and end on December 31. No member could serve more than two consecutive terms, excluding any term of office less than three years. For the initial board, the terms of Board members would be staggered for two, three, and four years and would be recommended to the Secretary by the BRC.

Section 1217.43 of the proposed Order would specify criteria for the removal of members and for filling vacancies. If a Board member ceased to work for or be affiliated with a domestic manufacturer or importer or ceased to do business in the region he or she represented, such position would become vacant. Additionally, the Board could recommend to the Secretary that a member be removed from office if the member consistently refused to perform his or her duties or engaged in dishonest acts or willful misconduct. The Secretary could remove the member if he or she finds that the Board's recommendation shows adequate cause. If a position became vacant, nominations to fill the vacancy would be conducted using the nominations process as proposed in § 1217.41 of the Order. A vacancy would not be required to be filled if the unexpired term is less than six months.

Section 1217.44 of the proposed Order would specify procedures of the Board. A majority of the Board members (10) would constitute a quorum, provided that at least three of the members present were importers and six were domestic manufacturers. If participation by telephone or other means were permitted, members participating by such means would count towards the quorum requirements or other voting requirements as authorized under the Order. Proxy voting would not be permitted. A motion would carry if supported by 10 Board members, except for recommendations to change the assessment rate or to adopt a budget, both of which would require affirmation by at least two-thirds of the Board members (12 members for an 18 member Board and 13 members for a 19 member Board). If a Board has vacant positions, recommendations to change the assessment rate or to adopt a budget would have to pass by an affirmative vote of two-thirds of the Board members, exclusive of the vacant seats.

For example, if a 19 member Board had a vacancy, there would be 18 Board members. If the Board held a meeting, and 9 members were present (of which 6 were domestic manufacturers) in person and 4 (of which 3 were importers) participated by telephone, there would be a quorum (13) for the meeting. If the Board were voting on the upcoming year's budget, 12 members ($.66 \times 18$ members) would have to vote in favor of the budget for it to pass.

The proposed Order would also provide for the Board to take action by mail, telephone, electronic mail, facsimile, or any other electronic means when the chairperson believes it is necessary. Actions taken under these procedures would be valid only if all members and the Secretary were notified of the meeting and all members were provided the opportunity to vote and at least 10 Board members voted in favor of the action (unless two-thirds vote were required under the Order). Additionally, all votes would have to be confirmed in writing and recorded in Board minutes.

The proposed Order would specify that Board members would serve without compensation. However, Board members would be reimbursed for reasonable travel expenses, as approved by the Board, incurred when performing Board business.

Section 1217.46 of the proposed Order would specify powers and duties of the Board. These are similar in promotion programs authorized under the 1996 Act. They include, among other things, to administer the Order and collect assessments; to develop bylaws and recommend regulations necessary to administer the Order; to select a chairperson and other Board officers; to create an executive committee and form other committees and subcommittees as necessary; to hire staff or contractors; to provide appropriate notice of meetings to the industry and USDA and keep minutes of such meetings; to develop programs and enter into contracts to implement programs; to submit a budget to USDA for approval 60 calendar days prior to the start of the fiscal year; to borrow funds necessary to cover startup costs of the Order; to invest Board funds appropriately; to recommend changes in the assessment rate as appropriate and within the limits of the Order; to have its books audited by an outside certified public accountant at the end of each fiscal period and at other times as requested by the Secretary; to report its activities to manufacturers for the U.S. market; to make public an accounting of funds received and expended; to receive, investigate and report to the Secretary complaints of violations of the Order; and to recommend amendments to the Order as appropriate.

Section 1217.47 of the proposed Order would specify prohibited activities that are common to all promotion programs authorized under the 1996 Act. In summary, the Board nor its employees and agents could engage in actions that would be a conflict of interest; use Board funds to lobby (influencing legislation or governmental action or policy, by local, State, national, and foreign governments or subdivision thereof, other than recommending to the Secretary amendments to the Order); and engage in any advertising or activities that may be false, misleading or disparaging to another agricultural commodity.

Expenses and Assessments

Pursuant to sections 516 and 517 of the 1996 Act, §§ 1217.50 through 1217.53 of the proposed Order detail requirements regarding the Board's budget and expenses, financial statements, assessments, and exemption from assessments. At least 60 calendar days before the start of the fiscal period, and as necessary during the year, the Board would submit a budget to USDA covering its projected expenses. The budget must include a summary of anticipated revenue and expenses for each program along with a breakdown of staff and administrative expenses. Except for the initial budget, the Board's budgets should include comparative data for at least one preceding fiscal period.

Each budget must provide for adequate funds to cover the Board's anticipated expenses. Any amendment or addition to an approved budget must be approved by USDA, including shifting of funds from one program, plan or project to another. Shifts of funds that do not result in an increase in the

Board's approved budget would not have to have prior approval from USDA. For example, if the Board's approved budget provided for $1 million in consumer advertising and $500,000 in research projects, a shift of $50,000 from consumer advertising to research would require USDA approval. However, a shift within the $1 million consumer advertising line item would not require prior USDA approval.

The Board would be authorized to incur reasonable expenses for its maintenance and functioning. During its first year of operation, the Board could borrow funds for startup costs and capital outlay. Any borrowed funds would be subject to the same fiscal, budget and audit controls as other funds of the Board.

The Board could also accept voluntary contributions. Any contributions received by the Board would be free from encumbrances by the donor and the Board would retain control over use of the funds. For example, the Board could receive Federal grant funds, subject to approval by the Secretary, for a specific research project. The Board would also be required to reimburse USDA for costs incurred by USDA in overseeing the Order's operations, including all costs associated with referenda.

The Board would be limited to spending no more than 8 percent of its available funds for administration, maintenance, and the functioning of the Board. This limitation would begin two fiscal years after the Board's first meeting. Reimbursements to USDA would not be considered administrative costs. As an example, if the Board received $15 million in assessments during fiscal year 5, and had available $1 million in reserve funds, the Board's available funds would be $16 million. In this scenario, the Board would be limited to spending no more than $1.28 million (.08 × $16 million) on administrative costs. While section 515 of the 1996 Act limits such spending to 15 percent of a board's budget, the BRC believes that 8 percent is appropriate.

The Board could also maintain a monetary reserve and carry over excess funds from one fiscal period to the next. However, such reserve funds could not exceed one fiscal year's budgeted expenses. For example, if the Board's budgeted expenses for a fiscal year were $15 million, it could carry over no more than $15 million in reserve. With approval of the Secretary, reserve funds could be used to pay expenses.

The Board could invest its revenue collected under the Order in the following: (1) Obligations of the United States or any agency of the United States; (2) general obligations of any State or any political subdivision of a State; (3) interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve; and (4) obligations fully guaranteed as to principal interest by the United States.

The Board would be required to submit to USDA financial statements on a quarterly basis, or at any other time as requested by the Secretary. Financial statements should include, at a minimum, a balance sheet, an income statement, and an expense budget.

Assessments

The Board's programs and expenses would be funded through assessments on manufacturers for the U.S. market, other income, and other funds available to the Board. The Order would provide for an initial assessment rate of $0.35 per thousand board feet. Domestic manufacturers would pay assessments based on the volume of softwood lumber shipped within the United States and importers would pay assessments based on the volume of softwood lumber imported to the United States.

Two years after the Order becomes effective and periodically thereafter, the Board would review the assessment rate and, if appropriate, recommend a change in the rate. At least two-thirds of the Board members would have to favor a change in the assessment rate. The assessment rate could be no less than $0.35 per thousand board feet and no more than $0.50 per thousand board feet. Any change in the assessment rate within this range would be subject to rulemaking by the Secretary. Anticipated income generated within the assessment range is addressed in the section titled Initial Regulatory Flexibility Act Analysis.

Domestic manufacturers would be required to pay their assessments owed to the Board by the 30th calendar day of the month following the end of the quarter in which the softwood lumber was shipped. Thus, the January to December fiscal year would have four quarters ending the last day of March, June, September, and December, respectively. Assessments would be due April 30th, July 30th, October 30th, and January 30th. As an example, assessments for lumber shipped in January would be due to the Board by April 30th.

Importer assessments would be collected through Customs. If Customs did not collect the assessment from an importer, then the importer would be responsible for paying the assessment directly to the Board within 30 calendar days after importation.

Most of the imported softwood lumber that would be covered under the program would have a quantity associated with it in cubic meters. To compute the assessments owed, the quantity of softwood lumber in cubic meters would have to be converted to thousand board feet, and then that number would be multiplied by the applicable assessment rate. One cubic meter is equal to 423.776001 board feet. The factor used to convert one cubic meter to one thousand board feet is 423.776001 divided by 1,000, or 0.423776001. For example, if 500,000 cubic meters of softwood lumber covered under the program is imported, and the assessment rate is $0.35 per thousand board feet, the assessments owed would be $74,160.80 (500,000 × 0.423776001 × $.35).

Some imported lumber covered under the program may not have a quantity associated with it. It would include products like window and door frame parts. The importer declares an export price (or value) for the product, consistent with the SLA of 2008. To compute the assessments owed for such product, the value in dollars must be computed to thousand board feet, and that quantity must be multiplied by the applicable assessment rate. The factor used to convert dollar value to one thousand board feet is 0.0031746, and is based on a 10-year average of $315 per one thousand board feet. For example, if $500,000 worth of softwood lumber is imported under the program, and the assessment rate is $0.35 per thousand board feet, the assessments owed would be $555.54 ($500,000 × 0.0031746 × $.35).

Additionally, under the program, the Board could recommend to the Secretary, upon an affirmative vote of at least two-thirds of the Board members, a change in the factor used to convert value in dollars to one thousand board feet.

The Order would provide authority for the Board to impose a late payment charge and interest for assessments overdue to the Board by 60 calendar days. The late payment charge and rate of interest would be prescribed in the Order's regulations issued by the Secretary.

Exemptions

The Order would provide for four exemptions. First, manufacturers for the U.S. market who domestically ship or import less than 15 million board feet during a fiscal year would be exempt from paying assessments. Domestic manufacturers and importers would

apply to the Board for an exemption prior to the start of the fiscal year. This would be an annual exemption; entities would have to reapply each year. They would have to certify that they expect to domestically ship or import less than 15 million board feet for the applicable fiscal year. The Board could request past shipment or import data to support the exemption request. The Board would then issue, if deemed appropriate, a certificate of exemption to the eligible manufacturer for the U.S. market.

Once approved, domestic manufacturers would not have to pay assessments to the Board for the applicable fiscal year. Approved importers would have their assessments as collected by Customs refunded by the Board within 60 calendar days after receipt of such assessments by the Board. No interest would be paid on the assessments collected by Customs.

Manufacturers for the U.S. market who did not apply to the Board for an exemption and domestically shipped or imported less than 15 million board feet of softwood lumber during the fiscal year would receive a refund from the Board for the applicable assessments within 30 calendar days after the end of the fiscal year. Board staff would determine the assessments paid and refund the domestic manufacturer accordingly. On the other hand, manufacturers for the U.S. market who receive an exemption certificate but domestically ship or import more than 15 million board feet of softwood lumber during the fiscal year would have to pay the Board the applicable assessments owed within 30 calendar days after the end of the fiscal year and submit any necessary reports to the Board.

If an entity is a domestic manufacturer and importer of softwood lumber, such entity's domestic shipments and imports would count towards the 15 million board foot-exemption. For example, if an entity domestically ships 12 million board feet and imports 10 million board feet during a fiscal year, the entity would pay assessments on 7 million board feet of softwood lumber.

The Board could recommend additional procedures to administer the exemption as appropriate. Any procedures would be implemented through rulemaking by the Secretary.

The second exemption under the proposed Order would be for manufacturers for the U.S. market who domestically ship or import more than 15 million board feet of softwood lumber annually. Domestic manufacturers would not pay assessments on their first 15 million board feet of softwood lumber shipped during the applicable fiscal year. Importers would receive a refund from the Board for the applicable assessments collected by Customs no later than 60 calendar days after receipt of such assessments by the Board.

The third exemption under the proposed Order would be for exports, or shipments of softwood lumber by domestic manufacturers to locations outside of the United States. The Board would develop procedures for approval by USDA for refunding assessments that may be inadvertently paid on such shipments and establish any necessary safeguards as appropriate. Safeguard procedures would be implemented by the Secretary through rulemaking. If the Board determined that exports should be assessed, it would make that recommendation to the Secretary. Any such action would be implemented by USDA through rulemaking.

The fourth exemption under the proposed Order would be for organic lumber. A domestic manufacturer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan, only manufactures and ships softwood lumber that is eligible to be labeled as 100 percent organic under the NOP and is not a split operation would be exempt from payment of assessments. Likewise, an importer who imports only softwood lumber that is eligible to be labeled as 100 percent organic under the NOP and who does not import any nonorganic softwood lumber would be exempt from the payment of assessments.

Promotion, Research and Information

Pursuant to section 516 of the 1996 Act, §§ 1217.60 through 1217.62 of the proposed Order would detail requirements regarding promotion, research and information programs, plans and projects authorized under the Order. The Board would develop and submit to the Secretary for approval programs, plans and projects regarding promotion, research, education, and other activities, including consumer and industry information and advertising designed to, among other things, build markets for softwood lumber, enhance the image and reputation of softwood lumber and the forests from which it comes, and develop new applications for softwood lumber. The Board would be required to evaluate each plan and program to ensure that it contributes to an effective promotion program. Softwood lumber of all origins would have to be treated equally by the Board, and no program, plan, or project could be false, misleading, or disparage against another agricultural commodity.

The Order would also require that, at least once every five years, the Board fund an independent evaluation of the effectiveness of the Order and programs conducted by the Board. Finally, the Order would specify that any patents, copyrights, trademarks, inventions, product formulations and publications developed through the use of funds received by the Board would be the property of the U.S. Government, as represented by the Board. These along with any rents, royalties and the like from their use would be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board, and could be licensed with approval of the Secretary.

Reports, Books and Records

Pursuant to section 515 of the 1996 Act, §§ 1217.70 through 1217.72 specify the reporting and recordkeeping requirements under the proposed Order as well as requirements regarding confidentiality of information.

Manufacturers for the U.S. market would be required to submit periodically to the Board certain information as the Board may request. Specifically, domestic manufacturers would submit a report to the Board that would include, but not be limited to, the manufacturer's name, address, and telephone number; the board feet of softwood lumber shipped within the United States; the board feet of softwood lumber for which assessments were paid; and the board feet of softwood lumber that was exported. Manufacturers would submit this report at the same time they remit their assessments to the Board. Domestic manufacturers who received a certificate of exemption from the Board would not have to submit such a report to the Board. However, exempt domestic manufacturers who shipped over the exemption threshold of 15 million board feet during the fiscal year would have to submit such reports to the Board with the payment of assessments on a quarterly basis as specified in § 1217.53.

Likewise, importers who pay their assessments directly to the Board would be required to submit a report to the Board that would include, but not be limited to, the importer's name, address, and telephone number; the board feet of softwood lumber imported to the United States; the board feet of softwood lumber for which assessments were paid; and country of export for such softwood lumber. Importers would submit this report at the same time they remit their assessments to the Board. Importers who paid their assessments through Customs would not have to submit such reports to the Board

because Customs would collect this information upon entry.

Additionally, manufacturers for the U.S. market, including those who were exempt, would be required to maintain books and records needed to verify any required reports. Such books and records must be made available during normal business hours for inspection by the Board's or USDA's employees or agents. Manufacturers for the U.S. market would be required to maintain such books and records for two years beyond the applicable fiscal period.

The Order would also require that all information obtained from persons subject the Order as a result of proposed recordkeeping and reporting requirements would be kept confidential by all officers, employees, and agents of the Board and USDA. Such information could only be disclosed if the Secretary considered it relevant, and the information were revealed in a judicial proceeding or administrative hearing brought at the direction or at the request of the Secretary or to which the Secretary or any officer of USDA were a party. Other exceptions for disclosure of confidential information would include the issuance of general statements based on reports or on information relating to a number of persons subject to the Order, if the statements did not identify the information furnished by any person, or the publication, by direction of the Secretary, of the name of any person violating the Order and a statement of the particular provisions of the Order violated.

Miscellaneous Provisions

Referenda

Pursuant to section 518 of the 1996 Act, § 1217.81(a) of the proposed Order specifies that the program would not go into effect unless it is approved by a majority of domestic manufacturers and importers voting in a referendum who also represent a majority of the volume of softwood lumber represented in the referendum who, during a representative period determined by the Secretary, were engaged in the domestic manufacturing or importation of softwood lumber into the United States. For example, if 500 domestic manufacturers and importers representing 100 million board feet of softwood lumber voted in a referendum, 251 domestic manufacturers and importers representing over 50 million board feet would have to vote in favor of the Order for it to pass in the referendum.

Section 1217.81(b) of the proposed Order specifies criteria for subsequent referenda. Under the Order, a referendum would be held to ascertain whether the program should continue, be amended, or be terminated. This section specifies that a referendum would be held 5 years after the Order becomes effective, and every 5 years thereafter, to determine whether domestic manufacturers and importers favor continuation of the Order. The Order would continue if favored by a majority of domestic manufacturers and importers voting in the referendum that also represented a majority of the volume of softwood lumber represented in the referendum.

Additionally, a referendum could be conducted at the request of the Board. A referendum could also be conducted at the request of 10 percent or more of the number of persons eligible to vote in a referendum under the Order. Finally, a referendum could be conducted at any time as determined by the Secretary.

Other Miscellaneous Provisions

Sections 1217.80 and §§ 1217.82 through 1217.88 describe the rights of the Secretary; authorize the Secretary to suspend or terminate the Order when deemed appropriate; prescribe proceedings after termination; address personal liability, separability, and amendments; and provide OMB control numbers. These provisions are common to all research and promotion program authorized under the 1996 Act.

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of the proposed rule on small entities. Accordingly, AMS has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR Part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (domestic manufacturers and importers) as those having annual receipts of no more than $7.0 million.

According to USDA's Forest Service, it is estimated that, between 2007 and 2009, there were an average of 595 domestic manufacturers of softwood lumber in the United States annually.[14] This number represents separate business entities; one business entity may include multiple sawmills. Using an average price of $280 per thousand board feet, a domestic manufacturer who ships less than 25 million board feet per year would be considered a small entity. It is estimated that, between 2007 and 2009, about 363 domestic manufacturers, or about 61 percent[15], shipped less than 25 million board feet annually.

Likewise, according to Customs data, it is estimated that, between 2007 and 2009, there were about 883 importers of softwood lumber annually. About 798 importers, or about 90 percent, imported less than $7.0 million worth of softwood lumber annually. Thus, the majority of domestic manufacturers and importers of softwood lumber would be considered small entities.

Regarding value of the commodity, with domestic production averaging 29.5 billion board feet (2007 and 2008), and using an average price for those years of $268 per thousand board feet[16], the average annual value for softwood lumber is about $7.9 billion. According to Customs data, the average annual value for softwood lumber imports for 2007 and 2008 is about $4.7 billion.

This rule invites comments on a proposed industry-funded research, promotion, and information program for softwood lumber. Softwood lumber is used in products like flooring, siding and framing. The program would be financed by an assessment on softwood lumber domestic manufacturers and importers and would be administered by a board of industry members selected by the Secretary. The initial assessment rate would be $0.35 per thousand board feet shipped within or imported to the United States and could be increased to $0.50 per thousand board feet. Entities that ship or import less than 15 million board feet would be exempt along with shipments exported outside of the United States. No entity would pay assessments on the first 15 million board feet shipped or imported. The purpose of the program would be to strengthen the position of softwood lumber in the marketplace, maintain and expand markets for softwood lumber, and develop new uses for softwood lumber within the United States. A referendum would be held among eligible domestic manufacturers and importers to determine whether

[14] Spelter, McKeever and Toth, Profile 2009, p. 15.

[15] Percentages were obtained from the American Lumber Standard Committee, Inc. (ALSC). The ALSC administers an accreditation program for the grademarking of lumber produced under the American Softwood Lumber Standard (Voluntary Product Standard 20).

[16] Spelter, McKeever and Toth, Profile 2009, p. 2–5.

they favor implementation of the program prior to it going into effect. A majority of entities by both number and volume would have to support the program for it to be implemented. The program is authorized under the 1996 Act.

Regarding the economic impact of the proposed Order on affected entities, softwood lumber domestic manufacturers and importers would be required to pay assessments to the Board. As previously mentioned, the initial assessment rate would be $0.35 per thousand board feet shipped within or imported to the United States and could be increased to no more than $0.50 per thousand board feet.

The Order would provide for an exemption for domestic manufacturers and importers who ship or import less than 15 million board feet annually. Of the 595 domestic manufacturers, it is estimated that about 232, or 39 percent, ship less than 15 million board feet per year and would thus be exempt from paying assessments under the proposed Order. Of the 883 importers, it is estimated that about 780, or 88 percent, import less than 15 million board feet per year and would also be exempt from paying assessments. Thus, about 363 domestic manufacturers and 103 importers would pay assessments under the Order. It is estimated that if $17.5 million were collected in assessments ($0.35 per thousand board feet assessment rate with 50 billion board feet assessed), 25 percent, or about $4 million, would be paid by importers and 75 percent, or about $13 million, would be paid by domestic manufacturers.

Regarding the impact on the industry as a whole, the proposed program is expected to grow markets for softwood lumber by stopping the erosion of market share in single family residential market, increasing the market share in multi-family residential construction, significantly increasing the use of softwood lumber in non-residential markets, and rebuilding softwood lumber's share in the outdoor living market. The BRC estimates the long-term market growth opportunity in the non-residential market and the raised wood segment of the residential market is between 10 and 12 billion board feet. USDA's Forest Service in a 2007 study estimated a more conservative potential growth at around 8 billion board feet.[17] While the benefits of the proposed program are difficult to quantify, the benefits are expected to outweigh the program's costs.

Regarding alternatives, the BRC considered various options to the proposed range in assessment rates and options to the proposed exemption. The BRC believes that $20 million in assessment income is the threshold for an effective program that could help to improve the market for softwood lumber. Table 3 below shows the range in assessments projected at various industry shipment levels per year.

TABLE 3—PROJECTED INCOME GENERATED AT VARIOUS ASSESSMENT RATES AND SHIPMENT LEVELS [1]

Assessment options (per thousand board feet)	Annual shipment levels (billion board feet)		
	40	50	60
$0.25	$10 million	$12.5 million	$15 million
$0.35	$14 million	$17.5 million	$21 million
$0.50	$20 million	$25 million	$30 million

[1] Assumes no exemption.

Regarding exemption levels, the BRC explored projected assessment income at exemption levels of 15, 20, and 30 million board feet. With a 15 million board foot exemption, the BRC projected a deduction of 11.3 percent in assessment income. Table 4 below shows the BRC's projected income levels at various assessment options in light of the proposed 15 million board foot exemption.

TABLE 4—PROJECTED INCOME GENERATED AT VARIOUS ASSESSMENT RATES AND SHIPMENT LEVELS [1]

Assessment options (per thousand board feet)	Annual shipment levels (billion board feet)		
	40	50	60
$0.25	$8.9 million	$11.1 million	$13.3 million
$0.35	$12.4 million	$15.5 million	$18.9 million
$0.50	$17.7 million	$22.2 million	$26.6 million

[1] Assumes 15 million board foot exemption.

Ultimately the BRC concluded that an assessment rate range of $0.35 to a maximum of $0.50 per thousand board feet with an exemption threshold of 15 million board feet was appropriate and would generate sufficient income to support an effective promotion program for softwood lumber. At an initial assessment rate of $0.35 per thousand board feet, the BRC projects assessment income between $12.4 million and almost $19 million with shipment levels ranging from 40 to 60 billion board feet, respectively.

The industry explored the merits of a voluntary promotion program. Over the years, the industry organized various public outreach, education and promotion campaigns funded through voluntary assessments. Although some were partially effective, none fully accomplished their objectives and the gains either disappeared quickly or eroded over time once the campaigns were terminated.

This action would impose additional reporting and recordkeeping burden on

[17] Spelter, H.D. McKeever, M. Alderman, Profile 2007: Softwood Sawmills in the United States and Canada, USDA, p. 10.

domestic manufacturer and importers of softwood lumber. Domestic manufacturers and importers interested in serving on the Board may be asked to submit a nomination form to the Board indicating their desire to serve or nominating another industry member to serve on the Board. Interested persons could also submit a background statement outlining their qualifications to serve on the Board. Except for the initial Board nominations, domestic manufacturers and importers would have the opportunity to cast a ballot and vote for candidates to serve on the Board. Domestic manufacturer and importer nominees to the Board would have to submit a background form to the Secretary to ensure they are qualified to serve on the Board.

Additionally, domestic manufacturers and importers who ship or import less than 15 million board feet annually could submit a request to the Board for an exemption from paying assessments on this volume. Domestic manufacturers and importers would also be asked to submit a report regarding their shipments/imports that would accompany their assessments paid to the Board. Domestic manufacturers and importers who would qualify as 100 percent organic under the NOP could submit a request to the Board for an exemption from assessments. Importers could also request a refund of any assessments paid to Customs.

Finally, domestic manufacturers and importer who wanted to participate in a referendum to vote on whether the Order should become effective would have to complete a ballot for submission to the Secretary. These forms are being submitted to the OMB for approval under OMB Control No. 0581–NEW. Specific burdens for the forms are detailed later in this document in the section titled Paperwork Reduction Act. As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E–Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Regarding outreach efforts, as previously mentioned, the Endowment conducted a study to assess the feasibility of a softwood lumber research and promotion program. According to the BRC, at the beginning of the study (early 2008), in-depth interviews were conducted among North American softwood lumber industry leaders to explore the level of interest in a generic promotion program to help grow the market for softwood lumber. A sample of 35 companies was selected which was intended to reflect various levels of size and ownership types. Of the 35 companies surveyed, 86 percent by number representing 54 percent of the volume favored exploring a mandatory promotion program for softwood lumber.

In early 2009, the BRC was formed and began a comprehensive process to develop a program. According to the BRC, its membership is diverse and represents 44 percent of softwood lumber shipments within the U.S. market. Efforts were made to inform various associations throughout the country through presentations at their meetings.

While USDA has performed this initial RFA analysis regarding the impact of the proposed rule on small entities, in order to have as much data as possible for a more comprehensive analysis, we invite comments concerning potential effects. USDA is also requesting comments regarding the number and size of entities covered under the proposed Order.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS announces its intention to request an approval of a new information collection and recordkeeping requirements for the proposed lumber program.

Title: Advisory Committee or Research and Promotion Background Information.

OMB Number for background form AD–755: (Approved under OMB No. 0505–0001).

Expiration Date of Approval: Awaiting renewal.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–NEW.

Expiration Date of Approval: 3 years from approval date.

Type of Request: New information collection for research and promotion programs.

Abstract: The information collection requirements in the request are essential to carry out the intent of the 1996 Act. The information collection concerns a proposal received by USDA for a national research and promotion program for the softwood lumber industry. The program would be financed by an assessment on softwood lumber domestic manufacturers and importers and would be administered by a board of industry members selected by the Secretary. The program would provide for an exemption for the first 15 million board feet of softwood lumber shipped by domestic manufacturers within the United States or imported into the United States during the year. A referendum would be held among eligible domestic manufacturers and importers to determine whether they favor implementation of the program prior to it going into effect. The purpose of the program would be to help build the market for softwood lumber.

In summary, the information collection requirements under the program concern Board nominations, the collection of assessments, and referenda. For Board nominations, domestic manufacturers and importers interested in serving on the Board would be asked to submit a "Nomination Form" to the Board indicating their desire to serve or to nominate another industry member to serve on the Board. Interested persons could also submit a background statement outlining qualifications to serve on the Board. Except for the initial Board nominations, domestic manufacturers and importers would have the opportunity to submit a "Nomination Ballot" to the Board where they would vote for candidates to serve on the Board. Nominees would also have to submit a background information form, "AD–755," to the Secretary to ensure they are qualified to serve on the Board.

Regarding assessments, domestic manufacturers and importers who ship or import less than 15 million board feet annually could submit a request, "Application for Exemption from Assessments," to the Board for an exemption from paying assessments. Domestic manufacturers and importers would be asked to submit a "Shipment/Import Report" that would accompany their assessments paid to the Board and report the quantity of softwood lumber shipped domestically or imported during the applicable period, the quantity exported from the United States, the quantity for which assessments were paid, and the country of export (for imports). Domestic manufacturers who ship less than 15 million board feet annually and are exempt from paying assessments would not be required to submit this report. Additionally, only importers who pay their assessments directly to the Board would be required to submit this report. As previously mentioned, the majority of importer assessments would be collected by Customs. Customs would

remit the funds to the Board and the other information would be available from Customs (*i.e.,* country of export, quantity of softwood lumber imported). Finally, domestic manufacturers and importers who would qualify as 100 percent organic under the NOP could submit an "Organic Exemption Form" to the Board and request an exemption from assessments. Importers could also request a refund of any assessments paid to Customs.

There would also be an additional burden on domestic manufacturers and importers voting in referenda. The referendum ballot, which represents the information collection requirement relating to referenda, is addressed in a proposed rule on referendum procedures which is published separately in this issue of the **Federal Register**.

Information collection requirements that are included in this proposal include:

(1) Nomination Form

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.25 hour per application.

Respondents: Domestic manufacturers and importers.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 12.5 hours.

(2) Background Statement

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.25 hour per application.

Respondents: Domestic manufacturers and importers.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 12.5 hours.

(3) Nomination Ballot

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.25 hour per application.

Respondents: Domestic manufacturers and importers.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 75 hours.

(4) Background Information Form AD–755 (OMB Form No. 0505–0001)

Estimate of Burden: Public reporting for this collection of information is estimated to average 0.5 hour per response for each Board nominee.

Respondents: Domestic manufacturers and importers.

Estimated number of Respondents: 13 (38 for initial nominations to the Board, 0 for the second year, and up to 13 annually thereafter).

Estimated number of Responses per Respondent: 1 every 3 years. (0.3)

Estimated Total Annual Burden on Respondents: 19 hours for the initial nominations to the Board, 0 hours for the second year of operation, and up to 6.5 hours annually thereafter.

(5) Application for Exemption From Assessments

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hour per domestic manufacturer or importer reporting on softwood lumber shipped domestically or imported. Upon approval of an application, domestic manufacturers and importers would receive exemption certification.

Respondents: Domestic manufacturers (232) and importers (780) who ship domestically or import less than 15 million board feet of softwood lumber annually.

Estimated number of Respondents: 1,012.

Estimated number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 253 hours.

(6) Shipment/Import Report

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hour per domestic manufacturer or importer.

Respondents: Domestic manufacturers who ship over 15 million board feet annually (363) and importers who remit their assessments directly to the Board (assume 5 percent of 103 importers, or 5).

Estimated number of Respondents: 368.

Estimated number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 736 hours.

(7) Organic Exemption Form

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.5 hours per exemption form.

Respondents: Organic domestic manufacturers and importers.

Estimated Number of Respondents: 1.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 0.5 hour.

(8) Refund of Assessments Paid on Organic Softwood Lumber

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hour.

Respondents: Organic importers.

Estimated Number of Respondents: 1.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 0.25 hour.

(9) A Requirement To Maintain Records Sufficient To Verify Reports Submitted Under the Order

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per record keeper maintaining such records.

Recordkeepers: Domestic manufacturers (595) and importers (883).

Estimated number of recordkeepers: 1,478.

Estimated total recordkeeping hours: 739 hours.

As noted above, under the proposed program, domestic manufacturers and importers would be required to pay assessments and file reports with and submit assessments to the Board (importers through Customs). While the proposed Order would impose certain recordkeeping requirements on domestic manufacturers and importers, information required under the proposed Order could be compiled from records currently maintained. Such records shall be retained for at least two years beyond the fiscal year of their applicability.

An estimated 1,478 respondents would provide information to the Board (595 domestic manufacturers and 883 importers). The estimated cost of providing the information to the Board by respondents would be $24,387. This total has been estimated by multiplying 739 total hours required for reporting and recordkeeping by $33, the average mean hourly earnings of various occupations involved in keeping this information. Data for computation of this hourly rate was obtained from the U.S. Department of Labor Statistics.

The proposed Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other programs administered by USDA and other State programs.

The proposed forms would require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the 1996 Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information quarterly would coincide with normal industry business practices. The timing and frequency of collecting information are intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. The requirement to keep records for two years is consistent with normal industry practices. In addition, the information to be included on these forms is not available from other sources because such information relates specifically to individual domestic manufacturers and importers who are subject to the provisions of the 1996 Act. Therefore, there is no practical method for collecting the required information without the use of these forms.

Request for Public Comment Under the Paperwork Reduction Act

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the proposed Order and USDA's oversight of the proposed Order, including whether the information would have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) the accuracy of USDA's estimate of the principal manufacturing areas in the United States for softwood lumber; (d) the accuracy of USDA's estimate of the number of domestic manufacturers and importers of softwood lumber that would be covered under the program; (e) ways to enhance the quality, utility, and clarity of the information to be collected; and (f) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581–NEW. In addition, the docket number, date, and page number of this issue of the **Federal Register** also should be referenced. Comments should be sent to the same addresses referenced in the **ADDRESSES** section of this rule.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

USDA made modifications to the proponent's proposal to conform with other similar national research and promotion programs implemented under the 1996 Act.

While the proposal set forth below has not received the approval of USDA, it is determined that this proposed Order is consistent with and would effectuate the purposes of the 1996 Act.

As previously mentioned, for the proposed Order to become effective, it must be approved by a majority of domestic manufacturers and importers voting for approval in a referendum who also represent a majority of the volume of softwood lumber represented in the referendum. Referendum procedures will be published separately in this issue of the **Federal Register**.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this rule by the date specified will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1217

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Softwood Lumber promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations be amended by adding part 1217 to read as follows:

PART 1217—SOFTWOOD LUMBER RESEARCH, PROMOTION, CONSUMER EDUCATION AND INDUSTRY INFORMATION ORDER

Subpart A—Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order

Definitions

Sec.

Softwood Lumber Board

Expenses and Assessments

Promotion, Research and Information

Reports, Books, and Records

Miscellaneous

Subpart B—[Reserved]

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

Subpart A—Softwood Lumber Research, Promotion, Consumer Education, and Industry Information Order

Definitions

§ 1217.1 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425), and any amendments thereto.

§ 1217.2 Blue Ribbon Commission.

Blue Ribbon Commission or *BRC* means the 21-member committee representing businesses that manufacture softwood lumber in the United States or import softwood lumber to the United States formed to pursue an industry research, promotion, and information program.

§ 1217.3 Board.

Board or *Softwood Lumber Board* means the administrative body established pursuant to § 1217.40, or such other name as recommended by the Board and approved by the Department.

§ 1217.4 Board foot.

Board foot or *BF* means a unit of measurement of softwood lumber represented by a board 12-inches long, 12-inches wide, and 1-inch thick or its cubic equivalent. A board foot calculation for softwood lumber 1 inch or more in thickness is based on its nominal thickness and width and the actual length. Softwood lumber with a nominal thickness of less than 1 inch is calculated as 1 inch.

§ 1217.5 Conflict of interest.

Conflict of interest means a situation in which a member or employee of the Board has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

§ 1217.6 Customs.

Customs means the United States Customs and Border Protection or U.S. Customs Service, an agency of the United States Department of Homeland Security.

§ 1217.7 Department or USDA.

Department or USDA means the U.S. Department of Agriculture, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1217.8 Domestic manufacturer.

Domestic manufacturer means any person who is a first handler and is engaged in the manufacturing, sale and shipment of softwood lumber in the United States during a fiscal period and who owns, or shares the ownership and risk of loss of manufacturing of softwood lumber or a person who is engaged in the business of manufacturing, or causes to be manufactured, sold and shipped such softwood lumber in the United States beyond personal use. This term does not include any person who re-manufactures softwood lumber that has already been subject to assessment under this Order.

§ 1217.9 Export.

Export means to manufacture and ship softwood lumber from within the United States to locations outside of the United States.

§ 1217.10 Fiscal period or year.

Fiscal period or year means a calendar year from January 1 through December 31, or such other period as recommended by the Board and approved by the Secretary.

§ 1217.11 Importer.

Importer means any person who imports softwood lumber from outside the United States for sale in the United States as a principal or as an agent, broker, or consignee of any person who manufactures softwood lumber outside the United States for sale in the United States, and who is listed in the import records as the importer of record for such softwood lumber.

§ 1217.12 Information.

Information means activities or programs designed to disseminate the results of research, new and existing marketing programs, new and existing marketing strategies, new and existing uses and applications, and to enhance the image of softwood lumber and the forests from which it comes. These include:

(a) Consumer education, which means any action taken to provide information to, and broaden the understanding of, the general public regarding softwood lumber; and

(b) Industry information, which means information and programs that would enhance the image of the softwood lumber industry.

§ 1217.13 Manufacture.

Manufacture means the process of transforming softwood logs into softwood lumber.

§ 1217.14 Manufacturer for the U.S. market.

Manufacturer for the U.S. market means domestic manufacturers and importers of softwood lumber as defined in this Order.

§ 1217.15 Marketing.

Marketing means the sale or other disposition of softwood lumber in interstate, foreign, or intrastate commerce.

§ 1217.16 Nominal size.

Nominal size means the size by which softwood lumber is known and sold in the marketplace that differs from actual size and is based on the thickness and width of a board when it is first cut from a log, or rough cut, prior to drying and planing.

§ 1217.17 Order.

Order means an order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1217.18 Part and subpart.

Part means the Softwood Lumber Research, Promotion, Consumer Education, and Industry Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a *subpart* of such part.

§ 1217.19 Person.

Person means any individual, group of individuals, partnership, company, corporation, association, affiliate, cooperative, or any other legal entity.

§ 1217.20 Planing.

Planing means the act of smoothing the surface of a board to make the wood a uniform size.

§ 1217.21 Programs, plans and projects.

Programs, plans and projects mean those research, promotion and information programs, plans, or projects established pursuant to this Order.

§ 1217.22 Promotion.

Promotion means any action taken, including paid advertising, public relations and other communications, and promoting the results of research, that presents a favorable image of softwood lumber to the public and to any and all consumers and those who influence consumption of softwood lumber with the intent of improving the perception, markets and competitive position of softwood lumber and stimulating sales of softwood lumber.

§ 1217.23 Research.

Research means any activity that advances the position of softwood lumber in the marketplace that includes any type of test, study, or analysis designed to advance the image, desirability, use, marketability, sales, product development, or quality of softwood lumber; new applications; improving softwood lumber's position in building and fire codes; softwood lumber product testing and safety; and evaluating the effectiveness of market development and promotion efforts including life cycle studies, forestry, sustainable forest management, environmental preferrability, competitiveness, efficiency, pest and disease control, water quality and other management aspects of forestry and the forests from which softwood lumber originates.

§ 1217.24 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any other officer or employee of the Department to whom authority has been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1217.25 Softwood lumber.

Softwood lumber means all softwood lumber and softwood lumber products described in section 804(a) of Title VIII of the Tariff Act of 1930, as amended (19 U.S.C. 1202–1683g). This definition does not include those products excluded or excepted under sections 804(b) and (c) of that Act.

§ 1217.26 Softwood.

Softwood means one of the botanical groups of trees that have needle-like or scale-like leaves, or conifers.

§ 1217.27 State.

State means any of the several 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1217.28 Suspend.

Suspend means to issue a rule under section 553 of title 5 U.S.C. to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

§ 1217.29 Terminate.

Terminate means to issue a rule under section 553 of title 5 U.S.C. to cancel permanently the operation of an order or part thereof beginning on a date certain specified in the rule.

§ 1217.30 United States.

United States means collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States.

Softwood Lumber Board

§ 1217.40 Establishment and membership.

(a) *Establishment of the Board.* There is hereby established a Softwood Lumber Board to administer the terms and provisions of this Order and promote the use of softwood lumber. The Board shall be composed of manufacturers for the U.S. market who manufacture and domestically ship or import 15 million board feet or more of softwood lumber in the United States during a fiscal period. Seats on the Board shall be apportioned based on the volume of softwood lumber manufactured and shipped within the United States by domestic manufacturers and the volume of softwood lumber imported into the United States.

(b) The Board shall be composed of 18 or 19 members, depending upon whether an additional importer member is appointed to the Board, pursuant to paragraph (b)(2)(iii) of this section. The Board shall be established as follows:

(1) *Domestic manufacturers.* Twelve members shall be domestic manufacturers from the following three regions:

(i) Six members shall be from the U.S. South Region, which consists of the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas;

(ii) Five members shall be from the U.S. West Region, which consists of the States of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming; and

(iii) One member shall be from the Northeast and Lake States Region, which consists of the States of Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia, Vermont, West Virginia, Wisconsin, and all other parts of the United States not listed in paragraphs (b)(1)(i), (b)(1)(ii), or (b)(1)(iii) of this section.

(2) *Importers.* Six members shall be importers who represent the following regions and import the majority of their softwood lumber from the respective region:

(i) Four members shall import softwood lumber from the Canadian West Region, which consists of the provinces of British Columbia and Alberta; and

(ii) Two members shall import softwood lumber from the Canadian East Region, which consists of the Canadian territories and all other Canadian provinces not listed in paragraph (b)(2)(i) of this section that import softwood lumber into the United States.

(iii) If the Secretary, at the request of the Board or on his or her own, determines that it would be consistent with the provisions of the Act, the Secretary may appoint an additional importer to the Board to represent a region not otherwise specified in paragraphs (b)(2)(i) and (b)(2)(ii) of this section. Nominees would be solicited as prescribed in paragraph (b) of § 1217.41, or in the case of the Secretary acting on his or her own will be handled by the Secretary, and all the names of eligible candidates would be submitted to the Secretary for consideration. Such nominees must certify that the majority of their softwood lumber is imported from such region. In addition, representation for the region not otherwise specified in paragraphs (b)(i) and (ii) of this section would be subject to the Board review and reapportionment provided for in paragraph (c) of this section.

(c) In each five-year period, but not more frequently than once in each three-year period, the Board shall:

(1) Review, based on a three-year average, the geographical distribution of the volume of softwood lumber manufactured and shipped within the United States by domestic manufacturers and the volume of softwood lumber imported into the United States; and

(2) If warranted, recommend to the Secretary the reapportionment of the Board membership to reflect changes in the geographical distribution of the volume of softwood lumber manufactured and shipped within the United States by domestic manufacturers and the volume of softwood lumber imported into the United States. The destination of volumes between regions also shall be considered. Any changes in Board composition shall be implemented by the Secretary through rulemaking.

§ 1217.41 Nominations and appointments.

(a) Initial nominations will be submitted to the Secretary by the Blue Ribbon Commission. Before considering any nominations, the BRC shall publicize the nomination process, using

trade press or other means it deems appropriate, and shall outreach to all manufacturers for the U.S. market who domestically manufacture and/or import 15 million board feet or more of softwood lumber per fiscal year in order to generate nominees that reflect the different operations within the softwood lumber industry. The BRC may use regional caucuses, mail or other methods to elicit potential nominees. The BRC shall submit the nominations to the Secretary and recommend two nominees for each Board position specified in paragraphs (b)(1) and (b)(2)(i) and (b)(2)(ii) of § 1217.40. All nominees solicited pursuant to § 1217.40(b)(2)(iii) shall be submitted to the Secretary through the BRC. From the nominations submitted by the BRC, the Secretary shall select the members of the Board.

(b) Subsequent nominations shall be conducted as follows:

(1) The Board shall outreach to all segments of the softwood lumber industry. Subsequent nominees must domestically manufacture and/or import 15 million board feet or more of softwood lumber per fiscal year;

(2) Domestic manufacturers and importer nominees may provide the Board a short background statement outlining their qualifications to serve on the Board;

(3) Nominees that are both a domestic manufacturer and an importer may seek nomination to the Board and vote in the nomination process as either a domestic manufacturer or an importer, but not both: *Provided,* That, such nominees who domestically manufacture the majority of their softwood lumber may seek nomination and vote as a domestic manufacturer, and such nominees who import the majority of their softwood lumber may seek nomination and vote as an importer. Such nominees must domestically manufacture and import 15 million board feet or more of softwood lumber per fiscal year;

(4) Domestic manufacturers who manufacture softwood lumber in more than one region may seek nomination only in the region in which they manufacture the majority of their softwood lumber. The names of domestic manufacturer nominees shall be placed on a ballot by region. The ballots along with the background statements shall be mailed to domestic manufacturers in each respective region for a vote. Domestic manufacturers who manufacture softwood lumber in more than one region may only vote in the region in which they manufacture the majority of their softwood lumber. The votes shall be tabulated for each region with the nominee receiving the highest number of votes at the top of the list in descending order by vote. The top two candidates for each position shall be submitted to the Secretary;

(5) Importer nominees shall certify that the majority of their softwood lumber is imported from the respective region for which they are seeking to represent on the Board and shall provide documentation to verify this if requested by the Board. The names of importer nominees shall be placed on a ballot by region. The ballots along with the background statements shall be mailed to importers in each respective region for a vote. Importers who import softwood lumber from more than one region may only vote in the region from which they import the majority of their softwood lumber. The votes shall be tabulated for each region with the nominee receiving the highest number of votes at the top of the list in descending order by vote. The top two candidates for each position shall be submitted to the Secretary.

(6) The Board must submit nominations to the Secretary at least six months before the new Board term begins. From the nominations submitted by the Board, the Secretary shall select the members of the Board;

(7) No two members shall be employed by a single corporation, company, partnership, or any other legal entity; and

(8) The Board may recommend to the Secretary modifications to its nomination procedures as it deems appropriate. Any such modifications shall be implemented through rulemaking by the Secretary.

§ 1217.42 Term of office.

(a) With the exception of the initial Board, each Board member will serve a three-year term or until the Secretary selects his or her successor. Each term of office shall begin on January 1 and end on December 31. No member may serve more than two consecutive terms, excluding any term of office less than three years.

(b) For the initial board, the terms of Board members shall be staggered for two, three, and four years. Determination of which of the initial members shall serve a term of two, three, or four years shall be recommended to the Secretary by the Blue Ribbon Commission.

§ 1217.43 Removal and vacancies.

(a) In the event that any member of the Board ceases to work for or be affiliated with a domestic manufacturer or importer or ceases to do business in the region he or she represents, such position shall become vacant.

(b) The Board may recommend to the Secretary that a member be removed from office if the member consistently refuses to perform his or her duties or engages in dishonest acts or willful misconduct. The Secretary may remove the member if he or she finds that the Board's recommendation shows adequate cause. Further, without recommendation of the Board, a member may be removed by the Secretary upon showing of adequate cause, including the failure by a member to submit reports or remit assessments required under this part, if the Secretary determines that such member's continued service would be detrimental to the achievement of the purposes of the Act.

(c) If a position becomes vacant, nominations to fill the vacancy will be conducted using the nominations process set forth in this Order. A vacancy will not be required to be filled if the unexpired term is less than six months.

§ 1217.44 Procedure.

(a) A majority of the Board members (10) will constitute a quorum so long as at least three of the members present are importer members and six of the members present are domestic manufacturers. If participation by telephone or other means is permitted, members participating by such means shall count as present in determining quorum or other voting requirements set forth in this section.

(b) All votes at meetings of the Board and executive committee will be cast in person or by electronic voting or other means as the Board and Secretary deem appropriate to allow members participating by telephone or other electronic means to cast votes. Voting by proxy will not be allowed.

(c) Each member of the Board will be entitled to one vote on any matter put to the Board and the motion will carry if supported by 10 Board members, except for recommendations to change the assessment rate or to adopt a budget, both of which require affirmation by at least two-thirds (12 members for an 18 member Board and 13 members for a 19 member Board) of the Board members. If a Board has vacant positions, recommendations to change the assessment rate or to adopt a budget must pass by an affirmative vote of at least two-thirds of the Board members, exclusive of the vacant seats.

(d) The Board must give members and the Secretary timely notice of all Board, executive and committee meetings.

(e) In lieu of voting at a properly convened meeting, and when, in the opinion of the Board's chairperson, such

action is considered necessary, the Board may take action by mail, telephone, electronic mail, facsimile, or any other means of communication. Any action taken under this procedure is valid only if:

(1) All members and the Secretary are notified and the members are provided the opportunity to vote;

(2) Ten (10) Board members vote in favor of the action (unless two-thirds vote of the Board members is required under the Order); and

(3) All votes are promptly confirmed in writing and recorded in the Board minutes.

§ 1217.45 Reimbursement and attendance.

Board members will serve without compensation. Board members will be reimbursed for reasonable travel expenses, as approved by the Board, which they incur when performing Board business.

§ 1217.46 Powers and duties.

The Board shall have the following powers and duties:

(a) To administer this Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board and such rules, regulations as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among its members a chairperson and, such other officers as may be necessary;

(d) To create an executive committee of five members of the Board comprised of the chairperson and four other members elected by the Board. The duties of the executive committee shall be specified in bylaws that are recommended by the Board and approved by the Secretary;

(e) To create other committees or subcommittees, which may include individuals other than Board members, as the Board deems necessary from its membership and other representatives it deems appropriate;

(f) To employ or contract with such persons, other than the members, as it may deem necessary to assist the Board in carrying out its duties, and to determine the compensation and define the duties of each;

(g) To notify manufacturers for the U.S. market of all Board meetings through press releases or other means and to give the Secretary the same notice of Board meetings, executive committee, and subcommittee meetings that is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting to the Secretary;

(h) To develop and administer programs, plans, and projects and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for promotion, research, and information, including consumer and industry information, research and advertising designed to strengthen the softwood lumber industry's position in the marketplace and to maintain, develop, and expand markets for softwood lumber. The payment of costs for such activities shall be with funds collected pursuant to the Order, including funds collected pursuant to § 1217.50(f). Each contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget that specifies the cost to be incurred to carry out the activity;

(2) The contractor or agreeing party shall keep accurate records of all of its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

(i) To prepare and submit to the Secretary for approval 60 calendar days in advance of the beginning of a fiscal period, rates of assessment and a budget of the anticipated expenses to be incurred in the administration of the Order, including the probable cost of each promotion, research, and information activity proposed to be developed or carried out by the Board;

(j) To borrow funds necessary for startup expenses of the Order;

(k) To invest assessments collected and other funds received pursuant to the Order and use earnings from invested assessments to pay for activities carried out pursuant to the Order;

(l) To recommend changes to the assessment rates as provided in this part;

(m) To cause its books to be audited by a certified public accountant at the end of each fiscal period and at such other times as the Secretary may request, and to submit a report of each audit directly to the Secretary;

(n) To periodically prepare and make public and to make available to manufacturers for the U.S. market reports of its activities and, at least once each fiscal period, to make public an accounting of funds received and expended;

(o) To maintain minutes, books, and records and prepare and submit to the Secretary such reports from time to time as may be required for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it, and to submit to the Secretary such information pertaining to this part or subpart as he or she may request;

(p) To act as an intermediary between the Secretary and any manufacturer for the U.S. market;

(q) To investigate and to receive and investigate and report to the Secretary complaints of violations of the Order; and

(r) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of plans or activities to effectuate the purposes of the Act.

§ 1217.47 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(a) Any action that would be a conflict of interest;

(b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, State, national, and foreign governments or subdivision thereof, other than recommending to the Secretary amendments to the Order; and

(c) No program, plan or project including advertising shall be false or misleading or disparaging to another agricultural commodity. Softwood lumber of all origins shall be treated equally.

Expenses and Assessments

§ 1217.50 Budget and expenses.

(a) At least 60 calendar days prior to the beginning of each fiscal period, and as may be necessary thereafter, the Board shall prepare and submit to the Department a budget for the fiscal period covering its anticipated expenses and disbursements in administering this part. The budget for research, promotion or information may not be implemented prior to approval by the Secretary. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data for at least one

preceding fiscal year, except for the initial budget;

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding fiscal year, except for the initial budget.

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this Order.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Department, including shifting funds from one program, plan, or project to another.

(d) The Board is authorized to incur such expenses, including provision for a reserve, as the Secretary finds reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) With approval of the Department, the Board may borrow money for the payment of startup expenses subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed shall be expended only for startup costs and capital outlays and are limited to the first year of operation by the Board.

(f) The Board may accept voluntary contributions, and is encouraged to seek other appropriate funding sources to carry out activities authorized by the Order. Such contributions shall be free from any encumbrances by the donor and the Board shall retain complete control of their use. The Board may receive funds from outside sources (*i.e.,* Federal or State grants, Foreign Agricultural Service funds), with approval of the Secretary, for specific authorized projects.

(g) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, enforcement and supervision of the Order, including all referendum costs in connection with the Order.

(h) For fiscal years beginning two years after the date the of the first Board meeting, the Board may not expend for administration, maintenance, and the functioning of the Board an amount that is greater than 8 percent of the assessment and other income received by and available to the Board for the fiscal year. For purposes of this limitation, reimbursements to the Secretary shall not be considered administrative costs.

(i) The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: *Provided,* That, the funds in the reserve do not exceed one fiscal period's budget of expenses. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this subpart.

(j) Pending disbursement of assessments and all other revenue under a budget approved by the Secretary, the Board may invest assessments and all other revenues collected under this part in:

(1) Obligations of the United States or any agency of the United States;

(2) General obligations of any State or any political subdivision of a State;

(3) Interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve System;

(4) Obligations fully guaranteed as to principal interest by the United States; or

(5) Other investments as authorized by the Secretary.

§ 1217.51 Financial statements.

(a) The Board shall prepare and submit financial statements to the Department on a quarterly basis, or at any other time as requested by the Secretary. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Department within 30 calendar days after the end of the time period to which it applies.

(c) The Board shall submit to the Department an annual financial statement within 90 calendar days after the end of the fiscal year to which it applies.

§ 1217.52 Assessments.

(a) The Board's programs and expenses shall be paid by assessments on manufacturers for the U.S. market, other income of the Board, and other funds available to the Board.

(b) Subject to the exemptions specified in § 1217.53, each manufacturer for the U.S. market shall pay an assessment to the Board at the rate of $0.35 per thousand board feet of softwood lumber except that no person shall pay an assessment on the first 15 million board feet of softwood lumber otherwise subject to assessment in a fiscal year. Domestic manufacturers shall pay assessments based on the volume of softwood lumber shipped within the United States and importers shall pay assessments based on the volume softwood lumber imported to the United States.

(c) At least 24 months after the Order becomes effective and periodically thereafter, the Board shall review and may recommend to the Secretary, upon an affirmative vote by at least two-thirds of the Board members, a change in the assessment rate. In no event may the rate be less than $0.35 per thousand board feet nor more than $0.50 per thousand board feet. A change in the assessment rate is subject to rulemaking by the Secretary.

(d) Domestic manufacturers shall remit to the Board the amount due no later than the thirtieth calendar day of the month following the end of the quarter in which the softwood lumber was shipped.

(e) Each importer of softwood lumber shall pay through Customs to the Board an assessment on softwood lumber and softwood lumber products imported into the United States as described in section 804(a) of Title VIII of the Tariff Act of 1930, as amended (19 U.S.C. 1202–1683g).

(f) The following conversion factors shall be used to determine the equivalent volume of softwood lumber in thousand board feet. The factor used to convert one cubic meter to one thousand board feet is 0.423776001. The current assessment rate per one cubic meter is $0.1483. The factor used to convert the value in dollars to one thousand board feet is 0.0031746 and is based on an average of $315 per one thousand board feet. The current assessment rate per dollar value is $0.0011. The Board may recommend to the Secretary, upon affirmative vote by at least two-thirds of the Board members, a change in the factors used to convert value in dollars to one thousand board feet. Such a change is subject to rulemaking by the Secretary.

(g) If Customs does not collect an assessment from an importer, the importer is responsible for paying the assessment directly to the Board within 30 calendar days after importation.

(h) When a domestic manufacturer or importer fails to pay the assessment within 60 calendar days of the date it is due, the Board may impose a late payment charge and interest. The late payment charge and rate of interest shall be prescribed in regulations issued by the Secretary. All late assessments shall be subject to the specified late payment charge and interest. Persons failing to

remit total assessments due in a timely manner may also be subject to actions under Federal debt collection procedures.

(i) The Board may accept advance payment of assessments from any manufacturer for the U.S. market that will be credited toward any amount for which that person may become liable. The Board may not pay interest on any advance payment.

(j) If the Board is not in place by the date the first assessments are to be collected, the Secretary shall receive assessments and shall pay such assessments and any interest earned to the Board when it is formed.

§ 1217.53 Exemption from assessment.

(a) *Manufacturers for the U.S. market who domestically ship and/or import less than 15 million board feet annually.*

(1) Domestic manufacturers who ship less than 15 million board feet of softwood lumber within the United States in a fiscal year are exempt from paying assessments. Such manufacturers must apply to the Board, on a form provided by the Board, for a certificate of exemption prior to the start of the fiscal year. This is an annual exemption and domestic manufacturers must reapply each year. Such manufacturers shall certify that they will ship less than 15 million board feet of softwood lumber during the fiscal year for which the exemption is claimed. Upon receipt of an application for exemption, the Board shall determine whether an exemption may be granted. The Board may request past shipment data to support the exemption request. The Board will then issue, if deemed appropriate, a certificate of exemption to the eligible domestic manufacturer. It is the responsibility of the domestic manufacturer to retain a copy of the certificate of exemption.

(2) Importers who import into the United States less than 15 million board feet of softwood lumber in a fiscal year are exempt from paying assessments. Such importers must apply to the Board, on a form provided by the Board, for a certificate of exemption prior to the start of the fiscal year. This is an annual exemption and importers must reapply each year. Such importers shall certify that they will import less than 15 million board feet of softwood lumber during the fiscal year for which the exemption is claimed. Upon receipt of an application for exemption, the Board shall determine whether an exemption is granted. The Board may request past import data to support the exemption request. The Board will then issue, if deemed appropriate, a certificate of exemption to the eligible importer. It is the responsibility of the importer to retain a copy of the certificate of exemption. The Board shall refund such importers their assessments as collected by Customs no later than 60 calendar days after receipt of such assessments by the Board. No interest shall be paid on the assessments collected by Customs.

(3) Domestic manufacturers who did not apply to the Board for an exemption and shipped less than 15 million board feet of softwood lumber within the United States during the fiscal year shall receive a refund from the Board for the applicable assessments within 30 calendar days after the end of the fiscal year. Board staff shall determine the assessments paid and refund the amount due to the domestic manufacturer accordingly.

(4) Importers who did not apply to the Board for an exemption and imported less than 15 million board feet of softwood lumber during the fiscal year shall receive a refund from the Board for the applicable assessments within 30 calendar days after the end of the fiscal year.

(5) If an entity is both a domestic manufacturer and an importer, such entity's domestic shipments and imports during a fiscal year shall count towards the 15 million board feet exemption.

(6) Domestic manufacturers and importers who received an exemption certificate from the Board but shipped or imported 15 million board feet or more of softwood lumber during the fiscal year shall pay the Board the applicable assessments owed on the domestic shipments or imports over the 15 million board foot-exemption threshold within 30 calendar days after the end of the fiscal year and submit any necessary reports to the Board pursuant to § 1217.70.

(7) The Board may develop additional procedures to administer this exemption as appropriate. Such procedures shall be implemented through rulemaking by the Secretary.

(b) *Manufacturers for the U.S. market who domestically ship or import over 15 million board feet annually.*

(1) Domestic manufacturers who domestically ship more than 15 million board feet per fiscal year shall not pay assessments on their first 15 million board feet of softwood lumber shipped during the applicable fiscal year.

(2) Importers who import more than 15 million board feet per fiscal year shall be exempt from paying assessments on their first 15 million board feet of softwood lumber imported during the applicable fiscal year. Such importers shall receive a refund from the Board for the applicable assessments collected by Customs. The Board shall refund such importers their assessments no later than 60 calendar days after receipt by the Board.

(c) *Export.* Shipments of softwood lumber by domestic manufacturers to locations outside of the United States are exempt from assessment. The Board shall establish procedures for approval by the Secretary for refunding assessments that may be paid on such shipments and establish any necessary safeguards as deemed appropriate. Safeguard procedures would be implemented by the Secretary through rulemaking. The Board may also recommend to the Secretary that such shipments be assessed if it deems appropriate. Such action shall be implemented by the Secretary through rulemaking.

(d) *Organic.*

(1) Organic Act means section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

(2) A domestic manufacturer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan, only manufactures and ships softwood lumber that is eligible to be labeled as 100 percent organic under the NOP and is not a split operation shall be exempt from payment of assessments. To obtain an organic exemption, an eligible domestic manufacturer shall submit a request for exemption to the Board, on a form provided by the Board, at any time initially and annually thereafter on or before the start of the fiscal year as long as such manufacturer continues to be eligible for the exemption. The request shall include the following: The manufacturer's name and address; a copy of the organic operation certificate provided by a USDA-accredited certifying agent as defined in the Organic Act, a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary. The Board shall have 30 calendar days to approve the exemption request. If the exemption is not granted, the Board will notify the applicant and provide reasons for the denial within the same time frame.

(3) An importer who imports only softwood lumber that is eligible to be labeled as 100 percent organic under the NOP and is not a split operation shall be exempt from the payment of assessments. To obtain an organic exemption, an eligible importer must submit documentation to the Board and request an exemption from assessment

on 100 percent of organic softwood lumber, on a form provided by the Board, at any time initially and annually thereafter on or before the beginning of the fiscal year as long as the importer continues to be eligible for the exemption. This documentation shall include the same information as required by domestic manufacturers in paragraph (d)(2) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule of the United States (HTSUS) classification valid for 1 year from the date of issue. This HTSUS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic softwood lumber bearing this HTSUS classification assigned by the Board will not be subject to assessments.

(4) Importers who are exempt from assessment in paragraph (d)(3) of this section shall also be eligible for reimbursement of assessments collected by Customs and may apply to the Board for a reimbursement. The importer would be required to submit satisfactory proof to the Board that the importer paid the assessment on exempt organic products.

(5) The exemption will apply immediately following the issuance of the exemption certificate.

Promotion, Research and Information

§ 1217.60 Programs, plans and projects.

(a) The Board shall develop and submit to the Secretary for approval programs, plans and projects authorized by this subpart. Such programs, plans and projects shall provide for promotion, research, education and other activities including consumer and industry information and advertising designed to:

(1) Maintain, develop, expand and grow markets for softwood lumber;

(2) Enhance and strengthen the image, reputation and public acceptance of softwood lumber and the forests from which it comes;

(3) Develop new markets and marketing strategies for softwood lumber;

(4) Expand the knowledge and understanding of the strength, safety and technical applications and encourage innovation in the use of softwood lumber;

(5) Transfer and disseminate the knowledge and understanding of the strength, safety, environmental and sustainable benefits and technical applications of softwood lumber; and

(6) Develop, expand and grow existing and new opportunities and applications for softwood lumber.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the Board shall take appropriate steps to implement it.

(c) The Board must evaluate each program, plan and project authorized under this subpart to ensure that it contributes to an effective and coordinated program of research, promotion and information. The Board must submit the evaluations to the Secretary. If the Board finds that a program, plan or project does not contribute to an effective program of promotion, research, or information, then the Board shall terminate such plan or program.

§ 1217.61 Independent evaluation.

At least once every five years, the Board shall authorize and fund from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and the programs conducted by the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

§ 1217.62 Patents, copyrights, trademarks, inventions, product formulations, and publications.

Any patents, copyrights, trademarks, inventions, product formulations, and publications developed through the use of funds received by the Board under this subpart shall be the property of the U.S. Government, as represented by the Board, and shall along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, inventions, publications, or product formulations, inure to the benefit of the Board, shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board, and may be licensed subject to approval by the Secretary. Upon termination of this subpart, § 1217.83 shall apply to determine disposition of all such property.

Reports, Books, and Records

§ 1217.70 Reports.

(a) Each manufacturer for the U.S. market will be required to provide periodically to the Board such information as the Board, with the approval of the Secretary, may require. Such information may include, but not be limited to:

(1)(i) For domestic manufacturers:

(A) The name, address and telephone number of the domestic manufacturer;

(B) The board feet of softwood lumber shipped within the United States;

(C) The board feet of softwood lumber for which assessments were paid; and

(D) The board feet of softwood lumber that was exported.

(ii) Such information shall accompany the collected payment of assessments on a quarterly basis specified in § 1217.52.

(2) For importers:

(i) The name, address and telephone number of the importer;

(ii) The board feet of softwood lumber imported;

(iii) The board feet of softwood lumber for which assessments were paid; and

(iv) The country of export.

(b) For importers who pay their assessments directly to the Board, such information shall accompany the payment of collected assessments within 30 calendar days after importation specified in § 1217.52.

§ 1217.71 Books and records.

Each manufacturer for the U.S. market, including those exempt under § 1217.53, shall maintain any books and records necessary to carry out the provisions of this subpart and regulations issued thereunder, including such records as are necessary to verify any required reports. Domestic manufacturers who only export softwood lumber shall also retain such books and records. Such books and records must be made available during normal business hours for inspection by the Board's or Secretary's employees or agents. A manufacturer for the U.S. market must maintain the books and records for two years beyond the fiscal period to which they apply.

§ 1217.72 Confidential treatment.

All information obtained from books, records, or reports under the Act, this subpart and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members or other manufacturers for the U.S. market. Only those persons having a specific need for such information solely to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as

the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or at the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this part, together with a statement of the particular provisions of this part violated by such person.

Miscellaneous

§ 1217.80 Right of the Secretary.

All fiscal matters, programs or projects, contracts, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1217.81 Referenda.

(a) *Initial referendum.* The Order shall not become effective unless the Order is approved by a majority of domestic manufacturers and importers voting in the referendum who also represent a majority of the volume of softwood lumber represented in the referendum who, during a representative period determined by the Secretary, have been engaged in the domestic manufacturing or importation of softwood lumber. A single entity who domestically manufactures and imports softwood lumber may cast one vote in the referendum.

(b) *Subsequent referenda.* The Secretary shall conduct subsequent referenda:

(1) For the purpose of ascertaining whether manufacturers for the U.S. market favor the amendment, continuation, suspension, or termination of the Order;

(2) Five years after this Order becomes effective and every five years thereafter, to determine whether softwood lumber manufacturers for the U.S. market favor the continuation of the Order. The Order shall continue if it is favored by a majority of domestic manufacturers and importers voting in the referendum who also represent a majority of the volume of softwood lumber represented in the referendum who, during a representative period determined by the Secretary, have been engaged in the domestic manufacturing or importation of softwood lumber;

(3) At the request of the Board established in this Order;

(4) At the request of 10 percent or more of the number of persons eligible to vote in a referendum as set forth under the Order; or

(5) At any time as determined by the Secretary.

§ 1217.82 Suspension or termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof, if the Secretary finds that this part or subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) The Secretary shall suspend or terminate this subpart at the end of the fiscal period whenever the Secretary determines that its suspension or termination is favored by a majority of domestic manufacturers and importers voting in the referendum who also represent a majority of the volume represented in the referendum who, during a representative period determined by the Secretary, have been engaged in the domestic manufacturing or importation of softwood lumber.

(c) If, as a result of a referendum the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than one hundred and eighty (180) calendar days after making the determination, suspend or terminate, as the case may be, the collection of assessments under this subpart.

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1217.83 Proceedings after termination.

(a) Upon termination of this subpart, the Board shall recommend to the Secretary up to nine of its members, representing all regions specified in § 1217.40(b), three of whom shall be importers and six of whom shall be domestic manufacturers, to serve as trustees for the purpose of liquidating the Board's affairs. Such persons, upon designation by the Secretary, shall become trustees of all of the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered, or any other existing claim at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into pursuant to the Order;

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and trustees, to such person or person as the Secretary directs; and

(4) Upon request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such persons title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to the Order.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, to one or more softwood lumber industry organizations in the United States whose mission is generic softwood lumber promotion, research, and information programs.

§ 1217.84 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any other persons, with respect to any such violation.

§ 1217.85 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1217.86 Separability.

If any provision of this subpart is declared invalid or the applicability of it to any person or circumstances is held

invalid, the validity of the remainder of this subpart, or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1217.87 Amendments.

Amendments to this subpart may be proposed from time to time by the Board or any interested person affected by the provisions of the Act, including the Secretary.

§ 1217.88 OMB control numbers.

The control numbers assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, are OMB control number 0505–0001 (Board nominee background statement) and OMB control number 0581–NEW.

Subpart B—[Reserved]

Dated: September 22, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–24202 Filed 9–30–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1217

[Document Number AMS–FV–10–0015; PR–B]

RIN 0581–AD03

Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order; Referendum Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on procedures for conducting a referendum to determine whether issuance of a proposed Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order (Order) is favored by domestic manufacturers and importers of softwood lumber. Softwood lumber is used in products like flooring, siding and framing. The procedures would also be used for any subsequent referendum under the Order. The proposed Order is being published separately in this issue of the **Federal Register**. This proposed rule also announces the Agricultural Marketing Service's (AMS) intent to request approval by the Office of Management and Budget (OMB) of new information collection requirements to implement the program.

DATES: Comments must be received by November 30, 2010. Pursuant to the Paperwork Reduction Act (PRA), comments on the information collection burden that would result from this proposal must be received by November 30, 2010.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments may be submitted on the Internet at: *http://www.regulations.gov* or to the Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 0632–S, Stop 0244, Washington, DC 20250–0244; facsimile: (202) 205–2800. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection, including name and address, if provided, in the above office during regular business hours or it can be viewed at *http://www.regulations.gov*.

Pursuant to the PRA, comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, should be sent to the above address. In addition, comments concerning the information collection should also be sent to the Desk Office for Agriculture, Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 831, Beavercreek, Oregon 97004; telephone: (503) 632–8848; facsimile (503) 632–8852; or electronic mail: *Maureen.Pello@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued pursuant to the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the OMB.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act provides that it shall not affect or preempt any other Federal or state law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act, a person subject to an order may file a written petition with the U.S. Department of Agriculture (USDA) stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

This rule invites comments on procedures for conducting a referendum to determine whether domestic manufacturers and importers of softwood lumber favor issuance of a proposed softwood lumber Order. Softwood lumber is used in products like flooring, siding and framing. USDA would conduct the referendum. The program would be implemented if it is favored by a majority of domestic manufacturers and importers of softwood lumber voting in the referendum who also represent a majority of the volume of softwood lumber represented in the referendum. The procedures would also be used for any subsequent referendum under the Order. The proposed Order is being published separately in this issue of the **Federal Register.** This rule also announces AMS's intent to request approval by the OMB of new information collection requirements to implement the program.

The 1996 Act authorizes USDA to establish agricultural commodity research and promotion orders which may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. These programs are designed to maintain and expand markets and uses for agricultural commodities. As defined under section 513(1)(D) of the 1996 Act, agricultural

commodities include the products of forestry, which includes softwood lumber.

The 1996 Act provides for alternatives within the terms of a variety of provisions. Paragraph (e) of Section 518 of the 1996 Act provides three options for determining industry approval of a new research and promotion program: (1) By a majority of those persons voting; (2) by persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. In addition, Section 518 of the 1996 Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under an order.

USDA received a proposal for a national research and promotion program for softwood lumber from the Blue Ribbon Commission (BRC). The BRC is a committee of 21 chief executive officers and heads of businesses that domestically manufacture and import softwood lumber. Softwood lumber is used in products like flooring, siding and framing. The program would be financed by an assessment on softwood lumber domestic manufacturers and importers and would be administered by a board of industry members selected by the Secretary of Agriculture (Secretary). The initial assessment rate would be $0.35 per thousand board feet shipped within or imported to the United States and could be increased up to $0.50 per thousand board feet. Entities that domestically ship or import less than 15 million board feet would be exempt along with shipments exported outside of the United States. No entity would pay assessments on the first 15 million board feet domestically shipped or imported. The purpose of the program would be to strengthen the position of softwood lumber in the marketplace, maintain and expand markets for softwood lumber, and develop new uses for softwood lumber within the United States.

The BRC proposed that a referendum be held among eligible domestic manufacturers and importers to determine whether they favor implementation of the program prior to it going into effect. The BRC recommended that the program be implemented if it is favored by a majority of the domestic manufacturers and importers voting in the referendum who also represent a majority of the volume of softwood lumber represented in the referendum. Domestic manufacturers and importers who domestically ship or import 15 million board feet or more of softwood lumber annually would be eligible to vote in the referendum.

The softwood lumber and softwood lumber products covered under the Order would be the same as those described in section 804(a) within Title VIII (Softwood Lumber Act of 2008 or SLA of 2008) of the Tariff Act of 1930 (19 U.S.C. 1202–1683g), as amended by section 3301 of the Food, Conservation and Energy Act of 2008 (Pub. L. 110–246, enacted June 18, 2008). An interim final rule issued by Customs and effective on September 18, 2008 (73 FR 49934; August 25, 2008), prescribed an importer declaration program and entry requirements applicable to such softwood lumber and softwood lumber products. The declaration program and entry requirements were required under section 803 of the SLA of 2008. Section 804 of the SLA of 2008 sets forth the scope of softwood lumber and softwood lumber products covered by that Act. Accordingly, all softwood lumber and softwood lumber products classified under subheading 4407.10.00, 4409.10.10, 4409.10.20, or 4409.10.90 of the Harmonized Tariff Schedule of the United States (HTSUS) are subject to the importer declaration program and entry requirements and would be covered under this Order and are described in the following paragraphs: [1]

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces, whether or not planed, sanded, or finger-jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded, or finger-jointed;

(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces, whether or not planed, sanded, or finger jointed; and

(5) Coniferous drilled and notched lumber and angle cut lumber.

In addition, any product classified under subheading 4409.10.05 of the HTSUS that is continually shaped along its end and or side edges, and unless excepted or excluded from the importer declaration requirement, softwood lumber products that are stringers, radius cut box-spring frame components, fence pickets, truss components, pallet components, and door and window frame parts classified under subheading 4418.90.46.95, 4421.90.70.40, or 4421.90.97.40 of the HTSUS are covered under the SLA of 2008 and would be covered under the Order.

The following are not subject to the importer declaration program under section 803 of the SLA of 2008 (see section 804(b)) because they are defined as excluded from the program and would thus not be covered under the Order:

(1) Trusses and truss kits, properly classified under subheading 4418.90 of the HTSUS;

(2) I–Joist beams;

(3) Assembled box-spring frames;

(4) Pallets and pallet kits, properly classified under subheading 4415.20 of the HTSUS;

(5) Garage doors;

(6) Edge-glued wood, properly classified under subheading 4421.90.97.40 of the HTSUS;

(7) Complete door frames;

(8) Complete window frames;

(9) Furniture;

(10) Articles brought into the United States temporarily and for which an exemption from duty is claimed under subchapter XIII of chapter 98 of the HTSUS; and

(11) Household and personal effects.

Also, the following products are not subject to the importer declaration program established under section 803 of the SLA of 2008 (see section 804(c)) because they are defined as excepted from the program:

(1) Stringers (pallet components used for runners), if the stringers have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, and properly classified under subheading 4421.90.97.40 of the HTSUS;

(2) Box-spring frame kits, if the kits contain two wooden side rails, two wooden end (or top) rails; and varying numbers of wooden slats; and the side rails and the end rails are radius-cut at both ends. Box spring frame kits must be individually packaged, and contain

[1] The HTS numbers referred to in this discussion are as of January 1, 2008.

the exact number of wooden components needed to make the box-spring frame described on the entry documents, with no further processing required. None of the components contained in the package may exceed 1 inch in actual thickness or 83 inches in length.

(3) Radius-cut box-spring-frame components, not exceeding 1 inch in actual thickness or 83 inches in length, ready for assembly without further processing, if radius cuts are present on both ends of the boards and are substantial cuts so as to completely round one corner.

(4) Fence pickets requiring no further processing and properly classified under subheading 4421.90.70 of the HTSUS, 1 inch or less in actual thickness, up to 8 inches wide, and 6 feet or less in length, and having finials or decorative cuttings that clearly identify them as fence pickets (in the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring ¾ of an inch or more).

(5) Softwood lumber originating in the United States that is exported to another country for minor processing and imported into the United States if the processing occurring in another country is limited to kiln drying, planing to create smooth-to-size board, and sanding; and the importer establishes to Customs' satisfaction upon entry that the softwood lumber originated in the United States.

(6) Any softwood lumber or softwood lumber product that originated in the United States, if the importer, exporter, foreign manufacturer or original domestic manufacturer establishes to Customs' satisfaction upon entry that the softwood lumber entered and documented as originating in the United States was first manufactured in the United States.

(7) Softwood lumber or softwood lumber products contained in a single family home package or kit, regardless of classification under the HTSUS, if the importer declares that the following requirements have been met: (i) The package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint; (ii) The package or kit contains all necessary internal and external doors and windows, nails, screws, glue, subfloor, sheathing, beams, posts, and connectors, and if included in the purchase contract, the decking, trim, drywall and roof shingles specified in the plan, design or blueprint; (iii) Prior to importation, the package or kit is sold to a United States retailer that sells complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and the contract is signed by a customer not affiliated with the importer; and (iv) Softwood lumber products entered as part of the package or kit, whether in a single entry or multiple entries on multiple days, and are to be used solely for the construction of the single family home specified by the home design plan, or blueprint matching the Customs import entry.

For each entry of softwood lumber products contained in a single family home package for which the importer declares that these four requirements are met, the importer must retain and make available to Customs upon request the following documentation:

(1) A copy of the appropriate home design plan, or blueprint matching the Customs entry in the United States;

(2) A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;

(3) A listing of all parts in the package or kit being entered into the United States that conforms to the home design package being imported; and

(4) If a single contract involves multiple entries, an identification of all of the items required to be listed under item (3) that are included in each individual shipment.

Accordingly, this rule would add subpart B to part 1217 that would establish procedures for conducting the referendum. The procedures would cover definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information. The procedures would be applicable for the initial referendum and future referenda.

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of the proposed rule on small entities. Accordingly, AMS has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (domestic manufacturers and importers) as those having annual receipts of no more than $7.0 million.

According to USDA's Forest Service, it is estimated that, between 2007 and 2009, there were an average of 595 domestic manufacturers of softwood lumber in the United States annually.[2] Using an average price of $280 per thousand board feet, a domestic manufacturer who ships less than 25 million board feet per year would be considered a small entity. It is estimated that, between 2007 and 2009, about 498 domestic manufacturers, or about 61 percent, shipped less than 25 million board feet annually.[3]

According to U.S. Customs and Border Protection data, it is estimated that, between 2007 and 2009, there were about 833 importers of softwood lumber annually. About 798 importers, or about 90 percent, imported less than $7.0 million worth of softwood lumber annually. Thus, the majority of domestic manufacturers and importers of softwood lumber would be considered small entities.

It is estimated that, for 2007–2008, total output (production) of softwood lumber by U.S. sawmills averaged about 29.5 billion board feet annually. Of the 29.5 billion board feet, 12.6 billion board feet were from the southern states, 14.4 billion board feet were from the western states, and 2.5 billion board feet were from the northeast and lake states. (Data for the western states is from the Western Wood Products Association [4] and data for the other two regions is from the U.S. Census Bureau [5].)

According to U.S. Department of Commerce, Census Bureau, Foreign Trade Statistics data,[6] imports of softwood lumber from 2007 through 2009 averaged about 13 billion board feet annually. During those years, imports from Canada averaged 12 billion board feet annually, comprising about 92 percent of total imports; imports from western Europe averaged 434 million board feet annually, comprising about 3 percent of total imports; and imports from Chile averaged 255 million board feet

[2] Spelter, H., D. McKeever, D. Toth, Profile 2009: Softwood Sawmills in the United States, USDA, p. 15.

[3] Percentages were obtained from the American Lumber Standard Committee, Inc. (ALSC). The ALSC administers an accreditation program for the grademarking of lumber produced under the American Softwood Lumber Standard (Voluntary Product Standard 20).

[4] Western Wood Products Association, 2008 Statistical Yearbook, p. 32.

[5] U.S. Census Bureau, 2009, Construction, *http://www.census.gov/mcd/.*

[6] *http://www.fas.usda.gov/gats;* Accessed 5/1/10.

annually, comprising about 2 percent of total imports. Imports from other countries accounted for the remaining 3 percent of total imports for 2007 through 2009.

This rule invites comments on procedures for conducting a referendum to determine whether domestic manufacturers and importers of softwood lumber favor issuance of a proposed softwood lumber Order. Softwood lumber is used in products like flooring, siding and framing. USDA would conduct the referendum. The program would be implemented if it is favored by a majority of domestic manufacturers and importers of softwood lumber voting in a referendum who also represent a majority of softwood lumber represented in the referendum. The procedures would also be used for any subsequent referendum under the Order. The procedures are authorized under paragraph (e) of Section 518 the 1996 Act.

Regarding the economic impact of this rule on affected entities, eligible softwood lumber domestic manufacturers and importers would have the opportunity to participate in the referendum. The Order would exempt domestic manufacturers and importers who ship or import less than 15 million board feet annually from the payment of assessments. Exempt domestic manufacturers and importers would not be eligible to participate in the referendum. Of the 595 domestic manufacturers and 883 importers, it is estimated that about 363 domestic manufacturers and 103 importers would pay assessments under the Order and thus be eligible to vote in the referendum. It is estimated that if $17.5 million were collected in assessments ($0.35 per thousand board feet assessment rate with 50 billion board feet assessed), 25 percent, or about $4 million, would be paid by importers and 75 percent, or about $13 million, would be paid by domestic manufacturers. Voting in the referendum is optional. If domestic manufacturers and importers chose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether or not they want to be covered by the program.

Regarding alternatives, USDA considered requiring eligible voters to vote in person at various USDA offices across the country. USDA also considered electronic voting, but the use of computers is not universal. Conducting the referendum from one central location by mail ballot would be more cost effective and reliable. USDA would provide easy access to information for potential voters through a toll free telephone line.

This action would impose an additional reporting burden on eligible domestic manufacturers and importers of softwood lumber. Eligible domestic manufacturers and importers would have the opportunity to complete and submit a ballot to USDA indicating whether or not they favor implementation of the proposed Order. The specific burden for the ballot is detailed later in this document in the section titled Paperwork Reduction Act. As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Regarding outreach efforts, USDA would keep these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA would also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

USDA has performed this initial RFA analysis regarding the impact of this proposed rule on small businesses.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, has been submitted to OMB for approval.

Title: Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order.

OMB Number: 0581–NEW.

Expiration Date of Approval: 3 years from OMB date of approval.

Type of Request: New information collection for research and promotion programs.

Abstract: The information collection requirements in the request are essential to carry out the intent of the 1996 Act. The information collection concerns a proposal received by USDA for a national research and promotion program for softwood lumber. The program would be financed by an assessment on softwood lumber domestic manufacturers and importers and would be administered by a board of industry members selected by the Secretary. The program would provide for an exemption for the first 15 million board feet of lumber shipped by domestic manufacturers within the United States or imported into the United States during the year. Exports of softwood lumber from the United States would also be exempt from assessments. A referendum would be held among eligible domestic manufacturers and importers to determine whether they favor implementation of the program prior to it going into effect. The purpose of the program would be to help build the market for softwood lumber.

The information collection requirements in this rule concern the referendum that would be held to determine whether the program is favored by the industry. Domestic manufacturers and importers of 15 million or more board feet annually would be eligible to vote in the referendum. The ballot would be completed by eligible domestic manufacturers and importers who want to indicate whether or not they support implementation of the program.

Referendum Ballot

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.25 hour per application.

Respondents: Domestic manufacturers and importers.

Estimated Number of Respondents: 464 (363 domestic manufacturers and 103 importers).

Estimated Number of Responses per Respondent: 1 every 5 years (0.2).

Estimated Total Annual Burden on Respondents: 23.20 hours.

The ballot would be added to the other information collections approved under OMB No. 0581–NEW.

An estimated 464 respondents would provide information to the Board (363 domestic manufacturers and 103 importers). The estimated cost of providing the information to the Board by respondents would be $765.60. This total has been estimated by multiplying 23.20 total hours required for reporting and recordkeeping by $33, the average mean hourly earnings of various occupations involved in keeping this information. Data for computation of this hourly rate was obtained from the U.S. Department of Labor Statistics.

The proposed Order's provisions have been carefully reviewed, and every effort has been made to minimize any

unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other programs administered by USDA and other state programs.

Request for Public Comment Under the Paperwork Reduction Act

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the proposed Order and USDA's oversight of the proposed Order, including whether the information would have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) the accuracy of USDA's estimate of the principal manufacturing areas in the United States for softwood lumber; (d) the accuracy of USDA's estimate of the number of domestic manufacturers and importers of softwood lumber that would be covered under the program; (e) ways to enhance the quality, utility, and clarity of the information to be collected; and (f) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581–NEW. In addition, the docket number, date, and page number of this issue of the **Federal Register** also should be referenced. Comments should be sent to the same addresses referenced in the **ADDRESSES** section of this rule.

A 60-day comment period is provided to allow interested persons to comment on this proposed information collection. All written comments received will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

List of Subjects in 7 CFR Part 1217

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Softwood Lumber, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations, as proposed to be amended elsewhere in this issue of the **Federal Register**, be further amended as follows:

PART 1217—SOFTWOOD LUMBER RESEARCH, PROMOTION, CONSUMER EDUCATION AND INDUSTRY INFORMATION ORDER

1. The authority citation for part 1217 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

2. Subpart B of 7 CFR part 1217 is added to read as follows:

Subpart B—Referendum Procedures

Sec.

Subpart B—Referendum Procedures

§ 1217.100 General.

Referenda to determine whether eligible domestic manufacturers and importers favor the issuance, continuance, amendment, suspension, or termination of the Softwood Lumber Research, Promotion, Consumer Education, and Industry Information Order shall be conducted in accordance with this subpart.

§ 1217.101 Definitions.

For the purposes of this subpart:

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to delegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Customs* means the U.S. Customs and Border Protection or U.S. Customs Service, an agency of the U.S. Department of Homeland Security.

(c) *Department* or *USDA* means the U.S. Department of Agriculture or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(d) *Eligible domestic manufacturer* means any person who manufactured and shipped 15 million board feet or more of softwood lumber in the United States during the representative period.

(e) *Eligible importer* means any person who imported 15 million board feet or more of softwood lumber into the United States during the representative period as a principal or as an agent, broker, or consignee of any person who manufactured softwood lumber outside of the United States for sale in the United States, and who is listed as the importer of record for such softwood lumber. Importation occurs when softwood lumber manufactured outside of the United States is released from custody by Customs and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign-manufactured softwood lumber immediately upon release by Customs, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of softwood lumber from Customs when such softwood lumber is entered or withdrawn for use in the United States.

(f) *Manufacture* means the process of transforming softwood logs into softwood lumber.

(g) *Order* means the Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order.

(h) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term "partnership" includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a softwood lumber manufacturing entity as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So called "joint ventures" wherein one or more parties to an agreement, informal or otherwise, contributed land, facilities, capital, labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the domestic manufacturing or importation of softwood lumber and the authority to transfer title to the softwood lumber so manufactured or imported.

(i) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(j) *Representative period* means the period designated by the Department.

(k) *Softwood lumber* means all softwood lumber and softwood lumber products described in section 804(a) of Title VIII of the Tariff Act of 1930, as amended (19 U.S.C. 1202–1683g). This definition does not include those products excluded or excepted under sections 804(b) and (c) of that Act.

(l) *Softwood* means one of the botanical groups of trees that have needle-like or scale-like leaves, the conifers.

(m) *United States* means collectively the 50 states, the District of Columbia,

the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1217.102 Voting.

(a) Each eligible domestic manufacturer and importer of softwood lumber shall be entitled to cast only one ballot in the referendum. However, each domestic manufacturer in a landlord/tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to manufacture softwood lumber, in which more than one of the parties is a domestic manufacturer or importer, shall be entitled to cast one ballot in the referendum covering only such domestic manufacturer or importer's share of ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate domestic manufacturer or importer, or an administrator, executor, or trustee of an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) A single entity who domestically manufactures and imports softwood lumber may cast one vote in the referendum.

(d) All ballots are to be cast by mail or other means, as instructed by the Department.

§ 1217.103 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, consistent with the provisions of this subpart, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast;

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter;

(c) Give reasonable public notice of the referendum:

(1) By using available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible domestic manufacturers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot;

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process;

(f) Prepare a report on the referendum; and

(g) Announce the results to the public.

§ 1217.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions of this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1217.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1217.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1217.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

§ 1217.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. is OMB control number 0581–NEW.

Dated: September 22, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–24192 Filed 9–30–10; 8:45 am]

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Federal Register

Friday,
October 1, 2010

Part IV

The President

Memorandum of September 29, 2010—Provision of Aviation Insurance Coverage for Commercial Air Carrier Service in Domestic and International Operations

Federal Register
Vol. 75, No. 190
Friday, October 1, 2010

Presidential Documents

Title 3—

The President

Memorandum of September 29, 2010

Provision of Aviation Insurance Coverage for Commercial Air Carrier Service in Domestic and International Operations

Memorandum for the Secretary of Transportation

By the authority vested in me as President by the Constitution and the laws of the United States, including 49 U.S.C. 44302, *et seq.*, I hereby:

1. Determine that the continuation of U.S. commercial air transportation is necessary in the interest of air commerce, national security, and the foreign policy of the United States.

2. Approve the provision by the Secretary of Transportation of insurance or reinsurance to U.S. air carriers against loss or damage arising out of any risk from the operation of an aircraft in the manner and to the extent provided in chapter 443 of title 49 of the U.S. Code until September 30, 2011, when he determines such insurance or reinsurance cannot be obtained on reasonable terms and conditions from any company authorized to conduct an insurance business in a State of the United States.

You are directed to bring this determination immediately to the attention of all air carriers, as defined in 49 U.S.C. 40102(a)(2), and to arrange for its publication in the *Federal Register*.

THE WHITE HOUSE,
Washington, September 29, 2010

[FR Doc. 2010–24900
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FEDERAL REGISTER PAGES AND DATE, OCTOBER

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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H.R. 5297/P.L. 111–240

Small Business Jobs Act of 2010 (Sept. 27, 2010; 124 Stat. 2504)

Last List September 29, 2010

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This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	21 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	35 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
October 1	Oct 18	Oct 22	Nov 1	Nov 5	Nov 15	Nov 30	Dec 30
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October 21	Nov 5	Nov 12	Nov 22	Nov 26	Dec 6	Dec 20	Jan 19
October 22	Nov 8	Nov 12	Nov 22	Nov 26	Dec 6	Dec 21	Jan 20
October 25	Nov 9	Nov 15	Nov 24	Nov 29	Dec 9	Dec 27	Jan 24
October 26	Nov 10	Nov 16	Nov 26	Nov 30	Dec 10	Dec 27	Jan 24
October 27	Nov 12	Nov 17	Nov 26	Dec 1	Dec 13	Dec 27	Jan 25
October 28	Nov 12	Nov 18	Nov 29	Dec 2	Dec 13	Dec 27	Jan 26
October 29	Nov 15	Nov 19	Nov 29	Dec 3	Dec 13	Dec 28	Jan 27