6–10–10 Thursday
Vol. 75 No. 111 June 10, 2010

Pages 32841–33158

Federal Register

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register**, *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 75 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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, July 13, 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

Contents

Federal Register

Vol. 75, No. 111

Thursday, June 10, 2010

Separate Parts In This Issue

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
Vol. 75, No. 111
Thursday, June 10, 2010

Presidential Documents

Title 3—

The President

Notice of June 8, 2010

Continuation of the National Emergency With Respect to the Actions and Policies of Certain Members of the Government of Belarus and Other Persons That Undermine Democratic Processes or Institutions in Belarus

On June 16, 2006, by Executive Order 13405, the President declared a national emergency and ordered related measures blocking the property of certain persons undermining democratic processes or institutions in Belarus, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). The President took this action to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of certain members of the Government of Belarus and other persons to undermine Belarus democratic processes or institutions, to commit human rights abuses related to political repression, including detentions and disappearances, and to engage in public corruption, including by diverting or misusing Belarusian public assets or by misusing public authority.

Despite the release of internationally recognized political prisoners in the fall of 2008 and our continuing efforts to press for further reforms related to democracy, human rights, and the rule of law in Belarus, serious challenges remain. The actions and policies of certain members of the Government of Belarus and other persons continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. Accordingly, the national emergency declared on June 16, 2006, and the measures adopted on that date to deal with that emergency, must continue in effect beyond June 16, 2010. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13405.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
June 8, 2010.

[FR Doc. 2010–14116
Filed 6–9–10; 8:45 am] Folio: 1272
Billing code 3195–W0–P Folio: 1273

Presidential Documents

Notice of June 8, 2010

Continuation of the National Emergency With Respect to the Western Balkans

On June 26, 2001, by Executive Order 13219, the President declared a national emergency with respect to the Western Balkans, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions of persons engaged in, or assisting, sponsoring, or supporting (i) extremist violence in the Republic of Macedonia and elsewhere in the Western Balkans region, or (ii) acts obstructing implementation of the Dayton Accords in Bosnia or the United Nations Security Council Resolution 1244 of June 10, 1999, in Kosovo. The President subsequently amended that order in Executive Order 13304 of May 28, 2003.

Because the actions of persons threatening the peace and international stabilization efforts in the Western Balkans continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on June 26, 2001, and the measures adopted on that date and thereafter to deal with that emergency, must continue in effect beyond June 26, 2010. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to the Western Balkans.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,

June 8, 2010.

[FR Doc. 2010–14118

Filed 6–9–10; 8:45 am]

Billing code 3195–W0–P Folio: 1274

Rules and Regulations

Federal Register
Vol. 75, No. 111
Thursday, June 10, 2010

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2006–0109]

RIN 0960–AH17

Consultative Examination—Annual Onsite Review of Medical Providers

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are revising the threshold billing amount that triggers annual on-site reviews of medical providers who conduct consultative examinations (CEs) for our disability programs under titles II and XVI of the Social Security Act (Act). The revision will raise the threshold amount to reflect the increase in billing amounts since we first established the threshold amount in 1991. We expect the revised threshold amount will reestablish the level of oversight activity we required under our original rules.

DATES: These regulations are effective July 12, 2010.

FOR FURTHER INFORMATION CONTACT: Richard Bresnick, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1758. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

Why are we revising our rules?

We are making final the rules we proposed in the notice of proposed rulemaking (NPRM) published in the **Federal Register** on March 20, 2007. 72 FR 13053. Since 1991, our regulations have required each State agency that makes disability determinations for us to provide comprehensive oversight management of its CE program with special emphasis on key providers. Sections 404.1519s(d) and 416.919s(d). A CE is a medical examination or test that we purchase at our expense when we need additional information to make a disability determination, and we cannot obtain that information from existing medical sources. Sections 404.1517, 404.1519, 416.917, and 416.919.

As part of its oversight management of the CE program, each State agency must conduct annual on-site reviews of key providers. Sections 404.1519s(f)(11) and 416.919s(f)(11). Our regulations define a "key consultative examination provider" as a provider that meets at least one of three specified conditions. Sections 404.1519s(e) and 416.919s(e). Those conditions are:

(1) Any CE provider with an estimated annual billing to the Social Security disability programs of at least $100,000; or

(2) Any CE provider with a practice directed primarily towards evaluation examinations rather than the treatment of patients; or

(3) Any CE provider that does not meet the above criteria, but is one of the top five CE providers in the State by dollar volume, as evidenced by prior year data.

We are increasing the threshold billing amount in the first of these conditions to $150,000, the first change in the threshold since we published this provision in 1991. Due to the rise in CE costs since 1991, many providers who perform relatively few CEs nevertheless meet the current $100,000 threshold and are subject to mandatory on-site reviews. Raising the threshold amount to $150,000 will allow us to focus our limited resources on annual reviews of our largest CE providers.

We set the threshold at $150,000 by multiplying the current $100,000 threshold by the percentage increase in the consumer price index for urban wage earners and clerical workers from 1991 (134.3) to November 2006 (196.8) (the most recent information available at the time we proposed the revision). For administrative convenience, we rounded the resulting amount ($146,537.60) to $150,000. The CPI was 211.3 in October 2009, which would correspond to a threshold of $157,334. However, we believe that $150,000 remains an appropriate threshold for purposes of the on-site review requirement.

Public Comments

In the NPRM we published on March 20, 2007, we provided the public with a 60-day period in which to comment. The comment period ended on May 21, 2007.

We received one comment, from a professional organization representing adjudicators of claims for disability. We carefully considered the comment. Because the comment was long, we have condensed, summarized, and paraphrased it. We have tried to summarize the commenter's views accurately and to respond to all of the significant issues raised by the commenter that were within the scope of these rules.

Comment: The commenter recognized that the costs for performing CEs have risen and that some high volume CE providers may reach the $100,000 threshold amount sooner than in previous years. However, the commenter believed that raising the threshold amount could lead to some key providers furnishing "less than quality service" to the disability program. The commenter indicated that some of the smaller States currently do not have providers that meet the $100,000 threshold amount and only do reviews of the top five providers in their States in accordance with the current regulations. The commenter also stated that its experience has shown that the current regulations allow some high volume providers in larger States to not have on-site reviews. The commenter believed that more, not fewer, on-site reviews of high volume CE providers need to be conducted and increasing the threshold amount for performing on-site reviews from $100,000 to $150,000 would take away the possibility of reviewing some high volume CE providers in the future. The commenter believed that the State agencies need to continue to monitor high volume CE providers on a regular basis to maintain the quality and consistency of CEs. Thus, it favored expanding, rather than limiting, the situations in which State

agencies review high volume CE providers. The commenter also expressed concern that increasing the CE threshold amount may create the impression that oversight of CEs is not important.

Response: We disagree with the commenter's assertions. First, we do not believe that raising the threshold amount will lead to some key providers furnishing "less than quality service" to the disability program. Rather, we believe this revision will allow us to fulfill our stewardship obligations to the disability programs, while also ensuring that we use our scarce administrative resources as efficiently as possible. As for the commenter's assertion that the revision will lead to fewer on-site reviews of high volume providers in large States, the commenter is correct that we will no longer require automatic review of CE providers whose billing falls between $100,000 and $149,999. However, we will still require States to review all high volume providers as we now define that term. In addition, our regulations require the State agencies to maintain procedures for handling complaints. Sections 404.1519s(f)(9) and 416.919s(f)(9). By reducing the number of required reviews, we believe that the State agencies will be able to conduct more on-site reviews sooner in situations where credible complaints have been lodged against mid-tier and smaller CE providers. We can better fulfill our stewardship responsibilities by providing the State agencies with the ability to target CE providers with documented problems for on-site reviews regardless of their volume. Thus, we are not making any changes to the rules we proposed.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were subject to OMB review.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they only directly affect States. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final rules will impose no additional reporting or recordkeeping requirements requiring OMB clearance.

Federalism and the Unfunded Mandates Reform Act

We have reviewed the final rules under the threshold criteria of Executive Order 13132 (Federalism) and the Unfunded Mandates Reform Act of 1995. These final rules would change the threshold billing amount above which the State agencies that make determinations of disability for the Commissioner under titles II and XVI of the Act perform an annual on-site review of CE providers. Although the State agencies perform these reviews, the Social Security Administration fully funds the necessary costs of providing this service. We have determined that these final rules would not have substantial direct effects on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Michael J. Astrue,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending subpart P of part 404 and subpart I of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

■ 1. The authority citation for subpart P of part 404 is revised to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a), (i) and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a), (i) and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Revise paragraph (e)(1) of § 404.1519s to read as follows:

§ 404.1519s Authorizing and monitoring the consultative examination.

* * * * *

(e) * * *

(1) Any consultative examination provider with an estimated annual billing to the disability programs we administer of at least $150,000; or

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

■ 3. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p) and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

■ 4. Revise paragraph (e)(1) of § 416.919s to read as follows:

§ 416.919s Authorizing and monitoring the consultative examination.

* * * * *

(e) * * *

(1) Any consultative examination provider with an estimated annual billing to the disability programs we administer of at least $150,000; or

* * * * *

[FR Doc. 2010–14070 Filed 6–9–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2530

RIN 1210–AB15

Final Rule Relating to Time and Order of Issuance of Domestic Relations Orders

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document finalizes an interim final rule published on March 7, 2007, which was adopted in response to the specific statutory directive contained in section 1001 of the Pension Protection Act of 2006, Public Law No.

109–280 (PPA), requiring the Secretary of Labor to issue, not later than one year after the date of the enactment of the PPA, regulations clarifying certain issues relating to the timing and order of domestic relations orders under section 206(d)(3) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). The rule provides guidance to plan administrators, service providers, participants, and alternate payees on the qualified domestic relations order (QDRO) requirements under ERISA. The rule is being adopted in response to the specific statutory directive contained in the PPA.

DATES: The final rule is effective on August 9, 2010.

FOR FURTHER INFORMATION CONTACT: Allison E. Wielobob, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC 20210, (202) 693–8510. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

A. Qualified Domestic Relations Order Provisions

Section 206(d)(3) of title I of ERISA, and the related provisions of section 414(p) of the Internal Revenue Code of 1986 (Code), establish a limited exception to the prohibitions against assignment and alienation contained in ERISA section 206(d)(1) and Code section 401(a)(13).[1] Under this limited exception, a participant's benefits under a pension plan may be assigned to an alternate payee, defined as the participant's spouse, former spouse, child, or other dependent, pursuant to an order that constitutes a qualified domestic relations order (QDRO) within the meaning of those provisions. Such QDROs, in addition, survive the federal preemption of State law imposed by ERISA section 514(a) by virtue of ERISA section 514(b)(7).

Pursuant to the QDRO provisions, a plan administrator must determine, in accordance with specified procedures, whether an order purporting to divide a participant's benefits under a plan meets the applicable requirements set forth in section 206(d)(3) of ERISA.[2] If the plan administrator determines that the order meets these requirements and is, accordingly, a QDRO within the meaning of section 206(d)(3), the plan administrator must distribute the assigned portion of the participant's benefits to the alternate payee or payees named in the order in accordance with the terms of the order.

Subparagraphs (G) and (H) of ERISA section 206(d)(3) set forth provisions relating to the procedures that a plan must establish, and a plan administrator must observe, in determining whether an order is a QDRO and in administering the plan and the participant's benefits during the period in which the plan administrator is making such a determination. The plan's procedures must be reasonable, must be in writing, must require prompt notification and disclosure of the procedures to participants and alternate payees upon receipt of an order, and must permit alternate payees to designate representatives for notice purposes. In addition, the plan administrator must complete the determination process and notify participants and alternate payees of its determination within a reasonable period after receipt of the order.

Subparagraph (H) of section 206(d)(3) provides specific procedural protection of a potential alternate payee's interest in a participant's benefits during the plan's determination process and for a period of up to 18 months (the 18-month period) during which the issue of the qualified status of a domestic relations order is being determined—whether by the plan administrator, by a court of competent jurisdiction, or otherwise. During the 18-month period, a plan administrator must separately account for any amounts that would have been payable to the alternate payee if the order had been immediately treated as a QDRO and must pay these amounts (including any interest thereon) to the alternate payee if the order is determined to be a QDRO within such period. If the issue as to whether the order is a QDRO is not resolved within the 18-month period, the plan administrator is to pay such amounts to the person or persons who would have been entitled to the amounts if there had been no order. Any determination that an order is a QDRO that is made after the close of the 18-month period is to be applied prospectively only.

If a plan fiduciary, acting in accordance with the fiduciary responsibility provisions of part 4 of title I of ERISA, treats an order as a QDRO (or determines that such an order is not a QDRO) and distributes benefits in accordance with that determination, paragraph (I) of section 206(d)(3) provides that the obligations of the plan and its fiduciaries to the affected participants and alternate payees with respect to the distribution shall be treated as discharged.

The QDRO provisions detail specific requirements that an order must satisfy in order to constitute a QDRO. The order must be a "domestic relations order," which is a judgment, decree, or order issued pursuant to a State domestic relations law (including a community property law) that relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant. Section 206(d)(3)(B)(ii). It must create or recognize the existence of an alternate payee's right to receive all or a portion of the benefits payable with respect to a participant under a plan. Section 206(d)(3)(B)(i). Further, it must clearly specify the name and last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order; the amount or percentage of the participant's benefits to be paid by the plan(s) to each such alternate payee, or the manner in which such amount or percentage is to be determined; the number of payments or period to which the order applies; and each plan to which the order applies. Section 206(d)(3)(C). An order will fail to be a QDRO, however, if it requires the plan: To provide any type or form of benefit, or any option, not otherwise provided under the plan; to provide increased benefits determined on the basis of actuarial value; or to pay benefits to an alternate payee that are required to be paid to another alternate payee under another order previously determined to be a QDRO. Section 206(d)(3)(D).

B. Pension Protection Act of 2006

Under section 1001 of the Pension Protection Act of 2006 (PPA), Public Law 109–280, section 1001, 120 Stat. 780 (2006), Congress instructed the Secretary of Labor to issue regulations, not later than one year after the date of the enactment, under section 206(d)(3) of ERISA and section 414(p) of the

[1] The QDRO provisions were added to ERISA and the Code by the Retirement Equity Act of 1984 (REA), Public Law No. 98–397, 98 Stat. 1426 (1984). Except where no corresponding provision exists, all references to paragraphs of ERISA section 206(d)(3) should be read to refer to corresponding provisions of Code section 414(p). The Secretary of Labor has authority to interpret the QDRO provisions, section 206(d)(3), and its parallel provision at section 414(p) of the Code, and to issue QDRO regulations in consultation with the Secretary of the Treasury. 29 U.S.C. 1056(d)(3)(N) and 26 U.S.C. 414(p)(13). The Secretary of the Treasury has authority to issue rules and regulations necessary to coordinate the requirements of section 414(p) (and the regulations issued by the Secretary of Labor thereunder) with the other provisions of Chapter 1 of Subtitle A of the Code. 26 U.S.C. 401(n). The Secretary of the Treasury and the Pension Benefit Guaranty Corporation were consulted in connection with the final rule.

[2] For purposes of the Code, the requirements of section 414(p)(2) and (3) (parallel to ERISA section 206(d)(3)(C) and (D)) do not apply to governmental plans, church plans, or eligible plans under Code section 457(b). See Code section 414(p)(9) and (11).

Code, to clarify that—(1) a domestic relations order otherwise meeting the requirements to be a QDRO, including the requirements of section 206(d)(3)(D) of ERISA and section 414(p)(3) of the Code, shall not fail to be treated as a QDRO solely because—(A) the order is issued after, or revises, another domestic relations order or QDRO; or (B) of the time at which it is issued. Section 1001 of the PPA also requires that the regulations clarify that such orders are subject to all of the same requirements and protections that apply to QDROs, including the provisions of section 206(d)(3)(H) of ERISA and section 414(p)(7) of the Code.

C. Interim Final Rule and Public Comments

On March 7, 2007, the Department published an interim final rule (IFR) with a request for comments.[3] The IFR closely tracks the statutory language of section 1001 of the PPA. The IFR also includes several illustrative examples of specific fact patterns that the Department understands to be relatively common situations faced by plans. The Department received 24 comments in response to the request for comments contained in the IFR. Overall, the comments were favorable.

A number of commenters asked the Department to add additional examples to illustrate the rules in the regulation. The suggested additions generally were slight variations on the existing examples. The Department was not persuaded that additional examples are necessary to illustrate or further clarify the general rules of the regulation. To the contrary, the Department is concerned that, by adding more examples, some might conclude that the examples themselves are the only circumstances to which the general principles, contained in paragraphs (b)(1), (c)(1), and (d)(1) of the final regulation, apply. Such a conclusion would be inconsistent with the intent of the Department.[4] Accordingly, the Department, with one exception (discussed below), has decided against adding additional examples.

A number of commenters were concerned that Example (1), set forth in paragraph (c)(2) of the IFR, could be interpreted as requiring a plan fiduciary to reject a posthumous order if the plan fiduciary was not given notice of that order before the death of the participant. The Department does not agree with that interpretation of the example. Example (1) was intended to clarify that a domestic relations order will not fail to be a QDRO solely because it is issued after the death of a participant. The example dealt solely with the timing issue and its conclusion does not depend on the plan's receipt of pre-death notification of the domestic relations order. The facts of the example include pre-death notification merely because, as indicated above, the Department understands this to be a fairly frequent fact pattern confronted by plans. Nothing in the example should be construed as a requirement under section 206 of ERISA that an otherwise valid posthumous order fails to be a QDRO merely because the plan was not put on notice of the order while the participant was alive.[5] This example, which is in paragraph (c)(2) of the final regulation, has been modified to address the concern raised by these commenters.

A number of commenters expressed concern that Example (3), set forth in paragraph (c)(2) of the interim final regulation, could be read to require plans to provide a type or form of benefit, or an option, not otherwise available under the plan contrary to section 206(d)(3)(D)(i) of ERISA. Example (3) was intended to clarify that a domestic relations order will not fail to be a QDRO merely because it is issued after the annuity starting date. The example dealt solely with the timing issue and assumed that for all other purposes, including the requirements of paragraph (d)(3)(D)(i), the order met the requirements of section 206. In this regard, it is the view of the Department that a domestic relations order issued after the annuity starting date would not violate the requirements of section 206(d)(3)(D)(i) merely because the order requires the allocation of some or all of the participant's determined benefit payment under the applicable optional form of benefit to an alternate payee. In such cases, the plan is merely required to pay a portion of the benefit otherwise due to the participant to another person. On the other hand, any domestic relations order received by a plan after the original annuity starting date of the participant that would require reannuitization with a new annuity starting date would violate section 206(d)(3)(D)(i), unless the plan specifically provides for such an option. Examples of an order requiring a reannuitization with a new annuity starting date would include an order issued after the annuity starting date directing the plan to substitute one measuring life for another or directing the plan to change the form of benefit, such as from a single life annuity to a qualified joint and survivor annuity (QJSA) with a death benefit or from an annuity to a lump sum payment. In an effort to clarify the application of the principles in this paragraph, the Department has modified Example (3), set forth in paragraph (c)(2) of the final regulation, and has added Example (4) to paragraph (d)(2) of the final rule.

With regard to the principle, expressed above, that a domestic relations order issued after the annuity starting date does not violate the requirements of section 206(d)(3)(D)(i) merely because the order requires the allocation of some or all of the participant's determined monthly benefit payment to an alternate payee, the Department, based on its review of sections 206 and 205 of ERISA, the case law, and other relevant guidance, is of the view that such principle does not apply to a domestic relations order that is received after the annuity starting date and that requires an allocation to an alternate payee of some or all of the death benefit that, under the form of benefit in effect, is payable to another beneficiary.[6] An example of this is a plan's receipt of a domestic relations order after the annuity starting date of a QJSA that assigns to the participant's former spouse a shared payment of the participant's current spouse's survivor benefits under the QJSA.

A number of commenters asked the Department to undertake an education campaign on QDROs. The Department's Employee Benefits Security Administration (EBSA) already conducts various educational outreach programs aimed at increasing awareness of the requirements of ERISA and helping fiduciaries meet their legal obligations. In response to these specific comments, however, EBSA will update its educational handbook "QDROs—The Division of Pensions Through Qualified Domestic Relations Orders" that is available at *http://www.dol.gov/EBSA/publications.*

[3] 72 FR 10070.

[4] The examples in paragraphs (b)(2), (c)(2), and (d)(2) of the final regulation show how the rules in paragraphs (b)(1), (c)(1), and (d)(1), respectively, apply to specific facts. They do not represent the only circumstances for which these rules apply.

[5] Example (1) in paragraph (d)(2) of the IFR regulation also dealt with a posthumous domestic relations order, but in this example no pre-death notice is given to the plan. This example dealt solely with the type or form of benefit. Although the order in this example fails to be a QDRO, the conclusion is unrelated to the absence of pre-death notification to the plan. This example is unchanged and is in paragraph (d)(2) of the final regulation.

[6] *See Boggs* v. *Boggs,* 520 U.S. 833 (1997); *Hopkins* v. *AT & T Global Info. Solutions Co.,* 105 F.3d 153 (4th Cir. 1997); *Rivers* v. *Central & S.W. Corp.,* 186 F.3d 681 (5th Cir. 1999); *Carmona* v. *Carmona,* 548 F. 3d 988 (9th Cir. 2008); 26 CFR 1.401(a)–20 Q&A–25(b)(3) (second sentence); and 29 CFR 4022.8(d).

A number of commenters raised QDRO issues pertaining to matters that the Department considers to be beyond the scope of the directive contained in section 1001 of the PPA. This section of the PPA specifically directed the Department to clarify certain timing issues. These timing issues are addressed, with examples, in paragraphs (b) through (d) of the final regulation. QDRO issues beyond this specific directive may be addressed in future guidance by the Department in consultation with the Pension Benefit Guaranty Corporation and the Internal Revenue Service.

D. Overview of Final Rule

Scope of the Regulation

Paragraph (a) of the regulation provides that the scope of the regulation is to implement the directive contained in section 1001 of the PPA to clarify certain timing issues with respect to domestic relations orders and qualified domestic relations orders under ERISA.

Subsequent Domestic Relations Orders

Paragraph (b)(1) of the regulation provides that a domestic relations order otherwise meeting ERISA's requirements to be a QDRO shall not fail to be treated as a QDRO solely because the order is issued after, or revises, another domestic relations order or QDRO. Paragraph (b)(2) provides examples of this rule. Example 1 illustrates this rule as applied to a subsequent order revising an earlier QDRO involving the same parties. Example 2 illustrates this rule in the context of a subsequent order involving the same participant and a different alternate payee.

Timing of Domestic Relations Order

Paragraph (c)(1) of the regulation provides that a domestic relations order otherwise meeting ERISA's requirements to be a QDRO shall not fail to be treated as a QDRO solely because of the time at which it is issued. Paragraph (c)(2) provides examples of this rule. Example 1 illustrates the principle that a domestic relation order will not fail to be a QDRO solely because it is issued after the death of the participant. Example 2 illustrates that a domestic relation order will not fail to be a QDRO solely because it is issued after the parties divorce. Example 3 illustrates that an order would not fail to be a QDRO solely because it is issued after the participant's annuity starting date.

Requirements and Protections

Paragraph (d)(1) of the regulation provides that any domestic relations order described in paragraph (b) or (c) of the regulation shall be subject to the same requirements and protections that apply to all QDROs under section 206(d)(3) of ERISA. Paragraph (d)(2) provides examples of this rule. Example 1 illustrates that, although an order will not fail to be a QDRO solely because it is issued after the death of the participant, the order would fail to be a QDRO if it requires the plan to provide a type or form of benefit, or any option, not otherwise provided under the plan. Example 2 illustrates application of the protective rules regarding segregation of payable benefits to a second order involving the same participant and alternate payee. Example 3 illustrates that, although an order will not fail to be a QDRO solely because it is issued after another QDRO, the order will fail to be a QDRO if it assigns benefits already assigned to another alternate payee under another QDRO. Example 4 illustrates the principle that although an order will not fail to be a QDRO solely because it is issued after the annuity starting date, the order would fail to be a QDRO if it requires the plan to provide a type or form of benefit, or any option, not otherwise provided under the plan.

E. Regulatory Impact Analysis

Executive Order 12866 Statement

Under Executive Order 12866 (58 FR 51735), a regulatory action determined to be "significant" is subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a "significant regulatory action" as an action that is likely to result in a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This regulatory action is not economically significant within the meaning of section 3(f)(1) of the Executive Order. However, the Office of Management and Budget (OBM) has determined that the action is significant within the meaning of section 3(f)(4) of the Executive Order, and the Department accordingly provides the following assessment of its potential costs and benefits.

This final rule is intended to clarify the statutory requirements for QDROs under section 206(d)(3) of ERISA and section 414(p) of the Code. The provisions of section 206(d)(3) generally assist State authorities in deciding permissible ways in which pension benefits may be divided in domestic relations matters. The rules and processes under section 206(d)(3) make it possible for plan administrators to determine whether a State order seeking to assign pension benefits to an alternate payee should be given effect under the plan; clear rules concerning what constitutes a QDRO have the effect of assisting plan administrators in reviewing orders received by the plan, as well as participants and alternate payees in planning how to take pension assets into account when significant events require making a division of marital assets.

In directing the Department, in section 1001 of the Pension Protection Act, to clarify the application of the QDRO provisions, Congress recognized that existing uncertainty about the application of those provisions has caused difficulties meriting resolution through regulatory action. Such uncertainty can impose litigation and other costs on plans, participants, and alternate payees, as well as on State domestic relations authorities, that will be reduced through the promulgation of this rule. Consistent with the view of Congress, this rule clarifies, first, that the sequence in which multiple orders may be issued does not, in itself, affect whether the orders are QDROs, and, second, that the time at which an order is issued does not, in itself, determine whether an order is or is not a QDRO. The rule further reiterates that an order must meet the specific requirements of section 206(d)(3) of ERISA and section 414(p) of the Code.

By reducing uncertainty over the application of the statutory requirements in specific circumstances, the rule is expected to reduce costs that might otherwise arise from the necessity of resolving uncertainty in such circumstances. By providing clearer rules for plan administrators, the rule is also expected to increase the efficiency of plan administration. In addition, the Department is issuing this rule in direct response to a Congressional directive. As described above, section 1001 of the PPA requires the Department to issue regulations clarifying that an order otherwise meeting the requirements for a QDRO under section 206(d)(3) of ERISA should not fail to be treated as

a QDRO solely because it was issued after or revised another order, or because of the time at which it was issued. In issuing this final rule, therefore, the Department is fulfilling objectives expressly endorsed by Congress. Because the rule applies only in certain specific circumstances and affects only a small subset of domestic relations orders, the Department believes that its economic impact will be small, overall, but positive.

The rule is not anticipated to impose increased compliance costs, because it merely establishes the legal effect of certain sequences of events. Although it may cause some orders to be treated as QDROs that otherwise might be disputed (or fail to be treated as a QDRO), the rule provides certainty with respect to the circumstances it covers, which will aid State authorities seeking to divide pension benefits and assist plan administrators seeking to discharge their obligations under section 206(d)(3) of ERISA, without limiting the power of State authorities to determine the proper division of marital assets. The rule is expected generally to provide benefits to pension plans, plan participants and alternate payees, and State domestic relations authorities by increasing the clarity of the rules that apply to QDROs.

Based on the foregoing assessment, the Department concludes that the benefits of this final rule justify its costs.

Paperwork Reduction Act

The final regulation being issued here is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) because it does not contain an "information collection" as defined in 44 U.S.C. 3502 (11).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a final rule will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present a regulatory flexibility analysis at the time of the publication of the notice of proposed rule-making describing the impact of the rule on small entities and seeking public comment on such impact. Because this rule was issued as an interim final rule, the RFA does not apply and the Department is not required to either certify that the rule will not have a significant impact on a substantial number of small businesses or conduct a regulatory flexibility analysis. Nevertheless, the Department has considered the likely impact of the rule on small entities in connection with its assessment under Executive Order 12866, described above, and believes this rule will not have a significant impact on a substantial number of small entities. For purposes of this discussion, the Department continues to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans which cover fewer than 100 participants. The Department invited comments on the effect of the interim final rule on small entities, but no comments were received.

Congressional Review Act

The final rule being issued here is subject to the provisions of the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Comptroller General for review. The final rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it does not result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the final rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, or impose an annual burden exceeding $100 million on the private sector.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires federal agencies to adhere to specific criteria in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule does not have federalism implications because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. One exception described in section 514(b)(7) is for qualified domestic relations orders, as defined in section 206(d)(3) of ERISA. The rule does not alter the provisions of the statute; it merely clarifies the status of certain types of domestic relations orders under ERISA.

List of Subjects in 29 CFR Part 2530

Alternate payee, Divorce, Domestic relations orders, Employee benefit plans, Marital property, Spouse, Plan administrator, Pensions, Qualified domestic relations orders.

■ For the reasons set forth in the preamble, the Department amends Subchapter D, Part 2530 of Title 29 of the Code of Federal Regulations as follows:

SUBCHAPTER D—MINIMUM STANDARDS FOR EMPLOYEE PENSION BENEFIT PLANS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2530—RULES AND REGULATIONS FOR MINIMUM STANDARDS FOR EMPLOYEE PENSION BENEFIT PLANS

■ 1. The authority citation for part 2530 is revised to read as follows:

Authority: Secs. 201, 202, 203, 204, 210, 505, 1011, 1012, 1014, and 1015, Pub. L. 93–406, 88 Stat. 852–862, 866–867, 894, 898–913, 924–929 (29 U.S.C. 1051–4, 1060, 1135, 26 U.S.C. 410, 411, 413, 414); Secretary of Labor's Order No. 13–76. Section 2530.206 also issued under sec. 1001, Pub. L. 109–280, 120 Stat. 780.

■ 2. Revise § 2530.206 to read as follows:

§ 2530.206 Time and order of issuance of domestic relations orders.

(a) *Scope.* This section implements section 1001 of the Pension Protection Act of 2006 by clarifying certain timing issues with respect to domestic relations orders and qualified domestic relations orders under the Employee Retirement Income Security Act of 1974, as amended (ERISA), 29 U.S.C. 1001 *et seq.*

The examples herein illustrate the application of this section in certain circumstances. This section also applies in circumstances not described in the examples.

(b) *Subsequent domestic relations orders.* (1) Subject to paragraph (d)(1) of this section, a domestic relations order shall not fail to be treated as a qualified domestic relations order solely because the order is issued after, or revises, another domestic relations order or qualified domestic relations order.

(2) The rule described in paragraph (b)(1) of this section is illustrated by the following examples:

Example (1). Subsequent domestic relations order between the same parties. Participant and Spouse divorce, and the administrator of Participant's 401(k) plan receives a domestic relations order. The administrator determines that the order is a QDRO. The QDRO allocates a portion of Participant's benefits to Spouse as the alternate payee. Subsequently, before benefit payments have commenced, Participant and Spouse seek and receive a second domestic relations order. The second order reduces the portion of Participant's benefits that Spouse was to receive under the QDRO. The second order does not fail to be treated as a QDRO solely because the second order is issued after, and reduces the prior assignment contained in, the first order. The result would be the same if the order were instead to increase the prior assignment contained in the first order.

Example (2). Subsequent domestic relations order between different parties. Participant and Spouse 1 divorce and the administrator of Participant's 401(k) plan receives a domestic relations order. The administrator determines that the order is a QDRO. The QDRO allocates a portion of Participant's benefits to Spouse 1 as the alternate payee. Participant marries Spouse 2, and then they divorce. Participant's 401(k) plan administrator subsequently receives a domestic relations order pertaining to Spouse 2. The order assigns to Spouse 2 a portion of Participant's 401(k) benefits not already allocated to Spouse 1. The second order does not fail to be a QDRO solely because the second order is issued after the plan administrator has determined that an earlier order pertaining to Spouse 1 is a QDRO.

(c) *Timing.* (1) Subject to paragraph (d)(1) of this section, a domestic relations order shall not fail to be treated as a qualified domestic relations order solely because of the time at which it is issued.

(2) The rule described in paragraph (c)(1) of this section is illustrated by the following examples:

Example (1). Orders issued after death. Participant and Spouse divorce, and the administrator of Participant's plan receives a domestic relations order, but the administrator finds the order deficient and determines that it is not a QDRO. Shortly thereafter, Participant dies while actively employed. A second domestic relations order correcting the defects in the first order is subsequently submitted to the plan. The second order does not fail to be treated as a QDRO solely because it is issued after the death of the Participant. The result would be the same even if no order had been issued before the Participant's death, in other words, the order issued after death were the only order.

Example (2). Orders issued after divorce. Participant and Spouse divorce. As a result, Spouse no longer meets the definition of "surviving spouse" under the terms of the plan. Subsequently, the plan administrator receives a domestic relations order requiring that Spouse be treated as the Participant's surviving spouse for purposes of receiving a death benefit payable under the terms of the plan only to a participant's surviving spouse. The order does not fail to be treated as a QDRO solely because, at the time it is issued, Spouse no longer meets the definition of a "surviving spouse" under the terms of the plan.

Example (3). Orders issued after annuity starting date. Participant retires and begins receipt of benefits in the form of a straight life annuity, equal to $1,000 per month, and with respect to which Spouse has consented to the waiver of the surviving spousal rights provided under the plan and section 205 of ERISA. Subsequent to the commencement of benefits (in other words, subsequent to the annuity starting date as defined in section 205(h)(2) of ERISA and as further explained in 26 CFR 1.401(a)–20, Q&A–10(b)), Participant and Spouse divorce and present the plan with a domestic relations order requiring 50 percent ($500) of Participant's future monthly annuity payments under the plan to be paid instead to Spouse, as an alternate payee (so that monthly payments of $500 are to be made to Spouse during Participant's lifetime). Pursuant to paragraph (c)(1) of this section, the order does not fail to be a QDRO solely because it is issued after the annuity starting date. If the order instead had required payments to Spouse for the lifetime of Spouse, this would constitute a reannuitization with a new annuity starting date, rather than merely allocating to Spouse a part of the determined annuity payments due to Participant, so that the order, while not failing to be a QDRO because of the timing of the order, would fail to meet the requirements of section 206(d)(3)(D)(i) of ERISA (unless the plan otherwise permits such a change after the participant's annuity starting date). See 29 CFR 2530.206(d)(2), Example (4).

(d) *Requirements and protections.* (1) Any domestic relations order described in this section shall be a qualified domestic relations order only if the order satisfies the same requirements and protections that apply under section 206(d)(3) of ERISA.

(2) The rule described in paragraph (d)(1) of this section is illustrated by the following examples:

Example (1). Type or form of benefit. Participant and Spouse divorce, and their divorce decree provides that the parties will prepare a domestic relations order assigning 50 percent of Participant's benefits under a 401(k) plan to Spouse to be paid in monthly installments over a 10-year period. Shortly thereafter, Participant dies while actively employed. A domestic relations order consistent with the divorce decree is subsequently submitted to the 401(k) plan; however, the plan does not provide for 10-year installment payments of the type described in the order. Pursuant to paragraph (c)(1) of this section, the order does not fail to be treated as a QDRO solely because it is issued after the death of Participant, but the order would fail to be a QDRO under section 206(d)(3)(D)(i) and paragraph (d)(1) of this section because the order requires the plan to provide a type or form of benefit, or any option, not otherwise provided under the plan.

Example (2). Segregation of payable benefits. Participant and Spouse divorce, and the administrator of Participant's plan receives a domestic relations order under which Spouse would begin to receive benefits immediately if the order is determined to be a QDRO. The plan administrator separately accounts for the amounts covered by the domestic relations order as is required under section 206(d)(3)(H)(v) of ERISA. The plan administrator finds the order deficient and determines that it is not a QDRO. Subsequently, after the expiration of the segregation period pertaining to that order, the plan administrator receives a second domestic relations order relating to the same parties under which Spouse would begin to receive benefits immediately if the second order is determined to be a QDRO. Notwithstanding the expiration of the first segregation period, the amounts covered by the second order must be separately accounted for by the plan administrator for an 18-month period, in accordance with section 206(d)(3)(H) of ERISA and paragraph (d)(1) of this section.

Example (3). Previously assigned benefits. Participant and Spouse 1 divorce, and the administrator of Participant's 401(k) plan receives a domestic relations order. The administrator determines that the order is a QDRO. The QDRO assigns a portion of Participant's benefits to Spouse 1 as the alternate payee. Participant marries Spouse 2, and then they divorce. Participant's 401(k) plan administrator subsequently receives a domestic relations order pertaining to Spouse 2. The order assigns to Spouse 2 a portion of Participant's 401(k) benefits already assigned to Spouse 1. The second order does not fail to be treated as a QDRO solely because the second order is issued after the plan administrator has determined that an earlier order pertaining to Spouse 1 is a QDRO. The second order, however, would fail to be a QDRO under section 206(d)(3)(D)(iii) and paragraph (d)(1) of this section because it assigns to Spouse 2 all or a portion of Participant's benefits that are already assigned to Spouse 1 by the prior QDRO.

Example (4). Type or form of benefit. Participant retires and commences benefit payments in the form of a straight life annuity based on the life of Participant, with

respect to which Spouse consents to the waiver of the surviving spousal rights provided under the plan and section 205 of ERISA. Participant and Spouse divorce after the annuity starting date and present the plan with a domestic relations order that eliminates the straight life annuity based on Participant's life and provides for Spouse, as alternate payee, to receive all future benefits in the form of a straight life annuity based on the life of Spouse. The plan does not allow reannuitization with a new annuity starting date, as defined in section 205(h)(2) of ERISA (and as further explained in 26 CFR 1.401(a)–20, Q&A–10(b)). Pursuant to paragraph (c)(1) of this section, the order does not fail to be a QDRO solely because it is issued after the annuity starting date, but the order would fail to be a QDRO under section 206(d)(3)(D)(i) and paragraph (d)(1) of this section because the order requires the plan to provide a type or form of benefit, or any option, not otherwise provided under the plan. However, the order would not fail to be a QDRO under section 206(d)(3)(D)(i) and paragraph (d)(1) of this section if instead it were to require all of Participant's future payments under the plan to be paid instead to Spouse, as an alternate payee (so that payments that would otherwise be paid to the Participant during the Participant's lifetime are instead to be made to the Spouse during the Participant's lifetime).

Signed at Washington, DC, this 3rd day of June 2010.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2010–13868 Filed 6–9–10; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2010–0412]

RIN 1625–AA08

Navy River Swim Special Local Regulation; Lower Mississippi River, Walls, MS

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation for all waters of the Lower Mississippi River from mile marker 710 to 711 extending the entire width of the river. This special local regulation is needed to protect persons and vessels from the potential safety hazards associated with an event involving a swim across the Lower Mississippi River.

DATES: This rule is effective from 5 a.m. to 9 a.m., local time, on June 18, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0412 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0412 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, 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 FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lieutenant Junior Grade Jason Erickson, Coast Guard; telephone 901–521–4753, e-mail *Jason.A.Erickson@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to protect the participants in the Mississippi River swim, spectators, and other mariners from the safety hazards associated with swimming across the Lower Mississippi River. Further, the Coast Guard had late notice with respect to the permit: the Coast Guard did not receive the application for a marine event permit until May 2010.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This is because immediate action is needed to protect the participants in the Mississippi River swim, spectators, and other mariners from the safety hazards associated with swimming across the Lower Mississippi River.

Basis and Purpose

On May 6, 2010, the Coast Guard received an Application for Approval of Marine Event for a swim across the Lower Mississippi River. A special local regulation is needed to protect participants, spectators, and other mariners from the possible hazards associated with a swim across the Lower Mississippi River.

Discussion of Rule

The Coast Guard is establishing a special local regulation for all waters of the Lower Mississippi River from mile marker 710 to 711 extending the entire width of the river. Entry into the designated areas will be prohibited to all vessels, mariners, and persons unless specifically authorized by the COTP Lower Mississippi River or a designated representative.

The COTP Lower Mississippi River or a designated representative will inform the public through broadcast notices to mariners of changes in the effective period for the special local regulation. This rule is effective from 5 a.m. to 9 a.m., local time, on June 18, 2010.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This rule will only be in effect for a short period of time and notifications to the marine community will be made through broadcast notices to mariners. The impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the Lower Mississippi River between mile marker 710 and mile marker 711, effective from 5 a.m. to 9 a.m., local time, on June 18, 2010.

This special local regulation will not have a significant economic impact on a substantial number of small entities because this rule will only be in effect for four hours on the day the event is occurring. In addition, the common vessel traffic in this area is limited almost entirely to recreational vessels and commercial towing vessels.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves participants swimming across the Lower Mississippi River, and is not expected to result in any significant adverse environmental impact as described in NEPA.

Under figure 2–1, paragraph (34)(h), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. A new temporary § 100.35T08–0412 is added to read as follows:

§ 100.35T08–0412 Navy River Swim Special Local Regulation; Lower Mississippi River Mile Marker 710 to 711, Walls, MS.

(a) *Location.* The following area is a safety zone: all waters of the Lower Mississippi River, beginning at mile marker 710 and ending at mile marker 711, extending the entire width of the river.

(b) *Effective dates.* This section is effective from 5 a.m. through 9 a.m., local time, on June 18, 2010.

(c) *Regulations.* (1) In accordance with the general regulations in § 100.35 of this part, entry into the designated area is prohibited unless authorized by the Captain of the Port Lower Mississippi River or a designated representative.

(2) Persons or vessels requiring entry into or passage through the designated area must request permission from the Captain of the Port Lower Mississippi River or a designated representative. They may be contacted on VHF–FM channels 16 or by telephone at (901) 521–4822.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Lower Mississippi River and designated personnel. Designated personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(d) Informational Broadcasts: The Captain of the Port, Lower Mississippi River will inform the public when safety zones have been established via Broadcast Notice to Mariners.

Dated: May 13, 2010.

Michael Gardiner,

Captain, U.S. Coast Guard, Captain of the Port, Lower Mississippi River.

[FR Doc. 2010–13908 Filed 6–9–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–0467]

Drawbridge Operation Regulation; Between Tacony, PA and Palmyra, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the Tacony-Palmyra Bridge (Route 73), across the Delaware River, mile 107.2, between the townships of Tacony, PA and Palmyra, NJ. The deviation is necessary to facilitate the resurfacing of the bridge roadway. This deviation reduces the vertical clearance of the bridge in the closed position by three feet and restricts operation of the draw span.

DATES: This temporary deviation is effective with actual notice beginning 8 p.m. on May 26, 2010, and with constructive notice beginning 8 p.m. June 10, 2010 until 5 a.m. July 31, 2010.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–0467 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0467 in the "Keyword" box and then clicking "Search". This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, 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 FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Terrance Knowles, Environmental Protection Specialist, Fifth Coast Guard District, at telephone 757–398–6587, e-mail *Terrance.A.Knowles@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The Burlington County Bridge Commission, who owns and operates this bascule drawbridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.5 and 117.716(b) to facilitate the resurfacing of the bridge roadway.

The Tacony-Palmyra Bridge (Route 73) at mile 107.2, across the Delaware River, between PA and NJ, has a vertical clearance in the closed position to vessels of 53 feet above mean high water (MHW). This clearance will be reduced for safety netting by approximately three feet to 50 feet above MHW.

Under this temporary deviation, the resurfacing repairs will restrict the operation of the draw span on the following dates and times: Closed-to-navigation, each day from 8 p.m. to 5 a.m., from May 26, 2010 to July 31, 2010; except vessel openings will be provided with at least four hours advance notice given to the bridge operator at (856) 829–3002 or via marine radio on Channel 13. Vessels that can pass under the bridge without a bridge opening may do so at all times. There are no alternate routes for vessels transiting this section of the Delaware River.

Due to the limited number and types of vessels that require bridge openings, the Coast Guard has coordinated this project with the Delaware River Pilots, and will inform the other users of the waterway through our Local and Broadcast Notices to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation. Four hours advance notice may be required for an emergency opening.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 26, 2010.

Waverly W. Gregory, Jr.,

Bridge Administrator, Fifth Coast Guard District.

[FR Doc. 2010–13909 Filed 6–9–10; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–0471]

Drawbridge Operation Regulation; Delaware River, Between Bristol, PA and Burlington, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the Burlington-Bristol Bridge (Route 413), across the Delaware River, mile 117.8 between the Townships of Bristol, PA, and Burlington, NJ. The deviation is necessary to facilitate the replacement of the counterweight cables. This deviation restricts operation of the draw span but will not restrict vessels from navigating beneath the closed span.

DATES: This deviation is effective 7 p.m. July 6, 2010, until 7 a.m. July 11, 2010.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–0471 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0471 in the "Keyword" box and then clicking "Search." They are also available for inspection or copying

at the Docket Management Facility (M–30), U.S. Department of Transportation, 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 FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Terrance Knowles, Environmental Protection Specialist, Fifth Coast Guard District, at telephone 757–398–6587, e-mail *Terrance.A.Knowles@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Burlington County Bridge Commission, who owns and operates this vertical-lift drawbridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.5 and 117.716(b) to facilitate the replacement of the counterweight cables.

The Burlington-Bristol Bridge (Route 413) at mile 117.8, across the Delaware River, between PA and NJ, has a vertical clearance in the closed position to vessels of 62 feet above mean high water.

Under this temporary deviation, the cable repairs will restrict the operation of the draw span on the following dates and times: Closed-to-navigation, each day from 7 p.m. to 7 a.m., from July 6, 2010 to July 11, 2010.

Vessels that can pass under the bridge without an opening may do so at all times. There are no alternate routes for vessels transiting this section of the Delaware River.

Due to the limited number and types of vessels that require bridge openings, the Coast Guard has coordinated this project with the Delaware River Pilots, and will inform the other users of the waterway through our Local and Broadcast Notices to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation. An emergency opening may require up to twelve hours prior notice.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 26, 2010.

Waverly W. Gregory, Jr.,

Bridge Administrator, Fifth Coast Guard District.

[FR Doc. 2010–13910 Filed 6–9–10; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0475]

RIN 1625–AA00

Safety Zone; Pierce County, WA, Department of Emergency Management, Regional Water Exercise

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Pierce County, Washington, Department of Emergency Management is sponsoring a Regional Water Rescue Exercise in the waters of East Passage near Browns Point. A safety zone is necessary to ensure the safety of participating vessels and participants in the water by restricting traffic from passing within 900 yards of the exercise area, and restricting deep draft vessels from creating a wake near the exercise.

DATES: This rule is effective from 7 a.m. until 8 p.m. on June 10, 2010 unless cancelled sooner by the Captain of the Port (COTP).

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0475 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0475 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, 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 FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LTJG Ian Hanna, Sector Seattle Waterways Management, Coast Guard; telephone 206–217–6045, e-mail *SectorSeattleWWM@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure safety of participants in the Pierce County Regional Water Rescue Exercise.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels involved in the Pierce County Regional Water Rescue Exercise, and enhancing public and maritime safety.

Basis and Purpose

The Pierce County, Washington, Department of Emergency Management is sponsoring a Regional Water Rescue Exercise in the waters of East Passage near Browns Point. The exercise will involve many small response craft training and practicing search and rescue techniques with people in the water. The exercise takes place in an unsheltered area in the vicinity of vessel traffic, which poses hazards to participating vessels and participants. A safety zone will mitigate these hazards by restricting traffic from passing too close to the exercise area, and from creating large wakes near the exercise.

Discussion of Rule

This rule establishes a temporary safety zone on all waters of East Passage encompassed within 900 yards of Browns Point, Washington in position 47°18.354′ N, 122°27.654′ W (NAD 83). The Regional Water Rescue Exercise will include nineteen various government agencies with over two hundred personnel practicing water rescue, search and rescue, dive rescue, law enforcement searches, dewatering exercises and will involve persons in the water. Vessel operators are prohibited from entering or remaining in the safety zone unless authorized by the COTP, Puget Sound, or Designated Representative. The COTP will be assisted in the enforcement of the zone by other federal, state, and/or local agencies. Any vessel not participating in the Water Rescue Exercise wishing to transit the area during the effective time of this Safety Zone must coordinate

with an on scene Patrol Commander. Additionally, any vessel traffic transiting the area shall do so at a speed that minimizes wake in the exercise area.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard bases this finding on the fact that the safety zone will be in place for a limited period of time and maritime traffic will still be able to transit around the zone. Maritime traffic may request permission to transit through the zone from the Captain of the Port, Puget Sound or Designated Representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to operate near Browns Point, Washington between 7 a.m. and 8 p.m. on June 10, 2010. This rule will not have a significant economic impact on a substantial number of small entities, because the safety zone is short in duration and maritime traffic will be able to transit around the safety zone. Maritime traffic may also request permission to transit through the zone from the Captain of the Port, Puget Sound or Designated Representative.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction. This rule involves the establishment of a temporary safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. Add § 165.T13–146 to read as follows:

§ 165.T13–146 Safety Zone; Pierce County, Washington, Department of Emergency Management, Regional Water Exercise.

(a) *Location.* All waters of East Passage encompassed within 900 yards of Browns Point, Washington in position 47°18.354′ N., 122°27.654′ W. (NAD 83).

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no vessel operator may enter or remain in the safety zone without the permission of the Captain of the Port or Designated Representative. The Captain of the Port may be assisted by other federal, state, or local agencies with the enforcement of the safety zone. Additionally, any vessel traffic transiting the area shall do so at a speed that minimizes wake in the safety zone.

(c) *Authorization.* All vessel operators who desire to enter the safety zone must obtain permission from the Captain of the Port or Designated Representative by contacting the South Sound Water Exercise Control on VHF Channel 22 or via telephone at (253) 691–1313. Vessel operators granted permission to enter the zone will be escorted by the on-scene patrol craft until they are outside of the safety zone and may not cause a wake while in the zone.

(d) *Enforcement Period.* This rule is effective from 7 a.m. until 8 p.m. on June 10, 2010, unless canceled sooner by the Captain of the Port.

Dated: May 27, 2010.

S.W. Bornemann,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2010–13911 Filed 6–9–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Part 361

State Vocational Rehabilitation Services Program

CFR Correction

In Title 34 of the Code of Federal Regulations, Parts 300 to 399, revised as of July 1, 2009, on page 267, in § 361.42, in paragraph (a)(4) introductory text, in the first sentence, after the words "Any eligible", add the words "individual, including an individual whose eligibility for vocational".

[FR Doc. 2010–14049 Filed 6–9–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF EDUCATION

34 CFR Part 691

Academic Competitiveness Grant (ACG) and National Science and Mathematics Access To Retain Talent Grant (National Smart Grant) Programs

CFR Correction

In Title 34 of the Code of Federal Regulations, Part 400 to End, revised as of July 1, 2009, on page 978, in § 691.15, remove paragraphs (b)(1)(ii)(C)(*1*) and (b)(1)(ii)(C)(*2*).

[FR Doc. 2010–14051 Filed 6–9–10; 8:45 am]

BILLING CODE 1505–01–D

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 256

Adjustment of Royalty Fee for Cable Compulsory License

CFR Correction

In Title 37 of the Code of Federal Regulations, revised as of July 1, 2009, on page 666, in § 256.2, make the following changes:

a. In paragraph (b)(2)(i), remove "$189,800" and add "$263,800" in its place; and

b. In paragraph (b)(2)(ii), remove "$189,800" and add "$263,800" in its place, and remove "$379,600" and add "$527,600" in its place.

[FR Doc. 2010–14060 Filed 6–9–10; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2009–0599; FRL–9125–2]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revision to Clean Air Interstate Rule Sulfur Dioxide Trading Program

Correction

In final rule document 2010–5105 beginning on page 11738 in the issue of March 12, 2010, make the following correction:

§ 52.2420 [Corrected]

On page 11740, in §52.2420, in the table titled EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES, the bold center heading that reads **29 VAC 5, Chapter 140 Regulations for Emissions Trading Programs** should read **9 VAC 5, Chapter 140 Regulations for Emissions Trading Programs**.

[FR Doc. C1–2010–5105 Filed 6–9–10; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2010-0039; FRL-9158-3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Control of Nitrogen Oxide Emissions From Industrial Boilers and Process Heaters at Petroleum Refineries

Correction

In rule document 2010–13377 beginning on page 31711 in the issue of June 4, 2010, make the following correction:

§52.420 [Corrected]

On page 31712 in §52.420, the table titled EPA-APPROVED REGULATIONS IN THE DELAWARE SIP should appear as follows:

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
Regulation 1142—Specific Emission Control Requirements (Formerly Regulation No. 42)				
*	*	*	*	*
Section 2.0	Specific Emission Control Requirements.	11/11/09	6/4/10 ..... [Insert page number where the document begins].	Emission limitations for any industrial boiler or process heater with a maximum heat input capacity of equal to or greater than 200 mmBTU/hr.
*	*	*	*	*

[FR Doc. C1–2010–13377 Filed 6–9–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 417, 422, 423, and 480

[CMS–4085–CN]

RIN 0938–AP77

Medicare Program; Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of final rule.

SUMMARY: This document corrects technical and typographical errors in the final rule that appeared in the April 15, 2010 **Federal Register** entitled "Medicare Program; Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs."

DATES: *Effective Date:* This correction notice is effective June 7, 2010.

FOR FURTHER INFORMATION CONTACT: Alissa Deboy, (410) 786–6041.

SUPPLEMENTARY INFORMATION:

I. Background

In the final rule entitled "Medicare Program; Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs" which appeared in the April 15, 2010 **Federal Register** (FR Doc. 2010–7966, (75 FR 19678)), there were technical and typographical 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 that appeared in the April 15, 2010 **Federal Register.** Accordingly, the corrections are effective June 7, 2010.

II. Summary of Errors

On page 19752, in our preamble discussion regarding risk adjustment data validation (RADV) appeals and the addition of Medicare Advantage (MA) organization RADV—dispute and appeal procedures we made typographical errors in two regulatory citations and we correct these errors in section IV.A.1. of this correction notice. In addition, on page 19809 in the regulations text for the RADV provisions, we inadvertently designated two paragraphs as § 422.311(c)(iii)(C). We are correcting this error in section IV.B.l. of this correction notice.

In our preamble discussion of criteria and procedures for identifying "protected classes" of drugs within which all covered Part D drugs must be included in Part D formularies (75 FR 19767), we indicated that we would not finalize in regulations (§ 423.100) our proposed definitions used to interpret the section 176 of Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) criteria (that is, the definitions for the terms, "drug category or class," "major or life threatening clinical consequences," "restricted access," and "significant need for access to multiple drugs"). However, we indicated that we would finalize our proposed regulations text regarding the exceptions criteria (§ 423.120(b)(2)(iv)). Therefore, in section IV.B.3. and 4. of this correction notice, we correct these errors by removing the proposed definitions inadvertently published for § 423.100 and adding the exceptions criteria that were inadvertently omitted from § 423.120(b).

On page 19812, we presented our regulatory changes to § 422.566 and § 422.568 regarding organization determinations. We made errors in the amendatory statements for the regulations text of these sections regarding the redesigination of paragraphs. We are also correcting an technical error in § 422.566(c)(2)(i) (changing "A" to "The") to ensure consistency between paragraphs (c)(1)(i) and (c)(2)(i). In section IV.B.2 of this correction notice, we correct these errors.

On page 19822, we presented our regulatory changes to § 423.551 regarding changes in ownership during a PDP term of contract. In presenting these regulatory changes, we indicated that we were adding a new paragraph (g) instead of indicating that we were revising the existing paragraph (g). In section IV.B.5. of this correction notice, we correct this error.

In our acronyms list and in the preamble discussion and regulations text regarding medication therapy management programs under Part D, we erroneously used the term "comprehensive medical review" instead of "comprehensive medication review." Therefore, in section IV. A.2, 4. and 5. and B.5. of this correction notice we are correcting these errors. In addition, we inadvertently listed the acronym for comprehensive medical reviews (CMR) twice. We also correct the erroneous listing of the acronym in section IV.A.1. of this correction notice.

III. Waiver of Proposed Rulemaking and Waiver of the 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)). In addition, section 553(d) of the APA (5 U.S.C. 553(b)) ordinarily requires a 30-day delay in effect date of final rules after the date of their publication in the **Federal Register.** However, we can waive both the notice and comment procedure and the 30-day delay in effective date 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.

This document merely corrects typographical and technical errors made in the Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs final rule (FR. Doc. 2010–7966) which appeared in the April 15, 2010 **Federal Register** and will be effective on June 7, 2010. The provisions of the final rule have been subjected previously to notice and comment procedures. The corrections contained in this document are consistent with and do not make substantive changes to, the policies adopted in the final rule. Therefore, we find it unnecessary to undertake further notice and comment procedures with respect to this correction notice. We also believe it is in the public interest to waive notice and comment procedures and the 30-day delay in effective date for this notice. This correction notice is intended to ensure that the final rule accurately describes the policies being adopted in the final rule, and that correct information is made available to the public prior to June 7, 2010, the date on which the final rule becomes effective.

For the reasons stated above, we find that both notice and comment and the 30-day delay in effective date for this correction notice are unnecessary, and that it is in the public interest to make this notice effective in conjunction with the final rule to which the corrections apply. Therefore, we find there is good cause to waive notice and comment procedures and the 30-day delay in effective date for this correction notice.

IV. Correction of Errors

In FR Doc. 2010–7966 of April 15, 2010, (75 FR 19678), make the following corrections:

A. Correction of Errors in the Preamble

1. On page 19679, third column, second line from the bottom, the acronym and term "CMR Comprehensive Medical Review" is corrected by deleting the acronym and term.

2. On page 19680, first column, top of the page, line 1, the term for the acronym CMR, "Comprehensive Medical Review" is corrected to read "Comprehensive Medication Review".

3. On page 19752—

a. In the first column, last paragraph, line 1, the citation § 422.311(c)(2)(v) is corrected to read "§ 422.311(c)(2)(ix)".

b. In the second column, first partial paragraph, line 5, the citation § 422.311(c)(2)(vi) is corrected to read "§ 422.311(c)(2)(x)".

4. On page 19773, in the second column, first full paragraph, line 5, the term "comprehensive medical review" is corrected to read "comprehensive medication review".

5. On page 19793, first column—

a. Second full paragraph, lines 8 and 9, the term "comprehensive medical review" is corrected to read "comprehensive medication review".

b. Last paragraph—

(1) Lines 4 and 5, the term "medical reviews" is corrected to read "medication reviews".

(2) Line 6, the term "medical review" is corrected to read "medication review".

B. Correction of Errors in the Regulations Text

1. On page 19809, in the first column, second full paragraph, line 1, the paragraph designation "(C)" is corrected to read "(D)".

2. On page 19812, in the second column—

a. In the first full paragraph, in the amendatory statement for § 422.566 (statement number 37)—

(1) Lines 4 and 5 (amendatory instruction C), the sentence "Redesignating paragraph (b)(5) as (b)(6)" is corrected by removing the amendatory instruction.

(2) Line 7 (amendatory instruction D), the sentence "Adding a new paragraph (b)(5) is corrected by removing the amendatory instruction.

(3) Line 8 (amendatory statement E), the phrase "In paragraphs (c)(1)(i), and (c)(2)(i)" is corrected to read "In paragraph (c)(1)(i)".

(4) Line 14 (after amendatory statement E and before the phrase "The revision and addition"), the paragraph is corrected by adding the following sentence "F. In paragraph (c)(2)(i), the phrase 'An enrollee (including his or her authorized representative)'; is removed and the phrase 'The enrollee (including his or her representative);' is added in its place."

b. In the fourth full paragraph, the paragraph "(5) Reduction of a previously authorized course of treatment if the enrollee believes that continuation of the course of treatment is medically necessary." is corrected by removing the paragraph.

c. In the fifth full paragraph, in the amendatory statement for § 422.568 (statement number 38), lines 2 through 7, the sentence beginning with the phrase "A. Redesginating paragraphs (a)" through the sentence ending with phrase "newly redesignated paragraph (d)" are corrected to read as follows:

"A. Redesignating paragraphs (c) and (d) as paragraphs (d)(1) and (d)(2), respectively.

B. Redesignating paragraphs (a) and (b) as (b) and (c).

C. Adding a new paragraph (a).

D. Revising newly redesignated paragraph (d)."

3. On page 19816—

a. First and second columns, second paragraph from the bottom of the page through the sixth full paragraph; the paragraph beginning with the phrase "61. Section 423.100" through the paragraph ending with the phrase "on various individuals." is corrected by deleting these paragraphs.

b. In the third column, second full paragraph, in the amendatory statement for § 423.120 (statement number 64), line 6 (immediately following amendatory statement C), the paragraph is corrected by adding the following amendatory statement "D. Adding a new paragraph (b)(2)(vi)."

4. On page 19817, third column, after the third full paragraph ((b)(1)(ix)) which ends with "* * * * *", the paragraph is corrected by adding the following paragraphs:

"(2) * * *

(vi) Exceptions to paragraph (b)(2)(v) of this section are as follows:

(A) Drug products that are rated as therapeutically equivalent (under the Food and Drug Administration's most recent publication of "Approved Drug Products with Therapeutic Equivalence Evaluations," also known as the Orange Book).

(B) Utilization management processes that limit the quantity of drugs due to safety.

(C) Other drugs that CMS specifies through a process that is based upon scientific evidence and medical standards of practice (and, in the case of antiretroviral medications, is consistent with the Department of Health and Human Services Guidelines for the Use of Antiretroviral Agents in HIV–1–Infected Adults and Adolescents) and which permits public notice and comment.

5. On page 19818, second column, fifth paragraph from the bottom (regulations text for § 423.153(d)(1)(vii)(B)), lines 3 and 4, the term "comprehensive medical review" is corrected to read "comprehensive medication review".

6. On page 19822, in the third column, third paragraph from the bottom of the page, in the amendatory statement for § 423.551 (statement number 84), line 2, the phrase "adding a new paragraph (g) is corrected to read "revising paragraph (g)."

Authority: Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: June 4, 2010.

Dawn L. Smalls,

Executive Secretary to the Department.

[FR Doc. 2010–13923 Filed 6–7–10; 4:15 pm]

BILLING CODE 4120–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 505

[GSAR Amendment 2010–02; GSAR Case 2008–G503 (Change 45) Docket 2008–0007; Sequence 11]

RIN 3090–AI71

General Services Administration Acquisition Regulation; GSAR Case 2008–G503, Rewrite of GSAR Part 505, Publicizing Contract Actions

AGENCIES: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is issuing a final rule amending GSA Acquisition Regulation (GSAR) which provides requirements for publicizing contract actions.

DATES: *Effective Date*: June 10, 2010.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Beverly Cromer, Procurement Analyst, at (202) 501–1448. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite Amendment 2010–02, GSAR Case 2008–G503 (Change 45).

SUPPLEMENTARY INFORMATION:

A. Background

The GSA published a proposed rule, with request for comments, in the **Federal Register** at 73 FR 53404 on September 16, 2008. No comments were received in response to the proposed rule. This rule covers the GSAR portion of part 505. Currently, subparts 505.1, 505.2, and 505.5 are identified as "shaded" for regulatory coverage; however, the agency has deemed, these subparts as non-regulatory because the coverage addresses internal agency acquisition policy. These subparts have been revised and are moved to the non-regulatory portion of the GSA Acquisition Manual (GSAM).

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the revisions are not considered substantive.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

List of Subjects in 48 CFR Part 505

Government procurement.

Dated: May 17, 2010.

Rodney P. Lantier,

Acting Senior Procurement Executive, Office of Acquisition Policy, General Services Administration.

■ Therefore, under the authority of 40 U.S.C. 121(c), GSA removes and reserves 48 CFR part 505.

PART 505 [Removed and Reserved]

[FR Doc. 2010–13902 Filed 6–9–10; 8:45 am]

BILLING CODE 6820–61–S

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 390 and 395

Regulatory Guidance Concerning the Preparation of Drivers' Record of Duty Status To Document Compliance With the Hours-of-Service Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of regulatory guidance.

SUMMARY: The FMCSA announces regulatory guidance concerning the requirement for interstate commercial motor vehicle (CMV) drivers to prepare, in duplicate, a record of duty status for each 24-hour period. FMCSA has determined that the current requirement may be satisfied through the preparation of an original handwritten record, and subsequent electronic submission to the motor carrier of a scanned image of the original record; the driver would retain the original while the carrier maintains the electronic scanned electronic image along with any supporting documents.

The guidance is applicable to all interstate drivers of CMVs subject to the Federal Motor Carrier Safety Regulations (FMCSRs).

DATES: *Effective Date:* This regulatory guidance is effective on June 10, 2010.

FOR FURTHER INFORMATION CONTACT: Thomas L. Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590.

E-mail: *MCPSD@dot.gov.* Phone (202) 366–4325.

SUPPLEMENTARY INFORMATION:

Legal Basis

The Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, October 30, 1984) (the 1984 Act) provides authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary of Transportation to prescribe regulations which ensure that: (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely; and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators. (49 U.S.C. 31136(a)). Section 211 of the 1984 Act also grants the Secretary broad power in carrying out motor carrier safety statutes and regulations to "prescribe recordkeeping and reporting requirements" and to "perform other acts the Secretary considers appropriate." (49 U.S.C. 31133(a)(8) and (10), respectively).

The Administrator of FMCSA has been delegated authority under 49 CFR 1.73(g) to carry out the functions vested in the Secretary of Transportation by 49 U.S.C. chapter 311, subchapters I and III, relating to commercial motor vehicle programs and safety regulation.

Background

This document provides regulatory guidance concerning 49 CFR 395.8, "Driver's record of duty status," specifically paragraphs (a)(1) and (i). Currently, 49 CFR 395.8(a)(1) states, "Every driver who operates a commercial motor vehicle [in interstate commerce] shall record his/her duty status, in duplicate, for each 24 hour period." Section 395.8(i) requires that drivers submit or forward by mail the original records of duty status (RODS) to the regular employing motor carrier within 13 days following the completion of the form.

With regard to record retention, 49 CFR 395.8(k)(1) states, "Each motor carrier shall maintain records of duty status and all supporting documents for each driver it employs for a period of six months from the date of receipt." Section 395.8(k)(2) states, "The driver shall retain a copy of each record of duty status for the previous 7 consecutive days which shall be in his/her possession and available for inspection while on duty."

Basis for This Notice

FMCSA currently requires (49 CFR 390.31, Copies of records or documents) that records and documents specified under this subchapter be preserved in their original form for the periods specified, unless the records and documents are suitably photographed and the microfilm is retained in lieu of the original record for the required retention period. As used in § 390.31, "this subchapter" means Subchapter B [49 CFR parts 350–399] of Chapter III of Subtitle B of Title 49, Code of Federal Regulations (CFRs). Section 390.31(b) provides criteria for use in determining whether photographic copies of records may be acceptable in lieu of original records.

On April 4, 1997 (62 FR 16370, 16408), FMCSA published "Regulatory Guidance for the Federal Motor Carrier Safety Regulations" which included guidance concerning 49 CFR 390.31. The guidance reads as follows:

Question: May records required by the FMCSRs be maintained in an electronic format?

Guidance: Yes, provided the motor carrier can produce the information required by the regulations. Documents requiring a signature must be capable of replication (*i.e.,* photocopy, facsimile, etc.) in such form that will provide an opportunity for signature verification upon demand. If computer records are used, all of the relevant data on the original documents must be included in order for the record to be valid.

FMCSA received an exemption application from a motor carrier requesting relief from the requirement to prepare RODS in duplicate. The motor carrier explained that it plans to implement a new approach for receiving and processing RODS. Its drivers would complete their RODS and then electronically scan them at one of the carrier's terminals or at a truck stop that offers the scanning service. The image would then be electronically transmitted to the motor carrier while the driver retains the original paper RODS.

Upon reviewing the carrier's application for an exemption, FMCSA determined that an exemption is not necessary. Admittedly, 49 CFR 395.8(a)(1) and 395.8(i) could be construed as limiting the processing of RODS between drivers and carriers to the submission of the original paper documents either in person or via mail, thereby necessitating the preparation of the RODS, in duplicate. However, FMCSA has opted for a more pragmatic application of the rules.

Because existing regulations concerning the preservation of records (49 CFR 390.31) allow motor carriers to store electronically a scanned image of the original RODS submitted by drivers and essentially dispose of the original paper document, there is no discernible safety benefit to disallowing the driver's submission of a scanned image of the RODS to the carrier. There is no readily apparent reason that the location at which the original RODS is scanned into an image for subsequent electronic storage and retrieval should matter for the purposes of compliance with the recordkeeping requirements. Furthermore, there is no apparent reason to limit the means of submitting the information to the carrier; electronic submission is an efficient and reasonable alternative to mailing the document to the carrier or delivering it in person.

Summary

Based on a review of the regulatory text of 49 CFR 395.8(a)(1), 395.8(i) and 395.(k), and in consideration of 49 CFR 390.31 and the 1997 regulatory guidance concerning electronic recordkeeping, FMCSA issues guidance allowing interstate CMV drivers to prepare single originals of RODS and to submit electronically to the employing motor carrier a scanned image of the completed RODS.

Regulatory Guidance:

Part 395—Hours of Service of Drivers

Section Interpreted

Section 395.8 Driver's Record of Duty Status

Question: Are drivers who electronically scan a copy of their original record of duty status (RODS) for subsequent submission to the motor carrier required to prepare the RODS in duplicate?

Guidance: No. Although 49 CFR 395.8(a)(1) states, "Every driver who operates a commercial motor vehicle [in interstate commerce] shall record his/her duty status, in duplicate, for each 24-hour period," the intent of the requirement may be fulfilled through

the electronic submission of a scanned image of the original handwritten RODS to the regular employing motor carrier within 13 days following the completion of the form, while the driver retains the original records for the current day and the previous 7 consecutive days. Because existing regulations concerning the preservation of records (49 CFR 390.31) allow motor carriers to store electronically a scanned image of the original handwritten RODS submitted by drivers and essentially dispose of the original paper document, there is no adverse impact on the enforcement of the HOS regulations, and subsequently no compromise on the application of the safety requirement by allowing the driver to submit a scanned image of the original signed RODS to the regular employing motor carrier within 13 days of the completion of the record. Motor carriers must maintain the scanned image of the signed RODS and all supporting documents for each driver for a period of six months from the date of receipt (49 CFR 395.8(k)).

Issued on: June 4, 2010.

William A. Quade,

Associate Administrator for Enforcement and Program Delivery.

[FR Doc. 2010–13900 Filed 6–9–10; 8:45 am]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register
Vol. 75, No. 111
Thursday, June 10, 2010

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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0583; Directorate Identifier 2010–CE–028–AD]

RIN 2120–AA64

Airworthiness Directives; PILATUS AIRCRAFT LTD. Model PC–12/47E Airplanes

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

Reports have been received indicating that, if the power control friction wheel is tightened, the reverse thrust latch may stick and subsequently allow the Power Control Lever (PCL) to be inadvertently retarded aft of the idle detent.

This condition, if not corrected, could result in undesired reverse thrust activation which, especially during approach, could result in reduced 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 July 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.

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: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090.

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–2010–0583; Directorate Identifier 2010–CE–028–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

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No. 2010–0093, dated May 20, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Reports have been received indicating that, if the power control friction wheel is tightened, the reverse thrust latch may stick and subsequently allow the Power Control Lever (PCL) to be inadvertently retarded aft of the idle detent.

This condition, if not corrected, could result in undesired reverse thrust activation which, especially during approach, could result in reduced control of the aeroplane.

For the reason described above, this AD requires an inspection of the PCL reverse thrust latch and the accomplishment of corrective actions as necessary.

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

Relevant Service Information

PILATUS AIRCRAFT LTD. has issued Service Bulletin No.: 76–002, dated October 15, 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 the 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 this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed 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

We estimate that this proposed AD will affect 80 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $6,800, or $85 per product.

In addition, we estimate that any necessary follow-on actions would take about 9 work-hours and require parts costing $100, for a cost of $865 per product. We have no way of determining the number of products that may need these actions.

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:

Pilatus Aircraft Ltd.: Docket No. FAA–2010–0583; Directorate Identifier 2010–CE–028–AD.

Comments Due Date

(a) We must receive comments by July 26, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to PC–12/47E airplanes, manufacturer serial numbers (MSN) 1001 and MSN 1003 through 1140, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 76: Engine Controls.

Reason

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

Reports have been received indicating that, if the power control friction wheel is tightened, the reverse thrust latch may stick and subsequently allow the Power Control Lever (PCL) to be inadvertently retarded aft of the idle detent.

This condition, if not corrected, could result in undesired reverse thrust activation which, especially during approach, could result in reduced control of the aeroplane.

For the reason described above, this AD requires an inspection of the PCL reverse thrust latch and the accomplishment of corrective actions as necessary.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Within 30 days after the effective date of this AD, inspect the power control lever reverse thrust latch handle for free movement following the accomplishment instructions in paragraph 3.A. of PILATUS AIRCRAFT LTD. Service Bulletin No.: 76–002, dated October 15, 2009.

(2) If during the inspection required in paragraph (f)(1) of this AD you determine the reverse thrust latch sticks or the idle detent is not present, do the following actions:

(i) Before further flight, insert Temporary Revision (TR) No. 12 to PC–12/47E Pilot's Operating Handbook, dated October 15, 2009, into the normal procedures section of the aircraft flight manual (AFM).

(ii) Within 12 months after the effective date of this AD, modify the engine control console assembly following the accomplishment instructions in paragraph 3.B. of PILATUS AIRCRAFT LTD. Service Bulletin No.: 76–002, dated October 15, 2009.

(iii) Before further flight after the modification required by paragraph (f)(2)(ii) of this AD, remove TR No. 12 to PC–12/47E Pilot's Operating Handbook, dated October 15, 2009, from the AFM.

(3) If during the inspection specified in paragraph (f)(1) of this AD you determine the reverse thrust latch moves freely and the idle detent is present, no further action is required.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, 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: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(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

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2010–0093, dated May 20, 2010; PILATUS AIRCRAFT LTD. Service Bulletin No.: 76–002, dated October 15, 2009; and Temporary Revision

No. 12 to PC–12/47E Pilot's Operating Handbook, dated October 15, 2009, for related information.

Issued in Kansas City, Missouri, on June 4, 2010.

Steven W. Thompson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–13924 Filed 6–9–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0119 Airspace Docket No. 10–AAL–6]

Proposed Revision of Class E Airspace; Unalakleet, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revise Class E airspace at Unalakleet, AK. The amendment and development of two (each) Standard Instrument Approach Procedures (SIAPs), and the development of one Obstacle Departure Procedure (ODP) at the Unalakleet Airport have made this action necessary to enhance safety and management of Instrument Flight Rules (IFR) operations.

DATES: Comments must be received on or before July 26, 2010.

ADDRESSES: Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–0299/ Airspace Docket No. 10–AAL–9 at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0119/Airspace Docket No. 10–AAL–6." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition, in person in the Federal Docket Management System Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Alaska Flight Services Information Area Group. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at Unalakleet, AK, to accommodate a new departure procedure, and new and amended SIAPs at Unalakleet Airport. This Class E airspace would provide adequate controlled airspace upward from the surface, and from 700 and 1,200 feet above the surface for the safety and management of IFR operations at Unalakleet Airport.

The Class E2 surface areas are published in paragraph 6002 in FAA Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be subsequently published in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Because this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to revise airspace at Unalakleet, Alaska, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, is to be amended as follows:

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AAL AK E2 Unalakleet, AK [Revised]

Unalakleet Airport, AK
(Lat. 63°53′19″ N., long. 160°47′57″ W.)
Unalakleet Localizer
(Lat. 63°52′52″ N., long. 160°47′42″ W.)

Within a 4.2-mile radius of the Unalakleet Airport, AK, and within 3.2 miles each side of the Unalakleet Localizer front course, extending from the 4.2-mile radius to 12.6 miles northwest of the Unalakleet Airport, AK. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Supplement Alaska (Airport/Facility Directory).

* * * * *

Paragraph 6005 Class E Airspace Extending Upward from 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Unalakleet, AK [Revised]

Unalakleet Airport, AK
(Lat. 63°53′19″ N., long. 160°47′57″ W.)
Unalakleet Localizer
(Lat. 63°52′52″ N., long. 160°47′42″ W.)
Unalakleet VOR/DME
(Lat. 63°52′31″ N., long. 160°41′04″ W.)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of the Unalakleet Airport, AK, and within 3.8 miles either side of the 289 radial of the Unalakleet VOR/DME, extending from the 7.3-mile radius to 15.4 miles west of the Unalakleet VOR/DME, and within 3.6 miles either side of the Unalakleet Localizer front course, extending from the 7.3-mile radius to 13.6 miles northwest of the Unalakleet Airport; and that airspace extending upward from 1,200 feet above the surface within a 74-mile radius of the Unalakleet Airport, AK.

Issued in Anchorage, AK, on May 28, 2010.

Michael A. Tarr,

Acting Manager, Alaska Flight Services Information Area Group.

[FR Doc. 2010–13990 Filed 6–9–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2010–0383]

RIN 1625–AA08

Special Local Regulations for Marine Events; Patuxent River, Solomons, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations during the "Chesapeake Challenge" power boat races, a marine event to be held on the waters of the Patuxent River, near Solomons, MD on October 3, 2010. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Patuxent River during the event.

DATES: Comments and related material must be received by the Coast Guard on or before July 12, 2010. Requests for public meetings must be received by the Coast Guard on or before the end of the comment period.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0383 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Ronald Houck, U.S. Coast Guard Sector Baltimore, MD; telephone 410–576–2674, e-mail *Ronald.L.Houck@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0383), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the

comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–0383" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0383" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before the end of the comment period, using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

On October 3, 2010, the Chesapeake Bay Power Boat Association will sponsor power boat races on the Patuxent River near Solomons, MD. The event consists of offshore power boats racing in a counter-clockwise direction on a racetrack-type course located between the Governor Thomas Johnson Memorial (SR–4) Bridge and the U.S. Naval Air Station Patuxent River, MD. The start and finish lines will be located near the Solomon's Pier. A large spectator fleet is expected during the event. Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Patuxent River. The regulations will be enforced from 10 a.m. to 6 p.m. on October 3, 2010. The regulated area, approximately 4,000 yards in length and 1,700 yards in width, includes all waters of the Patuxent River, within lines connecting the following positions: from latitude 38°19′45″ N, longitude 076°28′06″ W, thence to latitude 38°19′24″ N, longitude 076°28′30″ W, thence to latitude 38°18′32″ N, longitude 076°28′14″ W; and from latitude 38°17′38″ N, longitude 076°27′26″ W, thence to latitude 38°18′00″ N, longitude 076°26′41″ W, thence to latitude 38°18′59″ N, longitude 076°27′20″ W, located at Solomons, Maryland. The effect of this proposed rule will be to restrict general navigation in the regulated area during the event. Spectator vessels will be allowed to view the event from a designated spectator area within the regulated area, located within a line connecting the following positions: latitude 38°19′14″ N, longitude 076°28′16″ W, thence to latitude 38°18′00″ N, longitude 076°27′26″ W, thence to latitude 38°18′02″ N, longitude 076°27′20″ W, thence to latitude 38°19′16″ N, longitude 076°28′10″ W, thence to the point of origin at latitude 38°19′14″ N, longitude 076°28′16″ W. All coordinates reference Datum NAD 83. Spectator vessels viewing the event outside the regulated area may not block the navigable channel. Other vessels intending to transit the Patuxent River will be allowed to safely transit around the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this regulation will prevent traffic from transiting a portion of the Patuxent River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners and marine information broadcasts, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit safely through a portion regulated area, westward and southward of the spectator fleet area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and

governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the effected portions of the Patuxent River during the event.

Although this regulation prevents traffic from transiting a portion of the Patuxent River at Solomons, MD during the event, this proposed rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be in effect for only a limited period. Though the regulated area extends across the entire width of the river, vessel traffic will be able to transit safely around the spectator fleet and race course areas within the regulated area. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Coast Guard Sector Baltimore, MD. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, 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.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR Part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sail board racing. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add a temporary section, § 100.35–T05–0383, to read as follows:

§ 100.35–T05–0383 Special Local Regulations for Marine Events; Patuxent River, Solomons, MD.

(a) *Regulated area.* The following location is a regulated area: All waters of the Patuxent River within a line connecting the following positions: from latitude 38°19′45′ N, longitude 076°28′06′ W, thence to latitude 38°19′24″ N, longitude 076°28′30″ W, thence to latitude 38°18′32″ N, longitude 076°28′14″ W; and from latitude 38°17′38″ N, longitude 076°27′26″ W, thence to latitude 38°18′00″ N, longitude 076°26′41″ W, thence to latitude 38°18′59″ N, longitude 076°27′20″ W, located at Solomons, Maryland. All coordinates reference Datum NAD 1983.

(b) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* means all vessels participating in the Chesapeake Challenge under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Baltimore.

(4) *Spectator* means all persons and vessels not registered with the event sponsor as participants or official patrol.

(c) *Special local regulations:* (1) The Coast Guard Patrol Commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) The Coast Guard Patrol Commander may terminate the event, or the operation of any vessel participating in the event, at any time it is deemed necessary for the protection of life or property.

(3) All vessel traffic, not involved with the event, will be allowed to transit the regulated area and shall proceed in a northerly or southerly direction westward of the spectator area, taking action to avoid a close-quarters situation with spectators, until finally past and clear of the regulated area.

(4) All Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

(5) Only participants and official patrol are allowed to enter the race course area.

(6) Spectators are allowed inside the regulated area only if they remain within the designated spectator area. Spectators will be permitted to anchor within the designated spectator area. No vessel may anchor within the regulated area outside the designated spectator area. Spectators may contact the Coast Guard Patrol Commander to request permission to pass through the regulated area. If permission is granted, spectators must pass directly through the regulated area outside the race course and spectator areas at a safe speed and without loitering.

(7) Designated Spectator Fleet Area. The spectator fleet area is located within a line connecting the following positions: latitude 38°19′14″ N, longitude 076°28′16″ W, thence to latitude 38°18′00″ N, longitude 076°27′26″ W, thence to latitude 38°18′02″ N, longitude 076°27′20″ W, thence to latitude 38°19′16″ N, longitude 076°28′10″ W, thence to the point of origin at latitude 38°19′14″ N, longitude 076°28′16″ W. All coordinates reference Datum NAD 83.

(8) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

(d) *Enforcement period:* This section will be enforced from 10 a.m. until 6 p.m. on October 3, 2010.

Dated: May 20, 2010.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Captain of the Port Baltimore, Maryland.

[FR Doc. 2010–13907 Filed 6–9–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R5–ES–2010–0032; [92220–1111–0000–C5]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List a Distinct Population Segment of the Gray Wolf in the Northeastern United States as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list a Distinct Population Segment (DPS) of the gray wolf (*Canis lupus*) in five northeastern States as endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition does not present substantial scientific or commercial information indicating that listing a DPS of the gray wolf in Massachusetts, New York, Vermont, New Hampshire, and Maine may be warranted. Therefore, we will not initiate a further status review in response to this petition. However, we ask the public to submit to us at any time, any new information that becomes available concerning the presence of the gray wolf in the northeastern United States, particularly information to substantiate the presence of breeding pairs.

DATES: The finding announced in this document was made on June 10, 2010.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov.* Supporting scientific documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, New England Field Office, 70 Commercial Street, Suite 300, Concord, New Hampshire 03301. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Thomas Chapman, Field Supervisor, or Michael Amaral, Fish and Wildlife Supervisory Biologist, of the New England Field Office (*see* **ADDRESSES**), by telephone at 603–223–2541, or by facsimile to 603–223–0104. If you use a telecommunications device for the deaf (TDD), please call the Federal

Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species.

We base this finding on information provided by the petitioner(s) and information available in our files at the time of the petition review. We evaluated that information in accordance with 50 CFR 424.14(b). On an ongoing basis prior to receipt of the petition, we have had frequent contact with State wildlife biologists from the five-State area and believe that our files represent the best information available regarding the potential occurrence of wolves in the northeastern United States. Our process for making this 90-day finding under § 4(b)(3)(A) of the Act and 50 CFR 424.14(b) of our regulations is limited to a determination of whether the information in the petition and in our files meets the "substantial information" threshold.

Petition History

On February 4, 2009, we received a petition, dated January 31, 2009, from Mr. John Glowa of South China, Maine (on behalf of himself and four other private citizens), requesting that we list a "Northeastern Gray Wolf Distinct Population Segment consisting of the States of New York, Vermont, New Hampshire, Maine, and Massachusetts." The petition did not specify whether the DPS should be listed as endangered or threatened. The petitioners also requested that we "regulate the commerce or taking, and treat as endangered species in the States of New York, Vermont, New Hampshire, Maine, and Massachusetts, coyotes (*Canis latrans*), coyote-gray wolf hybrids (*Canis latrans* × *Canis lupus*), eastern wolves (*Canis lycaon*), eastern wolf–gray wolf hybrids (*Canis lycaon* × *Canis lupus*), coyote-eastern wolf hybrids (Canis latrans × *Canis lycaon*), and coyote-eastern wolf/gray wolf hybrids (*Canis latrans* × *Canis lycaon* × *Canis lupus*) because of their close resemblance to the federally endangered and protected gray wolf." In addition, the petitioners requested that we develop and implement a Northeastern Gray Wolf Recovery Plan. The request to regulate the commerce and taking of coyotes and wolf-like canids, and the request to develop a Northeastern Gray Wolf Recovery Plan, are not petitionable actions under the Act and will be addressed separately from this finding.

The petition clearly identified itself as such and included the identification information of the petitioner required at 50 CFR 424.14(a). We acknowledged receipt of the petition in a letter to Mr. Glowa dated February 24, 2009. This finding addresses the petition to list a Northeastern DPS of the gray wolf (*Canis lupus*).

Previous Federal Actions

In 1974, we listed two subspecies of gray wolf as endangered: The Northern Rocky Mountain (NRM) gray wolf (*C. l. irremotus*) and the eastern timber wolf (*C. l. lycaon*) in the Great Lakes region (39 FR 1158, January 4, 1974). We listed a third gray wolf subspecies, the Mexican wolf (*C. l. baileyi*), as endangered on April 28, 1976 (41 FR 17736), in Mexico and the southwestern United States. On June 14, 1976 (41 FR 24062), we listed the Texas gray wolf subspecies (*C. l. monstrabilis*) as endangered in Texas and Mexico.

In 1978, we listed the gray wolf species, *Canis lupus,* as endangered throughout the lower 48 States, except for a threatened listing in Minnesota (43 FR 9607, March 9, 1978). Recovery efforts that followed were most successful in the species' core areas in the Northern Rocky Mountains and the Western Great Lakes. In 2000, we proposed to revise this species listing into four DPSs: the Western Great Lakes, Western, Northeastern, and Southwestern DPSs (65 FR 43450, July 13, 2000). We also proposed to downlist all but the Southwestern DPS to threatened status based on recovery in the core areas within the Western and Western Great Lakes DPSs.

In a 2003 final rule (68 FR 15804, April 1, 2003), we found that listing a Northeastern DPS of the gray wolf was not warranted because the available data and public comments did not show any breeding population in the Northeast. In addition, there was scientific uncertainty about the species of wolf that occurred in this region historically, as well as uncertainty regarding the taxonomic identity of the wolves indigenous to nearby areas in Ontario and Quebec, Canada. This issue is under continuing study. We, therefore, combined the wolf range in the Northeast with the Western Great Lakes DPS and called it the Eastern DPS. The 2003 final rule downlisted the Eastern DPS and a Western DPS to threatened based on wolf recovery in the core population areas. The 2003 rule also listed a Southwestern DPS as endangered.

Plaintiffs in Oregon opposed to the downlistings challenged the 2003 rule that reclassified these DPSs from the endangered lower 48 population. The District Court in Oregon held that the 2003 rule violated the Act, in part because it created the new threatened DPSs without analyzing the threats to any wolves outside their core recovery areas (*Defenders of Wildlife* v. *Secretary,* 354 F. Supp.2d 1156, 1171–72 (D. Ore. 2005)). Plaintiffs in Vermont also challenged the 2003 rule, and the District Court there likewise stated that the rule failed to analyze the threats outside the core areas (*National Wildlife Federation* v. *Norton,* 386 F. Supp.2d 553, 565 (D. Vt. 2005)). The Vermont court also rejected the biological basis of the Eastern DPS because the 2003 rule suggested that, based on the best information available at that time, any wolves in the Northeast, and those in Eastern Canada, were a different population from wolves in the Midwest.

Because the two courts vacated the 2003 rule, the endangered listing throughout the lower 48 States (and threatened in Minnesota) was reinstated. Neither court addressed the question whether a Northeastern DPS could ever be designated with that region's "low to non-existent" population of wolves (*Defenders of Wildlife,* 354 F. Supp.2d at 1173; *National Wildlife Federation,* 386 F. Supp.2d at 565). As suggested by the two courts, we have since described core populations in smaller Western Great Lakes and Northern Rocky Mountains DPSs that may be recovered (74 FR 15070, 15123; April 2, 2009). Those findings have been challenged. Except for the threatened listing in Minnesota; where listed as an experimental population; and where

delisted due to recovery in Montana, Idaho, portions of eastern Washington, portions of eastern Oregon, and portions of north-central Utah, wolves in the lower 48 States' range, including the Northeast, currently remain listed as endangered (50 CFR 17.11(h)).

In an April 1, 2003, petition to list a Northeastern gray wolf DPS, the Defenders of Wildlife and the Sierra Club (and others) concurred with the determination in our 2003 final rule regarding the absence of a breeding population (Defenders of Wildlife *et al.* 2003). Their petition stated "Since no wolves have formed packs or established territories over the course of the past few decades in the northeast region, there is little reason to believe that they will do so in the future." In regard to the 2003 Defenders *et al.* petition, the Service responded that the absence of a wolf population in the Northeast precluded us from designating that entity as a DPS (J. Geiger, FWS *in litt.* Sept. 12, 2003).

Species Information

The biology and ecology of the gray wolf has been widely reported in the scientific literature (*e.g.,* Carbyn *et al.* 1995; Wydeven *et al.* 2009), in Service recovery plans (*e.g.,* Recovery Plan for the Eastern Timber Wolf (Service 1992)), and in previous proposed and final rules (*e.g.,* 68 FR 15804, April 1, 2003; 71 FR 15266, March 27, 2006; and 74 FR 15123, April 2, 2009). In brief, gray wolves are the largest wild members of the Canidae, or dog family. Adults can range from 18 to 80 kilograms (40–175 pounds), depending on sex and geographic locale. In North America, wolves are primarily predators of large mammals, such as moose (*Alces alces*), white-tailed deer (*Odocoileus virginianus*), and beaver (*Castor canadensis*). Wolves are social animals, normally living in packs of 2 to12 animals, but occasionally pack sizes of greater than 20 animals are reported (68 FR 15805).

Distribution and Taxonomy

The gray wolf historically occurred across most of North America, Europe, and Asia. The only areas of the coterminous United States that apparently lacked gray wolf populations since the last glacial period are parts of California and portions of the southern and eastern United States (an area occupied by the red wolf, *C. rufus*). The identity of the precolonial wolf species that inhabited the northeastern United States has recently been called into question because there is some evidence that indicates that contemporary wolves in southeastern Ontario and southeastern Quebec (and some historical wolf specimens from the northeastern United States) are genetically more closely related to the red wolf than the gray wolf (Wilson *et al.* 2000; Wilson *et al.* 2003; Grewal *et al.* 2004; Kyle *et al.* 2006; and Kyle *et al.* 2008).

Status of the Species

It is widely accepted that wolves became extirpated from the northeastern United States by the year 1900 (Young and Goldman 1944 in Carbyn *et al.* 1995; Nowak 2002; Villemure and Jolicoeur 2004). As noted above, from 2000 to 2003, the Service reviewed the existing status of the wolf in the northeastern United States and found no reliable evidence of breeding pairs or wolves that had established territories. The petition lists information on eight wolves or wolf-like canids killed in the northeastern United States over a 40-year period from 1968 to 2007, and one additional animal in southern Quebec Province, Canada. The species' identity and the origin of several of the animals remain uncertain, and available genetic data indicate that two of the wolves were likely the result of a domestic breeding. The 2002 occurrence of a wolf killed in southern Quebec Province was noted as the first confirmed record of a wolf south of the St. Lawrence River in over 100 years (Villemure and Jolicoeur 2004). The Service finds that this is strong evidence that wolf breeding pairs have not become established in southern Quebec Province, a forested and mixed agricultural landscape contiguous with forested habitats in Maine and New Hampshire. Statements by the petitioners that in 2005, "wildlife workers" were monitoring a wolf pack 20 miles north of the Vermont border in Quebec could not be verified (Struhsacker, NWF *in litt.* 2008), and no further reports of wolves in that area are known to the Service (USFWS unpublished data).

The petition provides an accounting of individual dead wolves and wolf-like canids. It also includes information that potential source populations of wolves occur north of the St. Lawrence River in Quebec and Ontario, Canada, from which wolves could disperse to the five-State area. The Service concurs that source populations of wolves do occur within the recorded dispersal capability of a wolf. However, the petition and our files do not include information sufficient to conclude that wolves may have formed breeding pairs in the five-State area.

Distinct Population Segment Analysis

Section 3 of the Act defines "species" as including "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." The term "distinct population segment" is not recognized in the scientific literature. Therefore, the Service and the National Marine Fisheries Service adopted a joint policy for recognizing DPSs under the Act (DPS Policy; 61 FR 4722) on February 7, 1996. The DPS Policy requires the consideration of two elements when evaluating whether a vertebrate population segment may be considered a DPS: (1) The discreteness of the population segment in relation to the remainder of the species or subspecies to which it belongs; and (2) the significance of the population segment to the species or subspecies to which it belongs.

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon (an organism or group of organisms) as a consequence of physical, physiological, ecological, or behavioral factors; or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of § 4(a)(1)(D) of the Act (*i.e.,* inadequate regulatory mechanisms).

If a population segment is found to be discrete under one or more of the above conditions, its biological and ecological significance to the taxon to which it belongs is evaluated. This consideration may include, but is not limited to: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that the loss of the discrete population segment would result in a significant gap in the range of a taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

The definition of a "population" is central to our analysis under the DPS policy. Our regulations define a "population" as a "group of fish or wildlife * * * in common spatial arrangement that interbreed when

mature" (50 CFR 17.3). We have refined that definition in experimental wolf reintroduction rules to mean "at least two breeding pairs of gray wolves that each successfully raise at least two young" annually for 2 consecutive years (59 FR 60252, 60266; November 22, 1994).

Under the Act, an experimental population must be "wholly separate geographically from nonexperimental populations of the same species" (16 U.S.C. 1539(j)(1)). Opponents of wolf reintroduction in Yellowstone National Park have argued that releasing an experimental population would violate this separation requirement because individual wolves sometimes disperse to Yellowstone from natural populations to the north. The Court of Appeals rejected this argument: "by definition lone dispersers do not constitute a population or even part of a population, since they are not 'in common spatial arrangement' sufficient to interbreed with other members of a population" (*Wyoming Farm Bureau Federation* v. *Babbitt,* 199 F.3d 1224, 1234 (10th Cir. 2000)). This decision followed another Court of Appeals holding that, despite "sporadic sightings of isolated indigenous wolves in the release area, lone wolves, or 'dispersers,' do not constitute a population" under the Act (*U.S.* v. *McKittrick,* 142 F.3d 1170, 1175 (9th Cir. 1998), cert. denied, 525 U.S. 1072 (1999)). Thus, the courts have upheld the Service's interpretation that pairs must breed in order to have a "population."

The petition provides an account of individual wolves and wolf-like canids dispersing into the petitioned DPS area, as occurs in Yellowstone National Park. However, the petition does not provide information suggesting that dispersing wolves may be interbreeding. Nor do we have any information in our files indicating that dispersing wolves may be interbreeding. While the occurrence of dispersing wolves raises the theoretical possibility that a population could exist, it does not constitute substantial information that a population may actually exist. That is, it is not the amount of information that would lead a reasonable person to conclude that a population (*i.e.,* at least two breeding pairs of gray wolves that each successfully raise at least two young annually for 2 consecutive years) may exist. Because we do not have substantial information that any "population" of the gray wolf may exist in the Northeast, we lack substantial information that there may be a discrete population in the Northeast. Because we find that there is not substantial information that a discrete gray wolf population may exist in the Northeast, we do not evaluate whether such a population could be significant, and could be endangered or threatened.

Finding

We have reviewed the petition and supporting information provided with the petition, as well as information in our files. Based on this review, we find that the petition and information in our files do not present substantial information indicating that listing a gray wolf DPS in the States of Massachusetts, New York, Vermont, New Hampshire, and Maine as threatened or endangered may be warranted. If you wish to provide information regarding the Northeast DPS of gray wolf, you may submit your information or materials to the Field Supervisor/Listing Coordinator, New England Field Office (*see* **ADDRESSES**), at any time.

As explained above in the Previous Federal Actions section, any wolf found in the Northeast is still classified as endangered under the lower 48 United States listing. Therefore, should one or more wolves disperse into the Northeast from Canada, the protections of the Act would apply.

References Cited

A complete list of all references cited in this document is available on the Internet at *http://www.regulations.gov* and upon request, from the New England Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this notice is Michael Amaral, Supervisory Fish and Wildlife Biologist, (*see* **ADDRESSES**). Martin Miller, Chief, Division of Threatened and Endangered Species, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035, also contributed to this finding.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 12, 2010.

Daniel M. Ashe,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 2010–13882 Filed 6–9–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS-R9-MB-2010-0040]
[91200-1231-9BPP-L2]

RIN 1018-AX06

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations for the 2010–11 Hunting Season; Notice of Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), proposed in an earlier document to establish annual hunting regulations for certain migratory game birds for the 2010–11 hunting season. This supplement to the proposed rule provides the regulatory schedule, announces the Service Migratory Bird Regulations Committee and Flyway Council meetings, and provides Flyway Council recommendations resulting from their March meetings.

DATES: You must submit comments on the proposed regulatory alternatives for the 2010–11 duck hunting seasons by June 25, 2010. Following subsequent **Federal Register** documents, you will be given an opportunity to submit comments for proposed early-season frameworks by July 31, 2010, and for proposed late-season frameworks and subsistence migratory bird seasons in Alaska by August 31, 2010.

The Service Migratory Bird Regulations Committee will meet to consider and develop proposed regulations for early-season migratory bird hunting on June 23 and 24, 2010, and for late-season migratory bird hunting and the 2011 spring/summer migratory bird subsistence seasons in Alaska on July 28 and 29, 2010. All meetings will commence at approximately 8:30 a.m.

ADDRESSES: You may submit comments on the proposals by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments on docket number FWS-R9-MB-2010-0040.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R9-NB-2010-0040; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

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 you provide us (see the **Public Comments** section below for more information).

The Service Migratory Bird Regulations Committee will meet in room 200 of the U.S. Fish and Wildlife Service's Arlington Square Building, 4401 N. Fairfax Dr., Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP-4107-ARLSQ, 1849 C Street, NW, Washington, DC 20240; (703) 358-1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2010

On May 13, 2010, we published in the **Federal Register** (75 FR 27144) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and addressed the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. This document is the second in a series of proposed, supplemental, and final rules for migratory game bird hunting regulations. We will publish proposed early-season frameworks in early July and late-season frameworks in early August. We will publish final regulatory frameworks for early seasons on or about August 16, 2010, and for late seasons on or about September 15, 2010.

Service Migratory Bird Regulations Committee Meetings

The Service Migratory Bird Regulations Committee will meet June 23–24, 2010, to review information on the current status of migratory shore and upland game birds and develop 2010–11 migratory game bird regulations recommendations for these species, plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands. The Committee will also develop regulations recommendations for September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, the Committee will review and discuss preliminary information on the status of waterfowl.

At the July 28-29, 2010, meetings, the Committee will review information on the current status of waterfowl and develop 2010–11 migratory game bird regulations recommendations for regular waterfowl seasons and other species and seasons not previously discussed at the early-season meetings. In addition, the Committee will develop recommendations for the 2011 spring/summer migratory bird subsistence season in Alaska.

In accordance with Departmental policy, these meetings are open to public observation. You may submit written comments to the Service on the matters discussed.

Announcement of Flyway Council Meetings

Service representatives will be present at the individual meetings of the four Flyway Councils this July. Although agendas are not yet available, these meetings usually commence at 8 a.m. on the days indicated.

Atlantic Flyway Council: July 22–23, Hilton Wilmington, Riverside, Wilmington, NC.

Mississippi Flyway Council: July 23–24, Radisson Admiral Semmes Hotel, Mobile, AL.

Central Flyway Council: July 21–23, Embassy Suites, Norman, OK.

Pacific Flyway Council: July 23, John Ascuaga's Nugget, Reno, NV.

Review of Public Comments

This supplemental rulemaking describes Flyway Council recommended changes based on the preliminary proposals published in the May 13, 2010, **Federal Register**. We have included only those recommendations requiring either new proposals or substantial modification of the preliminary proposals and do not include recommendations that simply support or oppose preliminary proposals and provide no recommended alternatives. Our responses to some Flyway Council recommendations, but not others, are merely a clarification aid to the reader on the overall regulatory process, not a definitive response to the issue. We will publish responses to all proposals and written comments when we develop final frameworks.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items identified in the May 13 proposed rule. Only those categories requiring your attention or for which we received Flyway Council recommendations are discussed below.

1. Ducks

Duck harvest management categories are: (A) General Harvest Strategy; (B) Regulatory Alternatives, including specification of framework dates, season length, and bag limits; (C) Zones and Split Seasons; and (D) Special Seasons/Species Management.

A. General Harvest Strategy

Council Recommendations: The Mississippi Flyway Council recommended that regulations changes be restricted to one step per year, both when restricting as well as liberalizing hunting regulations.

Service Response: As we stated in the May 13 **Federal Register**, the final Adaptive Harvest Management protocol for the 2010–11 season will be detailed in the early-season proposed rule, which will be published in mid-July.

B. Regulatory Alternatives

Council Recommendations: The Mississippi and Central Flyway Councils recommended that regulatory alternatives for duck hunting seasons remain the same as those used in 2009.

Service Response: As we stated in the May 13 **Federal Register**, the final regulatory alternatives for the 2010–11 season will be detailed in the early-season proposed rule, which will be published in mid-July.

C. Zones and Split Seasons

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council and the Central and Pacific Flyway Councils recommended that the Service allow 3 zones, with 2-way splits in each zone, and 4 zones with no splits as additional zone/split-season options for duck seasons during 2011–15. In addition, it is recommended that States with existing grandfathered status be allowed to retain that status.

D. Special Seasons/Species Management

i. Special Teal Seasons

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service explore options for providing production States an opportunity to harvest teal outside the regular duck season frameworks as part of the teal season assessment that is currently being conducted.

vi. Pintails

Council Recommendations: The Atlantic Flyway Council recommended adoption of a derived Northern Pintail Harvest Strategy and provided the following pintail harvest objectives for the Atlantic Flyway and for individual Atlantic Flyway States: (1) The harvest objective for northern pintails should be Maximum Sustained Yield (MSY); (2) constrain closed seasons to breeding populations below 1.75 million birds;

and (3) regulatory alternatives should include a closed season, a liberal season with a 1-bird daily bag limit, and a liberal season with a 2-bird daily bag limit. These objectives were captured in Scenario #39 in the Service's draft Northern Pintail Harvest Strategy (Draft Strategy) (available at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html*).

The Mississippi Flyway Council recommended use of the Draft Strategy's harvest management Scenarios #39, #29, or #39(b) to develop an optimal harvest policy. The Council remains concerned regarding the following: (1) The Service does not provide performance metrics for harvest management Scenarios #39 and #39(b) with no closed seasons until the pintail BPOP falls to 1.0 million birds; (2) the method for integrating the preferred alternatives from other Flyways into a single harvest policy is not defined and reviewed; (3) additional weighting exercises that address more fundamental harvest objectives, such as simplified regulations, maintaining/expanding hunting opportunity for pintails, and maximizing harvest, have not yet been conducted; and (4) there is uncertainty about the consistency of the harvest strategy for pintails with the fundamental objectives addressed through the North American Waterfowl Management Plan (NAWMP) revision.

The Central Flyway Council recommended continued discussions on the potential structure and use of a derived harvest strategy for pintails. They recommend a one-year implementation of Scenario #39 in the Draft Strategy until a number of issues are resolved.

The Pacific Flyway Council recommended that harvest management for pintails be based on a derived strategy that: (1) uses MSY as a harvest objective; (2) constrains closed seasons to breeding populations below 1.75 million birds; and (3) eliminates partial seasons (shorter pintail seasons within a longer general duck season). Specifically, the Council recommended Scenario #39 as its preferred strategy for regulations in 2010–11 and further review for the next year. The Council supported a derived strategy that does not have an explicit allocation of harvest among the flyways. The Council also recommended that Alaska's exclusion from the pintail harvest management process be continued.

The Council further recommended the use of historic proportions of harvest to weight the inputs from the flyways should that input differ in the future. They noted that we proposed to consider inputs from all flyways equally, but the absolute and relative abundance of pintail is highest in the Pacific Flyway, and regulatory alternatives have a different effect there. They continued to support more work on alternative underlying population models because they do not believe that the model set in the strategy includes a model that addresses the effect of harvest regulation changes on pintail survival rates in a manner similar to ultra-structural models. The Council has recommended in the past that we investigate the usefulness of sex-specific regulations for pintails as a way to increase hunting opportunity on male pintails.

Lastly, the Council recognized that all of the analyzed strategies predict the perpetuation of the pintail breeding population between 2.78 and 3.57 million pintails, but that the differences among the strategies center largely on effects on the hunting public. These effects include the frequency of closed and partial seasons, larger daily bag limits, and annual regulation changes. The Council has limited information on hunter preferences about the trade-offs inherent in the analyzed derived strategies.

Service Response: We greatly appreciate the time and attention that all four Flyway Councils have devoted to review and consideration of the various alternatives for implementing a derived pintail harvest strategy. We note that all four flyways have recommended the same alternative derived strategy be implemented this year. Therefore, we propose adoption of alternative 39 as described and evaluated in the Service's report "**Proposal for a Derived and Adaptive Harvest Strategy for Northern Pintails (January 2010)**" and incorporated in a "**Proposed Northern Pintail Harvest Strategy (May 2010)**" (both available at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html*) for the 2010–11 hunting season. Numerous variations of the final proposed harvest strategy were evaluated and deliberated by the Service and Flyway Councils that differed in their expression of management objectives and regulatory alternatives, but that shared a common scientific underpinning. Alternative 39 was deemed to best balance tradeoffs among fundamental objectives identified for pintail harvest management. We note that additional technical work became available to the Councils and their technical committees very late in the process.

Over the coming year, we will review this choice of alternative 39 based on one year of experience, as well as input received from the Councils, public, and Service technical staff, to determine if a different alternative will better insure the long-term conservation of northern pintails and meet the interests of the hunting public. Changes, if warranted, would be implemented for the 2011–12 regulations cycle.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Mississippi Flyway Council recommended that the closing date for the September Canada goose season in Minnesota be September 22 Statewide.

The Central Flyway Council recommended that we increase the daily bag limit framework from 5 to 8 for the Central Flyway States of South Dakota, Nebraska, Kansas and Oklahoma during the Special Early Canada Goose hunting season.

B. Regular Seasons

Council Recommendations: The Mississippi Flyway Council recommended that the framework opening date for all species of geese for the regular goose seasons in Michigan and Wisconsin be September 16, 2010.

9. Sandhill Cranes

Council Recommendations: The Mississippi, Central, and Pacific Flyway Councils recommended a sandhill crane hunting season for mid-continent sandhill cranes in northwest Minnesota in 2010, following guidelines outlined in the 2006 Cooperative Management Plan for mid-continent sandhill cranes.

The Central and Pacific Flyway Councils recommend using the 2010 Rocky Mountain Population (RMP) sandhill crane harvest allocation of 1,979 birds as proposed in the allocation formula using the 2007–09 3–year running average.

The Pacific Flyway Council recommended initiating a limited hunt for Lower Colorado River Valley (LCRV) Sandhill Cranes in Arizona with a goal of a limited harvest of 9 cranes during the 2010–11 hunting season. Arizona will issue permits to hunters and require mandatory check-in of all harvested cranes. The Service previously approved the hunt in 2007.

14. Woodcock

Council Recommendations: The Atlantic and Mississippi Flyway Councils recommended adoption of the Interim American Woodcock Harvest Strategy (available at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html*) for implementation in the 2011–12 hunting season.

The Central Flyway Council recommended that the interim harvest

strategy outlined in the Draft American Woodcock Harvest Strategy be implemented for a period of 5 years (2011–15).

16. Mourning Doves

Council Recommendations: The Atlantic and Mississippi Flyway Councils recommended use of the "moderate" season framework for States within the Eastern Management Unit population of mourning doves resulting in a 70–day season and 15-bird daily bag limit. The daily bag limit could be composed of mourning doves and white-winged doves, singly or in combination.

The Mississippi and Central Flyway Councils recommend the use of the standard (or "moderate") season package of a 15-bird daily bag limit and a 70–day season for the 2010–11 mourning dove season in the States within the Central Management Unit.

The Pacific Flyway Council recommended use of the "moderate" season framework for States in the Western Management Unit (WMU) population of mourning doves, which represents no change from last year's frameworks.

Public Comments

The Department of the Interior's policy is, whenever possible, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgating final migratory game bird hunting regulations, we will consider all comments we receive. These comments, and any additional information we receive, may lead to final regulations that differ from these proposals.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post all comments in their entirety—including your personal identifying information—on *http://www.regulations.gov*. 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.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, Room 4107, 4501 North Fairfax Drive, Arlington, VA 22203.

For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments we receive during the comment period and respond to them after the closing date in the preambles of any final rules.

NEPA Consideration

NEPA considerations are covered by the programmatic document "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14),'' filed with the Environmental Protection Agency on June 9, 1988. We published notice of availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the address indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as detailed in a March 9, 2006, **Federal Register** (71 FR 12216). We prepared a scoping report summarizing the scoping comments and scoping meetings. The report is available by either writing to the address indicated under **FOR FURTHER INFORMATION CONTACT** or by viewing on our website at *http://www.fws.gov/migratorybirds*.

Endangered Species Act Consideration

Before issuance of the 2010–11 migratory game bird hunting regulations, we will comply with provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act), to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under section 7 of the Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order 12866

The Office of Management and Budget has determined that this rule is significant and has reviewed this rule under Executive Order 12866. OMB bases its determination of regulatory significance 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.

(d) Whether the rule raises novel legal or policy issues.

An economic analysis was prepared for the 2008–09 season. This analysis was based on data from the 2006 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) Issue restrictive regulations allowing fewer days than those issued during the 2007–08 season, (2) Issue moderate regulations allowing more days than those in alternative 1, and (3) Issue liberal regulations identical to the regulations in the 2007–08 season. For the 2008–09 season, we chose alternative 3, with an estimated consumer surplus across all flyways of $205–$270 million. At this time, we are proposing no changes to the season frameworks for the 2010–11 season, and as such, we will again consider these three alternatives. However, final frameworks will depend on population status information available later this year. For these reasons, we have not conducted a new economic analysis, but the 2008–09 analysis is part of the record for this rule and is available at *http://www.fws.gov/migratorybirds/*

NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs or at *http://www.regulations.gov*.

Regulatory Flexibility Act

The regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, and 2008. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5–year intervals. The 2008 Analysis was based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.2 billion at small businesses in 2008. Copies of the Analysis are available upon request from the Division of Migratory Bird Management (see **FOR FURTHER INFORMATION CONTACT**) or from our website at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov*.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are used in formulating migratory game bird hunting regulations. OMB has approved the information collection requirements of our Migratory Bird Surveys and assigned control number 1018–0023 (expires 2/28/2011). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska, and assigned control number 1018–0124 (expires 4/30/2013).

A Federal 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 OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this proposed rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

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), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no effects on Indian trust resources. We solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2010–11 migratory bird hunting season in the May 13, **Federal Register**. The resulting proposals will be contained in a separate proposed rule. By virtue of these actions, we have consulted with Tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*). We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are

developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations.

These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2010–11 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a–j.

Dated: May 28, 2010

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–13956 Filed 6–9–10; 8:45 am]

BILLING CODE S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 80

[Docket No. FWS–R9–WSR–2009–0088; 91400–5110–POLI–7B; 91400–9410–POLI–7B]

RIN 1018–AW65

Financial Assistance: Wildlife Restoration, Sport Fish Restoration, Hunter Education and Safety

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose changes in the regulations governing the Wildlife Restoration, Sport Fish Restoration, and Hunter Education and Safety (Enhanced Hunter Education and Safety) financial assistance programs. We conducted rulemaking 2 years ago to amend these regulations, and based on experience gained since then, we propose to adopt two recommendations that we received in response to the prior proposed rule and to modify three provisions from the subsequent final rule. We also propose to update the regulations to reflect changes in law, regulation, policy, technology, and practice during the past 25 years. In addition, this proposed rule simplifies specific requirements of the establishing authorities of the Wildlife Restoration and Sport Fish Restoration programs and clarifies terms in those authorities as well as terms generally used in grant administration. Finally, this proposed rule organizes the regulations to follow the life cycle of a grant and rewords and reformats the regulations following Federal plain language policy and current rulemaking guidance.

DATES: We will accept comments received or postmarked on or before August 9, 2010.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R9–WSR–2009–0088.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018–AW65; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all public comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (*see* the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Joyce Johnson, Wildlife and Sport Fish Restoration Program, Division of Policy and Programs, U.S. Fish and Wildlife Service, 703–358–2156.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Department of the Interior's (DOI) Fish and Wildlife Service (Service) manages or co-manages 55 financial assistance programs, 19 of which are managed, in whole or in part, by the Service's Wildlife and Sport Fish Restoration Program. This proposed rule would revise title 50, part 80, of the Code of Federal Regulations (CFR), which is "Administrative Requirements, Pittman-Robertson Wildlife Restoration and Dingell-Johnson Sport Fish Restoration Acts." The primary users of these regulations are the fish and wildlife agencies of the 50 States, the Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, and the territories of Guam, the U.S. Virgin Islands, and American Samoa. We use "State" or "States" in this document to refer to any or all of these jurisdictions except the District of Columbia for purposes of the Pittman-Robertson Wildlife Restoration Act and the two grant programs and one subprogram under the Act because the Act does not authorize funding for the District. The term, "the 50 States," applies only to the 50 States of the United States. It does not include the Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, or the territories of Guam, the U.S. Virgin Islands, and American Samoa. These regulations tell States how they may: (a) Use revenues from hunting and fishing licenses; (b) receive annual apportionments from the Federal Aid to Wildlife Restoration Fund and the Sport Fish Restoration and Boating Trust Fund; (c) receive financial assistance from the Wildlife Restoration program, the Basic Hunter Education and Safety subprogram, and the Enhanced Hunter Education and Safety program; and (d) receive financial assistance from the Sport Fish Restoration program, the Recreational Boating Access subprogram, the Aquatic Resources Education subprogram, and the Outreach and Communications subprogram. These programs provide financial assistance to State fish and wildlife agencies to: (a) Restore or manage wildlife and sport fish; (b) provide hunter-education, hunter-development, and hunter-safety programs; (c) provide recreational boating access; (d) enhance the public's understanding of water resources, aquatic-life forms, and sport fishing; and (e) develop responsible attitudes and ethics toward the aquatic environment. The Catalog of Federal Domestic Assistance at *http://www.cfda.gov* describes these programs under 15.611, 15.605, and 15.626.

The Pittman-Robertson Wildlife Restoration Act, as amended (50 Stat. 917; 16 U.S.C. 669–669k), and the Dingell-Johnson Sport Fish Restoration Act, as amended (64 Stat. 430; 16 U.S.C. 777–777n, except 777e–1 and g–1), established the programs affected by this proposed rule in 1937 and 1950 respectively. We refer to these acts in this document and in the proposed rule as "the Acts." They established a hunting- and angling-based user-pay and user-benefit system in which the State fish and wildlife agencies of the 50 States, the Commonwealths, and the territories receive formula-based funding from a continuing appropriation. The District of Columbia also receives funding, but only under the Dingell-Johnson Sport Fish Restoration Act. The Pittman-Robertson Wildlife Restoration Act does not authorize funding for the District of

Columbia. Industry partners pay excise taxes on equipment and gear manufactured for purchase by hunters, anglers, boaters, archers, and recreational shooters. The Service distributes these funds to the fish and wildlife agencies of the States that contribute matching funds, generally derived from hunting and fishing license sales. In fiscal year 2009, the States and other eligible jurisdictions received $336 million through the Wildlife Restoration and Enhanced Hunter Education and Safety programs and $404 million through the Sport Fish Restoration program.

Revisions of 50 CFR 80 during the past 25 years include one section of 50 CFR 80 in 1987, another section in 1989, and two sections in 2001. We revised the license-certification section in 2008 to address the greater number of license choices that many States have offered hunters and anglers in recent years. We also revised other sections in 2008 to: (a) Comply with Federal policy on plain language and writing style, (b) remove subject matter addressed adequately in other grant regulations, or (c) correct obsolete references or legal requirements. The focus of all revisions since 1987 was on specific issues. We have not systematically reviewed and revised 50 CFR 80 since the early 1980's, so the regulations at this part do not fully reflect the following laws and policies:

(a) The Wildlife and Sport Fish Restoration Programs Improvement Act of 2000, Nov. 1, 2000, (Pub. L. 106–408). This amendment of the Acts authorized the Enhanced Hunter Education and Safety program.

(b) Public Law 98–454, title VI, section 601(b), Oct. 5, 1984. This law states that a Federal awarding agency must waive any required match under $200,000 for grants to Guam, the Northern Mariana Islands, the U.S. Virgin Islands, and American Samoa.

(c) 43 CFR 12.43, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,* Mar. 11, 1988. This section of the CFR defines "obligations" in the context of a grantee incurring costs under a grant. This definition does not apply to "obligations" in the context of a Federal obligation of funds, which involves the awarding agency making funds available for a grant, the submission of an application, and the issuance and acceptance of an award under specified terms and conditions.

(d) OMB Circular A–102, *Grants and Cooperative Agreements with State and Local Governments,* Oct. 14, 1994, and amended Aug. 29, 1997. This policy requires us to treat land acquisition and development, in effect, as a phase of construction for the purpose of a grantee submitting an assurance statement with the Application for Federal Assistance.

(e) Department of the Interior Manual, 505 DM 2, "Procurement Contracts, Grant and Cooperative Agreements," Jan. 9, 2008. This DOI manual chapter states that a grant-funded project could involve amounts from more than one program or appropriation when different relationships would otherwise be appropriate and beneficial for different parts of the project.

(f) Service Manual chapter 522 FW 4, "Comprehensive Management System Grants," Nov. 30, 2004. This FWS manual chapter guides the award and operation of a Comprehensive Management System grant, which the establishing authorities authorize as an alternative to project-by-project grants.

(g) Service Manual chapter 522 FW 16, "Preagreement Costs," Oct. 13, 2005. This FWS manual chapter establishes conditions under which a grantee may incur costs before the effective date of a grant. It incorporates recommendations of a joint task force of Federal and State officials.

(h) Service Manual chapter 522 FW 19, "Program Income from Federal Assistance Grants," Feb. 20, 2008. This chapter establishes that States may: (a) Select the deduction or addition methods of applying program income to Federal and non-Federal outlays, and (b) reduce program income by an amount equal to the costs of generating it. The chapter gives examples of the costs of generating program income. It establishes criteria under which a Regional Director may approve an applicant's request to use program income as match. It also requires grant agreements to state that income earned by the grantee after the grant period from grant-supported activities will be treated as: (a) License revenue and used to support the administration of the State fish and wildlife agency, or (b) additional funding for purposes consistent with the grant or program that generated the income. The chapter also allows the grantee to request that grant agreements require that subgrantees account for program income earned after the grant period. Finally, the chapter gives examples of program income and states that the Service does not treat cooperative farming and grazing arrangements as program income if the State fish and wildlife agency designs the farming or grazing to advance its fish or wildlife management objectives. Service Manual chapter 522 FW 16 is based on recommendations of a joint task force of Federal and State officials.

(i) Director's guidance on "Policy—Federal Aid Timber Sales," June 6, 2002. This guidance applies a Dec. 5, 2000, Solicitor's Opinion to the Wildlife and Sport Fish Restoration program nationwide. That Opinion stated that timber revenue from wildlife management practices on lands bought under Wildlife Restoration or Sport Fish Restoration grants is program income instead of proceeds from the sale of real property.

(j) The Presidential memorandum of June 1, 1998, "Plain Language in Government Writing." This memorandum requires the use of plain language in all proposed and final rulemaking documents published in the **Federal Register**.

Updates to the Regulations

We have arranged the sections of the proposed rule into subparts of related subject matter. The gaps in section numbers between each subpart allow the addition of new sections in the future. We have summarized the changes in the proposed rule by section or by group of sections, and cross-referenced proposed section numbers to the corresponding numbers in the currently published version of 50 CFR 80, as amended by the final rule published in the **Federal Register** at 73 FR 43120 on July 24, 2008. We are referring to the 2008 version of 50 CFR 80 when we use the term "current" before a section number or before a reference to 50 CFR 80.

Subpart A—General

Section 80.1 What does this part do?

This proposed section does not have a corresponding section in the current regulations. It is a needed introduction to a part that covers subjects as diverse as (a) hunting and fishing license revenue, and (b) financial assistance under the three grant programs and four subprograms authorized by the Acts.

Section 80.2 What terms do I need to know?

This proposed section defines the following terms that are not in the corresponding "Definitions" section of the current § 80.1: Agency, angler, capital improvement, comprehensive management system grant, construction, diversion, grant, grantee, match, project-by-project grant, real property, sport fish, subaccount, useful life, and wildlife. We defined "agency" as the State fish and wildlife agency. We used this shorter form in headings and in most places in the text to make the

headings and text easier to read. However, not all readers will consult the definitions in § 80.2 before reading the sections that are of interest to them. To avoid any misunderstanding, we used the longer "State fish and wildlife agency" at the first opportunity in the text of each section and in places where clarity on this issue was especially important.

We defined "construction" to include land acquisition and the clearing and reshaping of land as types or phases of construction. This is consistent with OMB Circular A–102, *Grants and Cooperative Agreements with State and Local Governments,* which treats land acquisition and development as construction for purposes of grantees' submitting an assurance statement at the time of application.

We limited the definition of "wildlife" to birds and mammals, which have been the focus of this program since passage of the Pittman-Robertson Wildlife Restoration Act in 1937. The Act was amended in 2000 to include the Wildlife Conservation and Restoration program and accommodated this program by defining "wildlife" more broadly as "any species of wild free-ranging fauna including fish." The more limited definition in the proposed section is a common element in all State definitions of "wildlife." We add this more restrictive definition to 50 CFR 80 to clarify that the broader definition in the Act addresses the full scope of the Wildlife Conservation and Restoration program.

The proposed section deletes "common horsepower" because the term occurs only in the current § 80.24, "Recreational boating access facilities." The proposed § 80.51(b)(1), which would replace the current § 80.24, in part, uses the definition of "common horsepower" instead of the term.

The proposed § 80.2 also deletes "resident angler" because it occurs only in the proposed § 80.66, so we defined the term in that proposed section. We deleted "Wildlife and Sport Fish Restoration Program funds" from the proposed § 80.2 because the proposed rule does not use the term.

Subpart B—State Fish and Wildlife Agency Eligibility

Section 80.10 Who is eligible to receive the benefits of the Acts?

This proposed section restates the current § 80.2, "Eligibility," and § 80.3, "Assent legislation."

Section 80.11 How does a State become ineligible to receive the benefits of the Acts?

This proposed section restates, in part, the current § 80.4, "Diversion of license fees." It is consistent with the remedies for noncompliance at 43 CFR 12.83, "Enforcement."

Section 80.12 Does an agency have to confirm that it wants to receive an annual apportionment of funds?

This proposed section restates the current § 80.9, "Notice of desire to participate." This requirement is based on a provision of the Pittman-Robertson Wildlife Restoration Act. The proposed section would no longer require States to notify the Service within 60 days of receiving a certificate of apportionment that it wants to participate in the benefits of the Acts. It would require a 60-day notice only in the unlikely event that the State does not want to receive the annual apportionment of funds.

Subpart C—License Revenue

Section 80.20 What does revenue from hunting and fishing licenses include?

This proposed section clarifies that license revenue includes fees for access to (a) property acquired or constructed with license revenue, or (b) a recreational opportunity, product, or commodity derived from property acquired, managed, maintained, or produced with license revenue. The proposed section includes animal products among the examples of personal property. This would correct the listing of animal products among examples of real property in the current § 80.4, "Diversion of license fees." We clarify that only mineral rights and standing timber are real property, but become personal property when the owner extracts the minerals or harvests the timber. The clarification on timber is based on a Dec. 5, 2000, Solicitor's Opinion on Federal Aid Timber Sales. We also clarify in the proposed section that State property acquired or produced with license revenue could include intellectual property such as patents and copyrights.

Section 80.21 What if a State diverts license revenue from the control of its fish and wildlife agency?

This proposed section restates the opening sentence of the current § 80.4, "Diversion of license fees," and the current § 80.4(c) and (d).

Section 80.22 What must a State do to resolve a declaration of diversion?

This proposed section corresponds to and expands on the current § 80.4(a)(3), "Diversion of license fees," and § 80.4(d). The proposed section mentions for the first time that an agency may receive the market rental rate of the diverted property during the period of diversion as an alternative to the actual income earned.

Section 80.23 Does a declaration of diversion affect a previous Federal obligation of funds?

This proposed section restates the current § 80.4(e) "Diversion of license fees."

Subpart D—License Certification

Section 80.30 Why must an agency certify the number of paid license holders?

This proposed section restates and expands part of the first sentence of the current § 80.10(a), "State certification of licenses."

Section 80.31 How does an agency certify the number of paid license holders?

This proposed section restates the current § 80.10(a)(3), "State certification of licenses," and expands on the current § 80.10(c). The proposed section would require for the first time that if a State uses statistical sampling to eliminate multiple counting of single individuals in the annual certification of the number of people who hold paid licenses, it must sample: (a) Every 5 years, or (b) when the State changes the structure of its licensing system in a way that could affect the number of people who hold paid licenses, whichever comes first.

Section 80.32 What is the certification period?

This proposed section restates the current § 80.10(a)(1) and (2), "State certification of licenses."

Section 80.33 How does an agency decide who to count as paid license holders in the annual certification?

This proposed section restates the current § 80.10(b)(1)–(6), "State certification of licenses," but we made several significant changes. We state clearly in the proposed § 80.33(a)(1) that an agency must count a person who has a paid license to hunt or fish even if that person is not required to have a paid license or is unable to hunt or fish. This reflects the view that any paid license holder meets the requirements of the Acts and that license fees support the State fish and wildlife agency even if the license holder does not engage in the activity. We added a requirement at the proposed § 80.33(a) that the State fish and wildlife agency may count a person who has a paid license only if

the issue of the license in the license holder's name is verifiable in State records.

In the proposed § 80.33(a)(4) and (b), we replaced "State" in the current § 80.10(b)(2) with "State fish and wildlife agency." This would allow a State to use general-revenue funds to offset lost revenues from hunting and fishing licenses issued free of charge to veterans and other categories of license holders. The State could then count the individuals holding these licenses as paid license holders for annual certification purposes under certain conditions. We propose this change based on a recommendation of a joint task force of Federal and State officials.

In the proposed § 80.33(a)(4), we changed the "period in which the license was purchased," which is the language of the current § 80.10(b)(3), to "period in which the license first becomes valid." This change would more accurately reflect the actual participation in a hunting or fishing season by counting those who buy a license before the opening of a season.

The current § 80.10(b)(4)(i), reads "The net revenue from the [multiyear] license is in close approximation with the number of years in which the license is legal." We changed this in the proposed section at § 80.33(b) to read, "The State fish and wildlife agency must receive net revenue from the multiyear license of at least $1 for each year in which the license is valid." This change applies the same net revenue standard to multiyear licenses as applies to single-year licenses. We propose this change based on a recommendation of a joint task force of Federal and State officials.

We changed "legal" to "valid" in § 80.33(b) for the sake of consistency with § 80.33(a)(4). We added life-expectancy tables and mortality tables as potential techniques to determine if a lifetime-license holder remains a license holder in the proposed § 80.33(b)(2), which corresponds to the current § 80.10(b)(4)(ii).

Section 80.34 May an agency count license holders in the annual certification if the agency receives funds from the State to cover their license fees?

This proposed section does not have a corresponding section in the current 50 CFR 80. It establishes the conditions under which the State fish and wildlife agency may count a license holder if the State uses general-revenue funds to offset lost revenues from hunting and fishing licenses issued free of charge to veterans or another category of license holder. This proposed section is linked to language in the proposed § 80.33(a)(4) and (b), which we discuss above.

Section 80.35 How does an agency calculate net revenue from a license?

This proposed section restates and expands on the current § 80.10(b)(2), "State certification of licenses," by adding examples of the costs of issuing licenses to include automated license-system costs and licensing-unit personnel costs.

Section 80.36 What must an agency do if it becomes aware of errors in its data?

This proposed section does not have a corresponding section in the current regulations, but the current § 80.10(d), "State certification of licenses," indirectly acknowledges the possibility that an agency may submit incorrect certified data. This proposed section establishes a 90-day window for the State fish and wildlife agency to submit revised certified data after it becomes aware of errors in its data.

Section 80.37 May the Service recalculate an apportionment if an agency submits revised data?

This proposed section restates and expands on the current § 80.10(d), "State certification of licenses." It explicitly states that the Service may recalculate an apportionment if it receives revised certified data on license holders before the Director approves the final apportionment.

Section 80.38 May the Director correct a Service error in apportioning funds?

This proposed section restates the last sentence of the current § 80.10(d), "State certification of licenses."

Subpart E—Eligible Activities

Section 80.50 What activities are eligible for funding under the Pittman-Robertson Wildlife Restoration Act?

Section 80.51 What activities are eligible for funding under the Dingell-Johnson Sport Fish Restoration Act?

These proposed sections restate and expand on the current § 80.5, "Eligible undertakings," § 80.15(f)(1), "Allowable costs," and § 80.24, "Recreational boating access facilities." They list comprehensively the eligible activities for each program and subprogram and use standard terms and parallel construction to describe these activities in greater detail. In part, the proposed § 80.51 responds to several recommendations that we received on the proposed rule to amend 50 CFR 80 that was published in the **Federal Register** at 73 FR 24523 on May 5, 2008. These recommendations stated that we should explicitly list outreach and communications and aquatic resource education as eligible activities. The proposed § 80.51 does not include the following language of the current § 80.5(b)(2): "Additional funds resulting from expansion of the Sport Fish Restoration Program must be added to existing State fishery program funds available from traditional sources and not as a substitute therefor." This language became part of the regulations after enactment of a significant expansion of the sources of funding for the Dingell-Johnson Sport Fish Restoration Act about 25 years ago. We did not include it in the proposed rule because of its weak legislative authority and the difficulty of enforcing it.

Section 80.52 What activities are ineligible for funding?

The proposed § 80.52(a) and (b) restate and broaden the scope of two ineligible activities in the current § 80.6, "Prohibited activities." The proposed § 80.52(c), "Activities conducted for the primary purpose of producing income," restates a similar prohibition at the current § 80.14(c), "Application of Wildlife and Sport Fish Restoration Program funds." The newly proposed ineligible activity at § 80.52(d) reads "activities, projects, or programs that promote or encourage opposition to regulated taking of fish, hunting, or the trapping of wildlife." This language is based on the intent of the drafters of the Wildlife and Sport Fish Restoration Programs Improvement Act of 2000, which amended the Pittman-Robertson Wildlife Restoration Act and the Dingell-Johnson Sport Fish Restoration Act. The Improvement Act applied similar language to the Multistate Conservation Grant program.

Section 80.53 Are administrative costs for State central services eligible expenses?

This proposed section closely follows the language of the current § 80.15(e), "Allowable costs," but it does not include the unnecessary last sentence, which reads, "Each State has a State Wide Cost Allocation Plan that describes approved allocations of indirect costs to agencies and programs within the State."

Section 80.54 May an agency receive a grant to carry out part of a larger project?

This proposed section does not have a corresponding section in the current regulations. It states conditions under which a grant may carry out part of a larger project. These conditions are based on advice from the Department of

the Interior's Office of the Solicitor. It is also consistent with the Department of the Interior Manual, 505 DM 2.18, "Procurement Contracts, Grants, and Cooperative Agreements," issued Jan. 9, 2008.

Section 80.55 How does a proposed project qualify as substantial in character and design?

This proposed section corresponds to the current § 80.13, "Substantiality in character and design." The proposed section applies to both projects and comprehensive management systems as a result of the definition of "project" in the proposed § 80.2.

Subpart F—Allocation of Funds by an Agency

Section 80.60 What is the relationship between the Basic Hunter Education and Safety subprogram and the Enhanced Hunter Education and Safety program?

This proposed section does not have a corresponding section in the current regulations. It clarifies for the first time in regulation the complex relationship between the Basic Hunter Education and Safety subprogram and the Enhanced Hunter Education and Safety subprogram, which was authorized by the Wildlife and Sport Fish Restoration Programs Improvement Act of 2000.

Section 80.61 What requirements apply to funds for the Recreational Boating Access subprogram?

This proposed section corresponds, in part, with the current § 80.24, "Recreational boating access facilities." The proposed § 80.61(b) requires that Regional allocations average 15 percent over a 5-year period. Although this provision is not in the current § 80.24, the Dingell-Johnson Sport Fish Restoration Act requires it. The proposed § 80.61 also introduces a new requirement to ensure that Regional Offices will have information in time to ensure that the Regional allocation will average 15 percent over a 5-year period. It reads: "A State must apply to use these allocated funds by the end of the fourth consecutive Federal fiscal year after the Federal fiscal year in which the funds first became available for allocation." The current § 80.24 states, "Any portion of a State's 15-percent set aside for the above purposes that remain unexpended or unobligated after 5 years must revert to the Service for apportionment among the States." The proposed § 80.61(g) does not refer to an expenditure of grant funds as does the current § 80.24. It is unnecessary to include such a reference because: (a) a Federal obligation must precede an agency's expenditure, or (b) the agency's expenditure may be the last step in completing a Federal obligation, thus occurring simultaneously with the obligation.

Section 80.62 What limitations apply to spending on the Aquatic Resource Education and Outreach and Communications subprograms?

This proposed section corresponds in part to the current § 80.15(f), "Allowable Costs." The proposed section corrects the current section's incorrect reference to the two subprograms as a single "program."

Section 80.63 Does an agency have to allocate costs in multipurpose projects and facilities?

Section 80.64 How does an agency allocate costs in multipurpose projects and facilities?

The proposed § 80.63 and § 80.64 correspond to the current § 80.15(d), "Allowable costs." We added the following language in § 80.64, "The agency must describe the method used to allocate costs in multipurpose projects or facilities in the project statement included in the grant application."

Section 80.65 Does an agency have to allocate funds between marine and freshwater fisheries projects?

This proposed section corresponds, in part, to the current § 80.23, "Allocation of funds between marine and freshwater fishery projects." The proposed section includes the new language, "The subprograms authorized by the Dingell-Johnson Sport Fish Restoration Act do not have to allocate funding in the same manner as long as the State fish and wildlife agency equitably allocates Dingell-Johnson Sport Fish Restoration funds as a whole between marine and freshwater fisheries."

Section 80.66 What requirements apply to the allocation of funds between marine and freshwater fisheries projects?

This proposed section corresponds, in part, to the current § 80.23, "Allocation of funds between marine and freshwater fishery projects." The proposed section defines a resident angler as "one who fishes for recreational purposes in the same State where he or she maintains legal residence." The current regulations include this term in the Definitions section, but the definition leaves out "for recreational purposes." The proposed section adds the following: "(c) * * * Agencies must use the National Survey of Fishing, Hunting, and Wildlife-associated Recreation or another statistically reliable survey or technique approved by the Director for this purpose. (d) If a State uses statistical sampling, it must sample at the earlier of the following: (1) Five years after the last statistical sample, or (2) The first certification period affected by any change in the licensing system that could affect the number of people who hold a paid license to fish." We did not include in the proposed § 80.66 this language from the current § 80.23 because it is unnecessary, "Ongoing marine project costs can be applied toward the State's saltwater allocation."

Section 80.67 May an agency finance an activity from more than one annual apportionment?

Section 80.68 What requirements apply to financing an activity from more than one annual apportionment?

The proposed § 80.67 and § 80.68 correspond to the current § 80.25, "Multiyear financing under the Dingell-Johnson Sport Fish Restoration program," but the proposed sections broaden the authorization of multiyear financing. They also extend the multiyear-financing option to projects under the Pittman-Robertson Wildlife Restoration Act. The proposed § 80.68(c) changes the current § 80.25 by allowing interest and other financing costs subject to restrictions in the Federal Cost Principles.

Subpart G—Application for a Grant

Section 80.80 How does an agency apply for a grant?

Section 80.81 What must an agency submit when applying for a comprehensive management system grant?

Section 80.82 What must an agency submit when applying for a project-by-project grant?

These proposed sections correspond to the current and less comprehensive § 80.11, "Submission of proposals." The proposed sections include detailed information on the information that grantees must include in the application packages for comprehensive management system grants and project-by-project grants. This information is based on information in: (a) Service Manual Chapter 522 FW 4, "Comprehensive Management System Grant;" (b) OMB Circular A–102, *Grants and Cooperative Agreements with State and Local Governments,* Section (c)(5); (c) the current 50 CFR 80.25(b)(3) on multiyear financing; and (d) Service Manual chapter 522 FW 19, "Program Income from Federal Assistance Grants."

Section 80.83 What is the Federal share of allowable costs?

This proposed section corresponds, in part, to the current § 80.12, "Cost sharing." It changes the current regulations by authorizing the Regional Director to waive the 10-percent minimum Federal share of allowable costs if an agency requests a waiver and provides compelling reasons to justify it.

Section 80.84 How does the Service establish the non-Federal share of allowable costs?

This proposed section does not have a corresponding section in the current 50 CFR 80. It is based on the requirements of the Acts and 48 U.S.C. 1469a.

Section 80.85 What requirements apply to match?

The proposed §§ 80.85(a) and (b)(1) correspond in part to the current § 80.12, "Cost sharing." The proposed § 80.85(b)(2) is new, but it is consistent with the Federal Cost Principles. The proposed § 80.85(c) is based upon Service policy issued in Service Manual chapter 522 FW 17, which in turn is based on a 2005 recommendation of a joint task force of Federal and State officials.

Subpart H—General Grant Administration

Section 80.90 What are the responsibilities of an agency?

This proposed section corresponds to and closely follows the language of the current § 80.18, "Responsibilities."

Section 80.91 What is a Federal obligation of funds and how does it occur?

This proposed section does not have a corresponding section in the current regulations. We proposed this section for the following reasons:

(a) The nature of a Federal obligation is not defined in any regulations or policies of the Wildlife and Sport Fish Restoration program;

(b) Both State and Federal employees have at times expressed different understandings of what a Federal obligation is.

(c) Some of the confusion is due to a parallel and related process, in which grantees obligate funds available to them under a grant. These "grantee obligations" are discussed at 43 CFR 12.43 and 43 CFR 12.902 in the definitions of "obligations," "unliquidated obligations," and "unobligated balance." We do not define or discuss grantee obligations.

(d) We use the term "obligation" or "obligate" in the proposed § 80.60, § 80.61, and § 80.92.

Section 80.92 How long are funds available for a Federal obligation?

This proposed section restates and corrects the current § 80.8, "Availability of funds," which does not take into account the 1-year availability of funds under the Enhanced Hunter Education and Safety program or the 5-year availability of funds in the Recreational Boating Access subprogram.

Section 80.93 When may an agency incur costs under a grant?

This proposed section corresponds, in part, to the current § 80.15(c), "Allowable costs." It leads to the subject of preagreement costs in the proposed § 80.94.

Section 80.94 May an agency incur costs before the effective date of the grant period?

This proposed section corresponds, in part, to the current § 80.15(c), "Allowable costs," but describes the conditions under which the State fish and wildlife agency may incur preagreement costs. The proposed section is based on: (a) Service Manual Chapter 522 FW 16, "Preagreement Costs," which is based on a 2004 recommendation of a joint task force of Federal and State officials, and (b) the Federal Cost Principles in OMB Circular A–87. The proposed section goes beyond 522 FW 16 by allowing the completion of a proposed project before the grant's effective date as long as the grantee meets certain conditions.

Section 80.95 How does an agency receive Federal grant funds?

This proposed section corresponds to and expands on the current § 80.16, "Payments." It states that under certain circumstances a grantee may receive an advance of funds. An advance of funds is authorized in 43 CFR 12.61, and the Acts do not prohibit it. The current § 80.16 also limits the means of requesting payment. The proposed section recognizes the nearly universal use of electronic payments by stating that State fish and wildlife agencies may request funds on a standard form only if it cannot use the electronic payment system.

Section 80.96 May an agency request funds in excess of the Federal share?

This proposed section expands on the current § 80.16, "Payments," by clarifying that the grantee may request Federal grant funds for construction work in excess of the proportional Federal share of the project taking into account all previous advances and reimbursements for the project. This proposed practice is consistent with the Acts.

Section 80.97 May an agency barter goods or services to carry out a grant-funded project?

Section 80.98 How must an agency report barter transactions?

The proposed § 80.97 and § 80.98 do not have corresponding sections in the current regulations. We added them because of audit findings in several States. The Office of the Inspector General also recommended that the Service address inconsistencies in Service Manual Chapter 522 FW 19 on program income and provide clear guidance on reporting barter transactions.

Section 80.99 Are symbols available to identify projects?

Section 80.100 Do agencies have to display the symbols in this part on completed projects?

The proposed § 80.99 and § 80.100 correspond to and closely follow the language of the current § 80.26, "Symbols." The only significant change is in the proposed § 80.100, which allows Regional Directors to authorize certain uses of the symbols instead of or in addition to the Director of the U.S. Fish and Wildlife Service.

Subpart 1—Program Income

The proposed §§ 80.120 through 80.126 explain: (a) What program income is, (b) the conditions under which an agency may earn it, (c) how to calculate it, and (d) how to apply it to Federal and non-Federal outlays. Only the proposed § 80.121, "May an agency earn program income?", has a corresponding section at the current § 80.14(c), "Application of Wildlife and Sport Fish Restoration Program funds." The remaining sections in subpart I are based on Service Manual chapter 522 FW 19, "Program Income from Federal Assistance Grants." This chapter incorporates recommendations of a joint task force of Federal and State officials in 2004 and 2007.

Subpart J—Real Property

Section 80.130 Does an agency have to hold title to real property acquired under a grant?

Section 80.131 Does an agency have to hold an easement acquired under a grant?

The proposed § 80.130 and § 80.131 do not have corresponding sections in

the current regulations. The Dingell-Johnson Sport Fish Restoration Act states: "Title to any real or personal property acquired by any State, and to improvements placed on State-owned lands through the use of funds paid to the State under the provisions of this Act, shall be vested in such State." The Pittman-Robertson Wildlife Restoration Act does not have a similar requirement. The Act uses the term "title," which applies to ownership or possessory interests, but not to easements or other nonownership or nonpossessory interests. The proposed section § 80.130 would require grantees under either Act to hold title to the ownership interest in real property acquired under a grant. The proposed § 80.130 would prohibit the State fish and wildlife agency from holding title to an undivided ownership interest in the real property concurrently with a subgrantee or any other entity. The proposed § 80.131 would require grantees under both Acts to hold easements acquired under a grant, but the proposed section would allow the grantee to share certain rights and responsibilities with another State agency or a subgrantee. The proposed § 80.130 and § 80.131 are based on input received from State agencies and a joint task force of Federal and State officials.

Section 80.132 Does an agency have to control the land or water where it completes capital improvements?

This proposed section requires the grantee to control lands or waters on which it makes capital improvements with funds apportioned under the Acts. The proposed section corresponds to and closely follows the language of the current § 80.20, "Land control." This language is only in the Dingell-Johnson Sport Fish Restoration Act, but the current regulations apply the requirement to funding under both Acts. The proposed section continues to apply it to funding under both Acts in the interest of having standard requirements for all funding under the Acts to the extent legally possible.

Section 80.133 Does an agency have to maintain acquired or completed capital improvements?

This proposed section corresponds to and is consistent with the language of the current § 80.17, "Maintenance."

Section 80.134 How must an agency use real property?

This proposed section is consistent with the language of the current § 80.14(b), "Application of Wildlife and Sport Fish Restoration Program funds," the current § 80.20, "Land control," and Service Manual chapters 522 FW 18, "Useful Life," 522 FW 21, "Allowable Recreational Activities and Related Facilities on Federal Assistance Lands," and 522 FW 22, "Allowable Commercial Activities and Related Facilities on Federal Assistance Lands." These Service Manual chapters were based on recommendations of a joint task force of Federal and State officials.

Section 80.135 What if an agency allows a use of real property that interferes with the authorized purpose?

This proposed section corresponds to and closely follows the language of the current § 80.14(b), "Application of Wildlife and Sport Fish Restoration Program funds." It is also consistent with Service Manual Chapter 522 FW 20, "Loss of Control and Disposal of Real Property." This chapter is based on the recommendation of a joint task force of Federal and State officials.

Section 80.136 When is a use of real property that interferes with the authorized purpose considered a diversion?

This proposed section does not have a corresponding section in the current regulations, but it is based on the requirements of the current § 80.4, "Diversion of license fees."

Section 80.137 What if real property is no longer useful or needed for its original purpose?

This proposed section corresponds, in part, to the current § 80.14(b)(3), "Application of Wildlife and Sport Fish Restoration Program funds." One new element is that the director of an agency may propose another eligible purpose for real property no longer useful or needed for its original purpose. The director of the State fish and wildlife agency must ask the Service Regional Director to approve the proposed purpose. This section is based on a recommendation of a joint task force of Federal and State officials. It also follows, in large part, Service Manual chapter 522 FW 20, Loss of Control and Disposal of Real Property, which is based on a recommendation of a joint task force of Federal and State officials.

Subpart K—Amendments and Appeals

Section 80.150 How does an agency ask for an amendment of a grant?

This proposed section does not have a corresponding section in the current regulations, but it is consistent with the current § 80.11, "Submission of proposals," and Office of Management and Budget Circular A–102, *Grants and Cooperative Agreements with State and Local Governments,* Paragraph 1.c.(5)(e). It is also consistent with 43 CFR 12.70.

Section 80.151 May an agency appeal a decision?

This proposed section corresponds to the current § 80.7, "Appeals," but expands it by providing timelines for appeals. It also specifies that appeals to the Secretary are governed by 43 CFR 4, subpart G.

Subpart L—Information Collection

Section 80.160 What are the information-collection requirements of this part?

This proposed section corresponds to and expands on the current § 80.27, "Information collection requirements." The proposed section lists all information collection requirements in the proposed rule that are subject to the Paperwork Reduction Act. The Office of Management and Budget has approved all of these information collections and assigned them control numbers.

Public Comments

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** 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.

Required Determinations

Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one

of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Regulatory Planning and Review (E.O. 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under E.O. 12866. OMB bases its determination on 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.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

The Regulatory Flexibility Act requires an agency to consider the impact of proposed rules on small entities, *i.e.,* small businesses, small organizations, and small government jurisdictions. If there is a significant economic impact on a substantial number of small entities, the agency must perform a Regulatory Flexibility Analysis. This is not required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities. The Small Business Regulatory Enforcement Fairness Act (SBREFA) amended the Regulatory Flexibility Act to require Federal agencies to state 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. We have determined that the proposed changes do not have a significant impact and do not require a Regulatory Flexibility Analysis because the changes:

a. Give information to State fish and wildlife agencies that allows them to apply for and administer grants more easily, more efficiently, and with greater flexibility. Only State fish and wildlife agencies may receive grants in the three programs affected by this regulation, but small entities sometimes voluntarily become subgrantees of agencies. Any impact on these subgrantees would be beneficial.

b. Address changes in law and regulation. This helps grant applicants and recipients by making the regulation consistent with current standards. Any impact on small entities that voluntarily become subgrantees of agencies would be beneficial.

c. Change three provisions on license certification adopted in a final rule published on July 24, 2008, based on subsequent experience. These changes would impact only agencies and not small entities.

d. Clarify additional issues in the Pittman-Robertson Wildlife Restoration Act and Dingell-Johnson Sport Fish Restoration Act. This would help agencies comply with statutory requirements and increase awareness of alternatives available under the law. Any impact on small entities that voluntarily become subgrantees of agencies would be beneficial.

e. Clarify that (1) cooperative farming or grazing arrangements and (2) sales receipts retained by concessionaires or contractors are not program income. This clarification allows States to expand projects with small businesses and farmers without making these cooperative arrangements or sales receipts subject to program income restrictions. This clarification would be potentially beneficial to the small entities that voluntarily become cooperative farmers, cooperative ranchers, and concessionaires.

f. Add information that allows States to enter into agreements with nonprofit organizations to share rights or responsibilities for easements acquired under grants for the mutual benefit of both parties. This addition would benefit the small entities that enter into these agreements voluntarily.

g. Reword and reorganize the regulation to make it easier to understand. Any impact on the small entities that voluntarily become subgrantees of agencies would be beneficial.

The Service has determined that the changes primarily impact State governments. The small entities affected by the changes are primarily concessionaires, cooperative farmers, cooperative ranchers, and subgrantees who voluntarily enter into mutually beneficial relationships with an agency. The impact on small entities would be very limited and beneficial in all cases.

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.

In addition, this proposed rule is not a major rule under SBREFA (5 U.S.C. 804(2)) and would not have a significant impact on a substantial number of small entities because it does not:

a. Have an annual effect on the economy of $100 million or more.

b. Cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

c. 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

The Unfunded Mandates Reform Act of 1995 (2 USC Ch.25; Pub. L. 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. The Act requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of a proposed rule with Federal mandates that may result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. We have determined the following under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. As discussed in the determination for the Regulatory Flexibility Act, this proposed rule would not have a significant economic effect on a substantial number of small entities.

b. The regulation does not require a small government agency plan or any other requirement for expenditure of local funds.

c. The programs governed by the current regulations and enhanced by the proposed changes potentially assist small governments financially when they occasionally and voluntarily participate as subgrantees of an agency.

d. The proposed rule clarifies and enhances the current regulations allowing State, local, and tribal governments, and the private sector to receive the benefits of grant funding in a more flexible, efficient, and effective manner. They may receive these benefits as a subgrantee of a State fish and wildlife agency, a cooperating farmer or rancher, a concessionaire, a

concurrent holder of a grant-acquired easement, or a holder of enforcement rights under an easement.

e. Any costs incurred by a State, local, and tribal government, or the private sector are voluntary. There are no mandated costs associated with the proposed rule.

f. The benefits of grant funding outweigh the costs. The Federal Government provides up to 75 percent of the cost of each grant to the 50 States in the three programs affected by the proposed rule. The Federal Government may also provide up to 100 percent of the cost of each grant to the Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, and the territories of Guam, the U.S. Virgin Islands, and American Samoa. All 50 States and other eligible jurisdictions voluntarily apply for grants in these programs each year. This rate of participation is clear evidence that the benefits of grant funding outweigh the costs.

g. 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

This proposed rule would not have significant takings implications under E.O. 12630 because it would not have a provision for taking 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. We work closely with the States in administration of these programs, and they helped us identify those sections of the current regulations in need of change and new issues in need of clarification through regulation. In drafting the proposed rule, we received comments from committees of the Association of Fish and Wildlife Agencies and from the Joint Federal/State Task Force on Federal Assistance Policy. The Director of the U.S. Fish and Wildlife Service and the President of the Association of Fish and Wildlife Agencies jointly chartered the Joint Federal/State Task Force on Federal Assistance Policy in 2002 to identify issues of national concern in the three grant programs affected by the proposed rule.

Civil Justice Reform

The Office of the Solicitor has determined under E.O. 12988 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. The proposed rule will benefit grantees because it:

(a) Updates the regulations to reflect changes in policy and practice during the past 25 years;

(b) Makes the regulations easier to use and understand by improving the organization and using plain language;

(c) Modifies three provisions in the final rule to amend 50 CFR 80 published in the **Federal Register** at 73 FR 43120 on July 24, 2008, based on subsequent experience; and

(d) Adopts two recommendations on new issues received from State fish and wildlife agencies in response to the proposed rule to amend 50 CFR 80 published in the **Federal Register** at 73 FR 24523 on May 5, 2008.

Paperwork Reduction Act

We examined the proposed rule under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). We may not collect or sponsor and you are not required to respond to a collection of information unless it displays a current OMB control number. The proposed 50 CFR 80.160 describes seven information collections in the proposed rule. All of these collections request information from State fish and wildlife agencies, and all have current OMB control numbers.

OMB authorized and approved Governmentwide standard forms for three of the seven information collections. These three information collections are for the purposes of: (a) Application for a grant; (b) certifications related to authority, capability, and legal compliance; and (c) reporting on the use of Federal funds, match, and program income.

OMB approved three other information collections in the proposed rule under control number 1018–0109, but has not approved Governmentwide standard forms for these collections. The purposes of these information collections are to provide the Service with: (a) A project statement in support of a grant application, (b) a report on progress in completing a grant-funded project, and (c) a request to approve an update or another change in information provided in a previously approved application. OMB authorized these information collections in its Circular A–102.

The Acts and the current 50 CFR 80.10 authorize the seventh information collection. This collection allows the Service to learn the number of people who have a paid license to hunt and the number of people who have a paid license to fish in each State during a State-specified certification year. The Service uses this information in statutory formulas to apportion funds in the Wildlife Restoration and Sport Fish Restoration programs among the States. OMB approved this information collection on forms FWS 3–154a and 3–154b under control number 1018–0007. The proposed rule does not change the information required on forms FWS 3–154a and 3–154b. It merely establishes a common approach for States to assign license holders to a certification year.

National Environmental Policy Act

We have analyzed this rule under the National Environmental Policy Act, 42 U.S.C. 432–437(f) and part 516 of the Departmental Manual. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required due to the categorical exclusion for administrative changes provided at 516 DM 2, Appendix 1, section 1.10.

Government-to-Government Relationship With Tribes

We have evaluated potential effects on federally recognized Indian tribes under 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 determined that there are no potential effects. This proposed rule would not interfere with the tribes' ability to manage themselves or their funds.

Energy Supply, Distribution, or Use (E.O. 13211)

E.O. 13211 addresses regulations that significantly affect energy supply, distribution, and use and requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under E.O. 12866 and would not 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 80

Education, Fish, Fishing, Grants administration, Grant programs, Hunting, Natural resources, Real property acquisition, Recreation and recreation areas, Signs and symbols, Wildlife.

Proposed Regulation Promulgation

For the reasons discussed in the preamble, we propose to amend title 50 of the Code of Federal Regulations, chapter I, subchapter F, by revising part 80 to read as follows:

PART 80—ADMINISTRATIVE REQUIREMENTS, PITTMAN-ROBERTSON WILDLIFE RESTORATION AND DINGELL-JOHNSON SPORT FISH RESTORATION ACTS

Subpart A—General

Subpart B—State Fish and Wildlife Agency Eligibility

Subpart C—License Revenue

Subpart D—Licensee Certification

Subpart E—Eligible Activities

Subpart F—Allocation of Funds by an Agency

Subpart G—Application for a Grant

Subpart H—General Grant Administration

Subpart I—Program Income

Subpart J—Real Property

Subpart K—Amendments and Appeals

Subpart L—Information Collection

Authority: 16 U.S.C. 669–669k; 16 U.S.C. 715 *et seq.;* 16 U.S.C. 777–777n, except 777e–1 and g–1; 18 U.S.C. 701; 26 U.S.C. 4161, 4162, 4181, 4182, 9503, and 9504; 48 U.S.C. 1469a; E.O. 12372.

Subpart A—General

§ 80.1 What does this part do?

This part of the Code of Federal Regulations tells States how they may:

(a) Use revenues derived from State hunting and fishing licenses in compliance with the Acts.

(b) Receive annual apportionments from the Federal Aid to Wildlife Restoration Fund (16 U.S.C. 669(b)), if authorized, and the Sport Fish Restoration and Boating Trust Fund (26 U.S.C. 9504).

(c) Receive financial assistance from the Wildlife Restoration program, the Basic Hunter Education and Safety subprogram, and the Enhanced Hunter Education and Safety grant program, if authorized.

(d) Receive financial assistance from the Sport Fish Restoration program, the Recreational Boating Access

subprogram, the Aquatic Resources Education subprogram, and the Outreach and Communications subprogram.

(e) Comply with the requirements of the Acts.

§ 80.2 What terms do I need to know?

The terms in this section pertain only to the regulations in this part.

Acts means the Pittman-Robertson Wildlife Restoration Act of September 2, 1937, as amended (16 U.S.C. 669–669k), and the Dingell-Johnson Sport Fish Restoration Act of August 9, 1950, as amended (16 U.S.C. 777–777n, except 777e–1 and g–1).

Agency means a State fish and wildlife agency.

Angler means a person who fishes for sport fish for recreational purposes as permitted by State law.

Capital improvement means an alteration, addition, or replacement that increases the value of real property by at least $10,000. An agency may use its own definition of *capital improvement* if its definition includes all capital improvements as defined here.

Comprehensive management system grant means a grant that funds all or part of a State's comprehensive management system. This system:

(1) Assesses the current, projected, and desired status of fish and wildlife;

(2) Develops a strategic plan and carries it out through an operational planning process; and

(3) Evaluates results. The planning period is at least 5 years using a minimum 15-year projection of the desires and needs of the State's citizens.

Construction means the act of building or significantly renovating, altering, or repairing a structure. Acquiring, clearing, and reshaping land and demolishing structures are types or phases of construction. Examples of structures are buildings, roads, parking lots, utility lines, fences, piers, wells, pump stations, ditches, dams, dikes, water-control structures, fish-hatchery raceways, and shooting ranges.

Director means the Director of the U.S. Fish and Wildlife Service, or his or her designated representative, who is delegated authority by the Secretary to administer the Acts.

Diversion means any use of revenue from the license fees paid by hunters and anglers for a purpose other than administration of the State fish and wildlife agency.

Grant means an award of money, the principal purpose of which is to transfer funds or property from a Federal agency to a grantee to support or stimulate an authorized public purpose under the Acts. This part uses the term *grant* for both a grant and a cooperative agreement for convenience of reference. This use does not affect the legal distinction between the two instruments. The meaning of *grant* in the terms *grant funds, grant-funded,* and *under the grant* includes the matching cash and any matching in-kind contributions in addition to the Federal award of money.

Grantee means the State fish and wildlife agency that applies for the grant and carries out grant-funded activities in programs authorized by the Acts. The State fish and wildlife agency acts on behalf of the State government, which is the legal entity and is accountable for the use of Federal funds, matching funds, and matching in-kind contributions.

Match means the value of any non-Federal in-kind contributions and the portion of the costs of a grant-funded project or projects not borne by the Federal government.

Project means one or more related undertakings in a project-by-project grant that are necessary to fulfill a need or needs, as defined by the State fish and wildlife agency, consistent with the purposes of the appropriate Act. For convenience of reference in this part, the meaning of *project* includes an agency's fish and wildlife program under a comprehensive management system grant.

Project-by-project grant means an award of money based on a detailed statement of a project or projects and other supporting documentation.

Real property means one, several, or all interests, benefits, and rights inherent in the ownership of a parcel of land or water including anything above, below, or attached to it as a result of natural processes or human actions.

Regional Director means the person appointed by the Director to direct the Service's operations in one of its geographic Regions, or his or her designated representative. This person's responsibility does not extend to any administrative units that the Service's Washington Office supervises directly in that geographic Region.

Secretary means the person appointed by the President to direct the operation of the Department of the Interior, or his or her designated representative.

Service means the U.S. Fish and Wildlife Service.

Sport fish means aquatic, gill-breathing, vertebrate animals with paired fins, having material value for recreation in the marine and fresh waters of the United States.

State means any State of the United States, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and the territories of Guam, the U.S. Virgin Islands, and American Samoa. *State* also includes the District of Columbia for purposes of the Dingell-Johnson Sport Fish Restoration Act, the Sport Fish Restoration program, and its subprograms. *State* does not include the District of Columbia for purposes of the Pittman-Robertson Wildlife Restoration Act and the programs and subprogram under the Act because the Pittman-Robertson Wildlife Restoration Act does not authorize funding for the District. References to "the 50 States" apply only to the 50 States of the United States and do not include the Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, or the territories of Guam, the U.S. Virgin Islands, and American Samoa.

State fish and wildlife agency means the administrative unit designated by State law or regulation to carry out State laws for management of fish and wildlife resources. If an agency has other jurisdictional responsibilities, the agency is considered the State fish and wildlife agency only when exercising responsibilities specific to management of the State's fish and wildlife resources.

Subaccount means a group of similar activities that the Service tracks for purposes of financial accountability using a distinct numeric code for each group. These groups correspond with programs, subprograms, or a combination of subprograms.

Useful life means the period during which a federally funded capital improvement is capable of fulfilling its intended purpose with adequate routine maintenance.

Wildlife means the indigenous or naturalized species of birds or mammals that are either:

(1) Wild and free-ranging;

(2) Held in a captive breeding program established to reintroduce individuals of a depleted indigenous species into previously occupied range; or

(3) Under the jurisdiction of a State fish and wildlife agency.

Subpart B—State Fish and Wildlife Agency Eligibility

§ 80.10 Who is eligible to receive the benefits of the Acts?

States acting through their fish and wildlife agencies are eligible for benefits of the Acts only if they pass and maintain legislation that:

(a) Assents to the provisions of the Acts;

(b) Ensures the conservation of fish and wildlife; and

(c) Requires that revenue from license fees paid by hunters and anglers be:

(1) Controlled only by the State fish and wildlife agency; and

(2) Used only for administration of the State fish and wildlife agency which includes only the functions required to manage the agency and the fish- and wildlife-related resources for which the agency has authority under State law.

§ 80.11 How does a State become ineligible to receive the benefits of the Acts?

(a) A State becomes ineligible to receive the benefits of the Acts if the Director finds that it:

(1) Does not pass legislation required at § 80.10 or passes legislation contrary to the Acts;

(2) Diverts revenue from license fees paid by hunters and anglers or from property acquired with this revenue from the control of the State fish and wildlife agency to purposes other than its administration; or

(b) A State may become ineligible to receive the benefits of the Acts if the Director finds that the State failed materially to comply with any law, regulation, or term of a grant as it relates to acceptance and use of funds under the Acts.

§ 80.12 Does an agency have to confirm that it wants to receive an annual apportionment of funds?

No. However, if a State fish and wildlife agency does not want to receive the annual apportionment of funds, it must notify the Service in writing within 60 days of receiving a preliminary or final certificate of apportionment.

Subpart C—License Revenue

§ 80.20 What does revenue from hunting and fishing licenses include?

(a) Hunting and fishing license revenue includes:

(1) Proceeds that the State fish and wildlife agency receives from the sale of State-issued general or special hunting or fishing licenses, permits, stamps, tags, access and use fees, or other State charges to hunt or fish for recreational purposes;

(2) Real, personal, or intellectual property acquired with license revenue;

(3) Income from the sale, lease, or rental of, granting rights to, or a fee for access to property acquired or constructed with license revenue (*see* paragraph (b) of this section); or

(4) Income from the sale, lease, or rental of, granting rights to, or a fee for access to a recreational opportunity, product, or commodity derived from property acquired, managed, maintained, or produced with license revenue (*see* paragraph (b) of this section);

(5) Interest, dividends, or other income earned on license revenue;

(6) Reimbursements for expenditures originally paid with license revenue; and

(7) Payments received for services funded by license revenue.

(b) Property referred to in paragraphs (a)(3) and (a)(4) of this section includes, but is not limited to:

(1) Real property, such as land owned in fee title, a leasehold interest, easements, mineral rights, standing timber, and structures;

(2) Personal property, such as vehicles, equipment, tools, supplies, annual crops, minerals extracted from the land, harvested timber, animal products, cash, and securities; and

(3) Intellectual property, such as patents and copyrights.

§ 80.21 What if a State diverts license revenue from the control of its fish and wildlife agency?

If a State violates the requirements of § 80.10 by diverting license revenue from the control of its fish and wildlife agency to purposes other than the agency's administration, the Director may declare the State to be in diversion. The State is ineligible to receive benefits under the relevant Act from the date the Director signs the declaration of diversion until the State resolves the diversion.

§ 80.22 What must a State do to resolve a declaration of diversion?

The State must complete the actions in paragraphs (a) through (f) of this section to resolve a declaration of diversion. The State must use a source of funds other than license revenue to fund the replacement of license revenue.

(a) The State must enact adequate legislative prohibitions to prevent future diversions of license revenue.

(b) The State fish and wildlife agency must regain all diverted cash derived from license revenue and the interest lost up to the date of repayment, and it must enter into State records the receipt of this cash and interest.

(c) The agency must receive either the revenue earned from diverted property during the period of diversion or the current market rental rate of any diverted property, whichever is greater.

(d) The agency must take one of the following actions to resolve a diversion of real, personal, or intellectual property:

(1) Regain management control of the property, which must be in about the same condition as before diversion;

(2) Receive replacement property that meets the criteria in paragraph (f) of this section; or

(3) Receive a cash amount at least equal to the current market value of the diverted property only if the Regional Director agrees that the actions described in paragraphs (d)(1) and (d)(2) of this section are not possible.

(e) The agency must enter into State records the action taken, current market value, amount received, and fish and wildlife benefits if applicable.

(f) To be acceptable under paragraph (d)(2) of this section, replacement property must have both:

(1) Market value that at least equals the current market value of the diverted property, and

(2) Fish or wildlife benefits that at least equal those of the property diverted, as approved by the Regional Director.

§ 80.23 Does a declaration of diversion affect a previous Federal obligation of funds?

No. Federal funds obligated before the date that the Director declares a diversion remain available for expenditure without regard to the intervening period of the State's ineligibility. *See* § 80.91 for when a Federal obligation occurs.

Subpart D—License Certification

§ 80.30 Why must an agency certify the number of paid license holders?

A State fish and wildlife agency must certify the number of people having paid licenses to hunt and paid licenses to fish because the Service uses these data in statutory formulas to apportion funds in the Wildlife Restoration and Sport Fish Restoration programs among the States.

§ 80.31 How does an agency certify the number of paid license holders?

(a) A State fish and wildlife agency certifies the number of paid license holders by responding to the Director's annual request for the following data:

(1) The number of people who have paid licenses to hunt in the State during the State-specified certification period (certification period); and

(2) The number of people who have paid licenses to fish in the State during the certification period.

(b) The director of the agency must certify this information in the format that the Director specifies. The director of the agency must provide documentation to support the accuracy of this information at the Director's request.

(c) The director of the agency is responsible for eliminating multiple

counting of single individuals in the information that he or she certifies and may use statistical sampling, automated record consolidation, or other techniques approved by the Director for this purpose. If a State uses statistical sampling, it must sample at the earlier of the following:

(1) Five years after the last statistical sample; or

(2) The first certification period affected by a change in the licensing system that could affect the number of people who hold a paid license to hunt or a paid license to fish.

§ 80.32 What is the certification period?

A certification period must:

(a) Be 12 consecutive months;

(b) Correspond to the State's fiscal year or license year;

(c) Be consistent from year to year unless the Director approves a change; and

(d) End at least 1 year and no more than 2 years before the beginning of the Federal fiscal year in which the apportioned funds first become available for expenditure.

§ 80.33 How does an agency decide who to count as paid license holders in the annual certification?

(a) An agency must follow the rules in the following table in deciding how to count paid license holders in the annual certification. For any license holder to be counted, the State fish and wildlife agency must be able to verify the license holder's name in State records.

Type of license holder	How to count each license holder
(1) A person who has either a paid license to hunt or a paid license to fish for sport or recreation even if the person is not required to have a paid license or is unable to hunt or fish.	Once.
(2) A person who has more than one paid license to hunt because the person either voluntarily obtained them or was required to have more than one license.	Once.
(3) A person who has more than one paid license to fish because the person either voluntarily obtained them or was required to have more than one license.	Once.
(4) A person who has a single-year license for which the State fish and wildlife agency receives at least $1 of net revenue. (Single-year licenses are valid for any length of time less than 2 years.).	Once in the certification period in which the license first becomes valid.
(5) A person who has a multiyear license. (Multiyear licenses may be valid for either a specific or indeterminate number of years, but must be valid for at least 2 years.).	Once in each certification period in which the license is valid only if the license meets the requirements in paragraph (b) of this section.
(6) A person holding a paid combination license permitting both hunting and fishing.	Twice: Once as a person who has a paid hunting license, and once as a person who has a paid fishing license.
(7) A person who has a license that allows the license holder only to trap animals or only to engage in commercial activities.	Cannot be counted.

(b) For a multiyear license to be eligible under paragraph (a)(5) of this section, the State fish and wildlife agency must receive net revenue from the multiyear license of at least $1 for each year in which the license is valid.

(1) The agency may compute net revenue from a multiyear license annually or at the time of sale. It must base the net revenue on either the:

(i) Duration of the license, in the case of a multiyear license with a specified ending date; or

(ii) Expected lifespan of the license holder, in the case of a lifetime license.

(2) The agency may use statistical sampling, life expectancy tables, mortality tables, or other techniques approved by the Director to decide how many multiyear-license holders remain alive in the certification period.

§ 80.34 May an agency count license holders in the annual certification if the agency receives funds from the State to cover their license fees?

If a State fish and wildlife agency receives funds from the State to cover fees normally charged for a category of licenses, the State may count those license holders in the annual certification only under the following conditions:

(a) The State funds must come from a source other than hunting- and fishing-license revenue;

(b) The State funds must equal or exceed the fees that the license holder would have paid for comparable hunting or fishing privileges;

(c) The agency must issue each license in the license holder's name;

(d) The agency must receive and account for the State funds as license revenue; and

(e) The license fees must meet all other requirements of this part.

§ 80.35 How does an agency calculate net revenue from a license?

The State fish and wildlife agency must calculate net revenue from a license by subtracting the per-license costs of issuing the license from the revenue generated by the license. Examples of costs of issuing licenses are: agents' or sellers' fees; automated license-system costs; licensing-unit personnel costs; and the costs of printing, distribution, and control.

§ 80.36 What must an agency do if it becomes aware of errors in its data?

A State fish and wildlife agency must submit revised certified data on paid license holders within 90 days after it becomes aware of errors in its certified data. The State may become ineligible to participate in the benefits of the relevant Act if it becomes aware of errors in its certified data and does not resubmit accurate certified data within 90 days.

§ 80.37 May the Service recalculate an apportionment if an agency submits revised data?

If a State fish and wildlife agency submits revised certified data on paid license holders, the Service may take one of the following actions depending on the timing and effects of the revision:

(a) If an agency submits revised certified data on paid license holders before the Director approves the final apportionment under the Acts, the Service may recalculate the proposed apportionment.

(b) If an agency submits revised certified data on paid license holders after the Director approves the final apportionment, the Service may recalculate the apportionment only if it would not reduce apportioned funds to other State fish and wildlife agencies.

§ 80.38 May the Director correct a Service error in apportioning funds?

Yes. The Director may correct any error that the Service makes in apportioning funds.

Subpart E—Eligible Activities

§ 80.50 What activities are eligible for funding under the Pittman-Robertson Wildlife Restoration Act?

The following activities are eligible for funding under the Pittman-Robertson Wildlife Restoration Act:

(a) *Wildlife Restoration program.*

(1) Restore or manage wildlife.

(2) Conduct research on problems of wildlife management if necessary to administer wildlife resources efficiently.

(3) Select, restore, rehabilitate, or improve lands or waters as habitat for wildlife.

(4) Acquire real property suitable or capable of being made suitable for wildlife habitat or public access.

(5) Build structures or acquire equipment, goods, and services to:

(i) Restore, rehabilitate, or improve lands or waters as habitat for wildlife; or

(ii) Provide public access.

(6) Operate or maintain:

(i) Projects that the State fish and wildlife agency completed under the Pittman-Robertson Wildlife Restoration Act; or

(ii) Facilities that the agency acquired or constructed with funds other than those authorized under the Pittman-Robertson Wildlife Restoration Act if these facilities are necessary to carry out activities authorized by the Pittman-Robertson Wildlife Restoration Act.

(7) Manage wildlife areas and resources.

(b) *Wildlife Restoration—Basic Hunter Education and Safety subprogram.*

(1) Teach the skills, knowledge, and attitudes necessary to be a responsible hunter.

(2) Construct, operate, or maintain firearm and archery ranges for public use.

(c) *Enhanced Hunter Education and Safety program.*

(1) Enhance programs for hunter education, hunter development, and firearm and archery safety. Hunter-development programs introduce individuals to and recruit them to take part in hunting, bow hunting, target shooting, or archery.

(2) Enhance interstate coordination of hunter-education and firearm- and archery-range programs.

(3) Enhance programs for education, safety, or development of bow hunters and archers.

(4) Enhance construction and development of firearm and archery ranges.

(5) Update safety features of firearm and archery ranges.

§ 80.51 What activities are eligible for funding under the Dingell-Johnson Sport Fish Restoration Act?

The following activities are eligible for funding under the Dingell-Johnson Sport Fish Restoration Act:

(a) *Sport Fish Restoration program.*

(1) Restore or manage sport fish.

(2) Conduct research on fish management or culture if necessary to administer sport fish resources efficiently.

(3) Obtain data to guide and direct the regulation of fishing. These data may be on: the size and geographic range of sport fish populations; changes in sport fish populations due to fishing, other human activities, or natural causes; and the effects of any measures or regulations applied.

(4) Develop and adopt plans to restock sport fish and forage fish in the natural areas or districts covered by the plans; and obtain data to develop, carry out, and test the effectiveness of the plans.

(5) Select, restore, rehabilitate, or improve areas of land or water adaptable as habitat for sport fish or as a buffer to protect that habitat.

(6) Acquire real property suitable or capable of being made suitable for sport fish habitat or as a buffer to protect that habitat, or acquire real property for public access. Closures to sport fishing must be based on the recommendations of the State fish and wildlife agency for fish and wildlife management purposes.

(7) Build structures or acquire equipment, goods, and services to provide public access to or to restore, rehabilitate, or improve areas of water or land as habitat for sport fish.

(8) Construct, renovate, operate, or maintain pumpout and dump stations. A pumpout station is a facility that pumps or receives sewage from a type III marine sanitation device that the U.S. Coast Guard requires on some vessels. A dump station, also referred to as a "waste reception facility," is specifically designed to receive waste from portable toilets on vessels.

(9) Operate or maintain:

(i) Projects that the State fish and wildlife agency completed under the Dingell-Johnson Sport Fish Restoration Act; or

(ii) Facilities that the agency acquired or constructed with funds other than those authorized by the Dingell-Johnson Sport Fish Restoration Act if these facilities are necessary to carry out activities authorized by the Act.

(b) *Sport Fish Restoration—Recreational Boating Access subprogram.*

(1) Acquire land for new facilities, build new facilities, or acquire, renovate, or improve existing facilities to create or improve public access to the waters of the United States or improve the suitability of these waters for recreational boating. A broad range of access facilities and associated amenities can qualify for funding, but the facilities must accommodate boats with any size of motor that is reasonable and legal for use on the applicable body of water. "Facilities" includes auxiliary structures necessary to ensure safe use of recreational boating access facilities.

(2) Conduct surveys to determine the adequacy, number, location, and quality of facilities providing access to recreational waters for all sizes of recreational boats.

(c) *Sport Fish Restoration—Aquatic Resource Education subprogram.* Enhance the public's understanding of water resources, aquatic life forms, and sport fishing, and develop responsible attitudes and ethics toward the aquatic environment.

(d) *Sport Fish Restoration—Outreach and Communications subprogram.*

(1) Improve communications with anglers, boaters, and the general public on sport fishing and boating opportunities.

(2) Increase participation in sport fishing and boating.

(3) Advance the adoption of sound fishing and boating practices including safety.

(4) Promote conservation and responsible use of the aquatic resources of the United States.

§ 80.52 What activities are ineligible for funding?

The activities below are ineligible for funding under the Acts, except when necessary to carry out project purposes approved by the Regional Director. Other activities may also be ineligible as a result of Federal laws, regulations, or policies.

(a) Law enforcement activities.

(b) Public relations activities to promote the State fish and wildlife agency, other State administrative units, or the State.

(c) Activities conducted for the primary purpose of producing income.

(d) Activities, projects, or programs that promote or encourage opposition to regulated taking of fish, hunting, or the trapping of wildlife.

§ 80.53 Are administrative costs for State central services eligible expenses?

Yes. Administrative costs in the form of overhead or indirect costs for State central services outside of the State fish and wildlife agency are eligible expenses under the Acts and must follow an approved cost allocation plan. These expenses must not exceed 3

percent of the funds apportioned annually to the State under the Acts.

§ 80.54 May an agency receive a grant to carry out part of a larger project?

Yes. A State fish and wildlife agency may receive a grant to carry out part of a larger project involving other organizations working toward the same goal, but using different sources of funding. The agency may receive this funding only if the grant-funded part of the larger project:

(a) Results in an identifiable outcome that is consistent with the purposes of the grant program;

(b) Is substantial in character and design;

(c) Meets the requirements of §§ 80.130 through 80.136 for any real property acquired under the grant and any capital improvements completed under the grant; and

(d) Meets all other requirements of the grant program.

§ 80.55 How does a proposed project qualify as substantial in character and design?

A proposed project qualifies as substantial in character and design if it:

(a) Describes a need within the purposes of the Acts;

(b) Has objectives to meet the need and has methods suitable to meet the objectives; and

(c) Demonstrates the use of accepted principles of fish and wildlife conservation and management, sound design, appropriate procedures, and the likelihood of benefits commensurate with project costs.

Subpart F—Allocation of Funds by an Agency

§ 80.60 What is the relationship between the Basic Hunter Education and Safety subprogram and the Enhanced Hunter Education and Safety program?

The relationship between the Basic Hunter Education and Safety subprogram (Basic Hunter Education) and the Enhanced Hunter Education and Safety program (Enhanced Hunter Education) is as follows:

	Basic Hunter Education funds	Enhanced Hunter Education funds
(a) Which activities are eligible for funding?	Those listed in § 80.50(b)	Those listed in § 80.50(c).
(b) How long are funds available for obligation?	Two Federal fiscal years	One Federal fiscal year.
(c) What if funds are not fully obligated during the period of availability?	The Service may use unobligated funds to carry out the Migratory Bird Conservation Act (16 U.S.C. 715 *et seq.*).	The Service reapportions unobligated funds to eligible States for the following fiscal year. States are eligible to receive funds only if their Basic Hunter Education funds were fully obligated in the preceding fiscal year.
(d) What if funds are fully obligated during the period of availability?	If Basic Hunter Education funds are fully obligated, the agency may use that fiscal year's Enhanced Hunter Education funds for eligible activities related to basic hunter education, enhanced hunter education, or the Wildlife Restoration program.	No special provisions apply.

§ 80.61 What requirements apply to funds for the Recreational Boating Access subprogram?

The requirements of this section apply to allocating and obligating funds for the Recreational Boating Access subprogram.

(a) A State fish and wildlife agency must allocate funds from each annual apportionment under the Dingell-Johnson Sport Fish Restoration Act for use in the subprogram.

(b) Over each 5-year period, the total allocation for the subprogram in each of the Service's geographic regions must average at least 15 percent of the Sport Fish Restoration funds apportioned to the States in that Region. As long as this requirement is met, an individual State agency may allocate more or less than 15 percent of its annual apportionment in a single Federal fiscal year with the Regional Director's approval.

(c) The Regional Director calculates Regional-allocation averages for separate 5-year periods that coincide with Federal fiscal years 2008–2012, 2013–2017, 2018–2022, and each subsequent 5-year period.

(d) If the total Regional allocation for a 5-year period is less than 15 percent, the State agencies may, in a memorandum of understanding, agree among themselves which of them will make the additional allocations to eliminate the Regional shortfall.

(e) This paragraph applies if State fish and wildlife agencies do not agree on which of them will make additional allocations to bring the average Regional allocation to at least 15 percent over a 5-year period. If the agencies do not agree:

(1) The Regional Director may require States in the Region to make changes needed to achieve the minimum 15-percent Regional average before the end of the fifth year; and

(2) The Regional Director must not require a State to increase or decrease its allocation if the State has allocated at least 15 percent over the 5-year period.

(f) An agency must apply to use these allocated funds by the end of the fourth consecutive Federal fiscal year after the Federal fiscal year in which the funds first became available for allocation.

(g) If the agency's application to use these funds has not led to a Federal obligation by that time, these allocated funds become available for reapportionment among the State fish and wildlife agencies for the following fiscal year.

§ 80.62 What limitations apply to spending on the Aquatic Resource Education and Outreach and Communications subprograms?

The limitations apply in this section to State fish and wildlife agency spending on the Aquatic Resource Education and Outreach and Communications subprograms.

(a) Each State's fish and wildlife agencies may spend a maximum of 15 percent of the annual amount apportioned to the State from the Sport Fish Restoration and Boating Trust Fund for activities in both subprograms. The 15-percent maximum applies to both subprograms as if they were one.

(b) The 15-percent maximum for the subprograms does not apply to the Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, and the territories of Guam, the U.S. Virgin Islands, and American Samoa. These jurisdictions may spend more than 15 percent of their annual apportionments for both subprograms with the approval of the Regional Director.

§ 80.63 Does an agency have to allocate costs in multipurpose projects and facilities?

Yes. A State fish and wildlife agency must allocate costs in multipurpose projects and facilities. A grant-funded project or facility is multipurpose if it carries out the purposes of:

(a) A single grant program under the Acts; and

(b) Another grant program under the Acts, a grant program not under the Acts, or an activity unrelated to grants.

§ 80.64 How does an agency allocate costs in multipurpose projects and facilities?

A State fish and wildlife agency must allocate costs in multipurpose projects based on the uses or benefits for each purpose that will result from the completed project or facility. The agency must describe the method used to allocate costs in multipurpose projects or facilities in the project statement included in the grant application.

§ 80.65 Does an agency have to allocate funds between marine and freshwater fisheries projects?

Yes. Each coastal State's fish and wildlife agency must equitably allocate the funds apportioned under the Dingell-Johnson Sport Fish Restoration Act between projects having benefits for marine fisheries and projects having recreational benefits for freshwater fisheries.

(a) The subprograms authorized by the Dingell-Johnson Sport Fish Restoration Act do not have to allocate funding in the same manner as long as the State fish and wildlife agency equitably allocates Dingell-Johnson Sport Fish Restoration funds as a whole between marine and freshwater fisheries.

(b) The coastal States for purposes of this allocation are:

(1) Alabama, Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, and Washington;

(2) The Commonwealths of Puerto Rico and the Northern Mariana Islands; and

(3) The territories of Guam, the U.S. Virgin Islands, and American Samoa.

§ 80.66 What requirements apply to allocation of funds between marine and freshwater fisheries projects?

The requirements of this section apply to allocation of funds between marine and freshwater fisheries projects.

(a) When a State fish and wildlife agency allocates and obligates funds it must meet the following requirements:

(1) The ratio of marine projects to total funds must be identical to the ratio of resident marine anglers to the total number of resident anglers in the State; and

(2) The ratio of freshwater fisheries projects to total funds must be identical to the ratio of resident freshwater anglers to the total number of resident anglers in the State.

(b) A resident angler is one who fishes for recreational purposes in the same State where he or she maintains legal residence.

(c) Agencies must use a statistically reliable method to determine the relative distribution of resident anglers in the State between those that fish in marine environments and those that fish in freshwater environments. Agencies must use the National Survey of Fishing, Hunting, and Wildlife-associated Recreation or another statistically reliable survey or technique approved by the Director for this purpose.

(d) If a State uses statistical sampling, it must sample at the earlier of the following:

(1) Five years after the last statistical sample; or

(2) The first certification period affected by any change in the licensing system that could affect the number of people who hold a paid license to fish.

(e) The amounts allocated from each year's apportionment do not necessarily have to result in an equitable allocation for each year. However, the amounts allocated over a variable period, not to exceed 3 years, must result in an equitable allocation between marine and freshwater fisheries projects.

(f) Failure to allocate funds equitably between marine and freshwater fisheries projects may result in the agency becoming ineligible to use Sport Fish Restoration program funds until the agency demonstrates to the Director's satisfaction that it has allocated funds equitably.

§ 80.67 May an agency finance an activity from more than one annual apportionment?

Yes. A State fish and wildlife agency may use funds from more than one annual apportionment to finance high-cost projects, such as construction or acquisition of lands or interests in lands, including water rights. An agency may do this in either of the following ways:

(a) Finance the entire cost of the acquisition or construction from a non-Federal funding source. The Service will reimburse funds to the agency in succeeding apportionment years according to a scheduled reimbursement plan approved by the Regional Director and subject to the availability of funds.

(b) Negotiate an installment purchase or contract in which the agency pays periodic and specified amounts to the seller or contractor. The Service will reimburse or advance funds to the agency for each payment subject to the availability of funds.

§ 80.68 What requirements apply to financing an activity from more than one annual apportionment?

The following conditions apply to financing an activity from more than one annual apportionment:

(a) A State fish and wildlife agency must agree to complete the project even if Federal funds are not available. If an agency does not complete the project, it must recover any expended Federal funds that did not result in commensurate wildlife or sport fishery benefits. The agency must then reallocate the recovered funds to approved projects in the same program. Agencies do not have to recover expended Federal funds for incomplete projects if the inability to complete the project is beyond the control of the agency and the State government.

(b) The project statement included with the application must have a complete schedule of payments to complete the project.

(c) Interest and other financing costs may be allowable subject to the restrictions in the applicable Federal Cost Principles.

Subpart G—Application for a Grant

§ 80.80 How does an agency apply for a grant?

(a) An agency applies for a grant by sending the Regional Director:

(1) Completed standard forms approved by the Office of Management and Budget for the grant application process; and

(2) Information required for a comprehensive management system grant or a project-by-project grant.

(b) The director of the State fish and wildlife agency or his or her designee must sign all standard forms submitted in the application process.

(c) The agency must send copies of all standard forms and supporting information to the State Clearinghouse or Single Point of Contact before sending it to the Regional Director if the State maintains this process under Executive Order 12372, Intergovernmental Review of Federal Programs.

§ 80.81 What must an agency submit when applying for a comprehensive-management-system grant?

A State fish and wildlife agency must submit all of the documents required by this section to the Regional Director when applying for a comprehensive-management-system grant.

(a) The following standard application forms, available on the Federal Web site for electronic grant applications at *www.grants.gov:*

(1) Application for Federal assistance; and

(2) Assurances for nonconstruction, or assurances for construction programs, or both if applicable. Agencies may submit these forms annually to the Service's Regional Divisions of Wildlife and Sport Fish Restoration for use with all applications for Federal assistance in the programs and subprograms under the Acts.

(b) Supporting documentation explaining how the proposed work complies with the Acts, the provisions of this part, and other applicable laws and regulations.

(c) A statement of the agency's intent to carry out and fund part or all of its comprehensive management system through a grant.

(d) A description of the agency's comprehensive management system including inventory, strategic plan, operational plan, and evaluation. "Inventory" refers to the process or processes that an agency uses to:

(1) Determine actual, projected, and desired resource and asset status; and

(2) Identify management problems, issues, needs, and opportunities.

(e) A description of the State fish and wildlife agency program covered by the comprehensive management system.

(f) Contact information for the State fish and wildlife agency employee who is directly responsible for the integrity and operation of the comprehensive management system.

(g) A description of how the public can take part in decision making for the comprehensive management system.

§ 80.82 What must an agency submit when applying for a project-by-project grant?

A State fish and wildlife agency must submit all of the documents required by this section to the Regional Director when applying for a project-by-project grant:

(a) Agencies must submit annually the following standard application forms for grant programs, available on the Federal Web site for electronic grant applications at *www.grants.gov:*

(1) Application for Federal assistance; and

(2) Assurances for nonconstruction, or assurances for construction programs, or both if applicable. Agencies may submit these forms annually to the Service's Regional Division of Wildlife and Sport Fish Restoration for use with all applications for Federal assistance in the programs and subprograms under the Acts.

(b) A project statement that describes each proposed project and provides the following information:

(1) *Need.* Explain why the project is necessary and how it fulfills the purposes of the relevant Act.

(2) *Objectives.* Base the objectives on the need.

(3) *Results or benefits expected.*

(4) *Approach.* Describe the methods used to achieve the stated objectives. This information must demonstrate that the agency will use sound design, appropriate procedures, and accepted fish and wildlife conservation, management, or research principles.

(5) *Useful life.* Reference the method used to determine the useful life of a capital improvement with a value greater than $100,000.

(6) *Geographic location.*

(7) *Principal investigator.* Record the principal investigator's name, work address, and work telephone number for research projects only.

(8) *Program income.* The agency must:

(i) Estimate the amount of program income that the project is likely to generate.

(ii) Indicate the method or combination of methods (deduction, addition, or matching) of applying program income to Federal and non-Federal outlays.

(iii) Request the Regional Director's approval for the matching method. Describe how the agency proposes to use the program income and the expected results. Describe the essential need for using program income as match.

(iv) Indicate whether the agency wants to treat program income that it earns after the grant period as license revenue or additional funding for purposes consistent with the grant or program.

(v) Indicate whether the agency wants to treat program income that the subgrantee earns as license revenue, additional funding for the purposes consistent with the grant or subprogram, or income subject only to the terms of the subgrant agreement.

(9) *Costs by project and subaccount.* Show how the project will yield benefits that address the need commensurate with estimated project costs.

(10) *Multipurpose projects.* Describe the method for allocating costs in multipurpose projects and facilities as described in §§ 80.63 and 80.64.

(11) *Relationship with other grants.* Describe the relationship between this project and other work funded by Federal grants that is planned, anticipated, or underway.

(12) *Timeline.* Describe significant milestones in completing the project and any accomplishments to date.

(13) *Multiyear projects.* Include a schedule of payments to finish the project if an agency proposes to use funds from two or more annual apportionments to fund construction or the acquisition of lands or interests in lands, including water rights.

(14) *General.* Demonstrate in the information described under paragraphs (b)(1) through (b)(13) of this section that the proposed activities are:

(i) Eligible for funding under the program;

(ii) Substantial in character and design; and

(iii) Comply with the Acts, this part, and other applicable laws and regulations.

§ 80.83 What is the Federal share of allowable costs?

(a) The Regional Director must provide at least 10 percent and no more than 75 percent of allowable costs incurred under a grant-funded project to the fish and wildlife agencies of the 50 States.

(1) An agency proposes the specific Federal share by estimating the Federal and match dollars on the application for Federal assistance.

(2) The Regional Director may waive the 10-percent minimum Federal share of allowable costs if an agency requests a waiver and provides compelling reasons to justify it.

(b) The Regional Director may provide funds to pay at least 75 percent and up to 100 percent of allowable costs incurred under a grant-funded project in the Sport Fish Restoration program to the District of Columbia's agency responsible for sport fishing. The Regional Director decides which percentage within the 75–100 percent range is fair, just, and equitable for the Federal share.

(c) The Regional Director may provide funds to pay at least 75 percent and up to 100 percent of allowable costs incurred for a grant-funded project to a fish and wildlife agency of the Commonwealths of Puerto Rico and the Northern Mariana Islands and the territories of Guam, the U.S. Virgin Islands, and American Samoa. The Federal share may be affected by the waiver process described at § 80.84(c).

§ 80.84 How does the Service establish the non-Federal share of allowable costs?

(a) To establish the non-Federal share of a grant-funded project for the 50 States, the Regional Director approves an application for Federal assistance in which the State fish and wildlife agency proposes the specific non-Federal share by estimating the Federal and match dollars, consistent with § 80.83(a).

(b) To establish the non-Federal share of a grant-funded project for the District of Columbia and the Commonwealth of Puerto Rico, the Regional Director:

(1) Decides which percentage within the 75–100 percent range is fair, just, and equitable for the Federal share;

(2) Subtracts the Federal share percentage from 100 percent to determine the percentage of non-Federal share; and

(3) Applies the percentage of non-Federal share to the allowable costs of a grant-funded project to determine the match requirement.

(c) To establish the non-Federal share of a grant-funded project for the Commonwealth of the Northern Mariana Islands and the territories of Guam, the U.S. Virgin Islands, and American Samoa, the Regional Director must first calculate a preliminary percentage of non-Federal share in the same manner as described in paragraph (b) of this section. According to 48 U.S.C. 1469(a), the Regional Director must then waive the first $200,000 of the preliminary match amount to establish the final non-Federal share for each project that includes funding from only one of the three grant programs under the Acts. If a project includes funding from two or all three grant programs under the Acts, the Regional Director must waive the first $200,000 of the preliminary match amount in each of these programs.

§ 80.85 What requirements apply to match?

The requirements that apply to match include:

(a) Match may be in the form of cash or in-kind contributions.

(b) Unless authorized by Federal law, the State fish and wildlife agency or any other entity must not:

(1) Use Federal funds or the value of a third-party in-kind contribution acquired with Federal funds; or

(2) Use the cost or value of an in-kind contribution to satisfy a match requirement if the cost or value has been or will be used to satisfy a match requirement of another Federal grant, cooperative agreement, or contract.

(c) The agency must fulfill match requirements at the:

(1) Grant level if the grant has funds from a single subaccount; or

(2) Subaccount level if the grant has funds from more than one subaccount.

Subpart H—General Grant Administration

§ 80.90 What are the responsibilities of an agency?

A State fish and wildlife agency as a grantee is responsible for all of the actions required by this section.

(a) Supervision to ensure that the work follows the terms of the grant, including:

(1) Proper and effective use of funds;

(2) Maintenance of records;

(3) Submission of complete and accurate Federal financial reports and performance reports by the due dates in the terms and conditions of the grant; and

(4) Regular inspection and monitoring of work in progress.

(b) Selection and supervision of personnel to ensure that:

(1) Adequate and competent personnel are available to complete the grant-funded work on schedule; and

(2) Project personnel meet time schedules, accomplish the proposed work, meet objectives, and submit the required reports.

(c) Control of all assets acquired under the grant to ensure that they serve the purpose for which acquired throughout their useful life.

(d) Compliance with all applicable Federal, State, and local laws and regulations.

(e) Settlement of all procurement-related contractual and administrative issues.

§ 80.91 What is a Federal obligation of funds and how does it occur?

An obligation of funds is a legal liability to disburse funds immediately or at a later date as a result of a series of actions. All of these actions must occur to obligate funds for the formula-based grant programs authorized by the Acts:

(a) The Service sends an annual certificate of apportionment to a State fish and wildlife agency, which tells the agency how much funding is available according to formulas in the Acts.

(b) The agency sends the Regional Director an application for Federal assistance to use the funds available to it under the Acts and commits to provide the required match to carry out projects that are substantial in character and design.

(c) The Regional Director notifies the agency that he or she approves the application for Federal assistance and states the terms and conditions of the grant.

(d) The agency accepts the terms and conditions of the grant in one of the following ways:

(1) Starts work on the grant-funded project by placing an order, entering into a contract, awarding a subgrant, receiving goods or services, or otherwise incurring allowable costs during the grant period that will require payment immediately or in the future;

(2) Draws down funds for an allowable activity under the grant; or

(3) Sends the Regional Director a letter, fax, or e-mail accepting the terms and conditions of the grant.

§ 80.92 How long are funds available for a Federal obligation?

Funds are available for a Federal obligation during the fiscal year for which they are apportioned and until the close of the following fiscal year except for funds in the Enhanced Hunter Education and Safety program and the Recreational Boating Access subprogram. *See* §§ 80.60 and 80.61 for the length of time that funds are available in this program and subprogram.

§ 80.93 When may an agency incur costs under a grant?

A State fish and wildlife agency may incur costs under a grant from the effective date of the grant period to the end of the grant period except for preagreement costs that meet the conditions in § 80.94.

§ 80.94 May an agency incur costs before the effective date of the grant period?

(a) Yes. A State fish and wildlife agency may incur costs of a proposed project before the effective date of the grant period (preagreement costs). However, an agency has no assurance of reimbursement for preagreement costs until the Regional Director approves an award that incorporates a proposal demonstrating that the preagreement costs conform to all of the conditions in paragraph (b) of this section. The agency cannot receive reimbursement for these costs until after the effective date of the grant.

(b) Preagreement costs must meet the following requirements:

(1) The costs are necessary and reasonable for accomplishing the grant objectives;

(2) The Regional Director would have approved the costs if the State fish and wildlife agency incurred them during the grant period;

(3) The agency incurs these costs in anticipation of the grant and in conformity with the negotiation of the award with the Regional Director;

(4) The activities associated with the preagreement costs comply with all

laws, regulations, and policies applicable to a grant-funded project; and

(5) The agency does not complete the project before the grant's effective date, except when the agency can demonstrate to the Regional Director that doing so is necessary either to take advantage of temporary circumstances favorable to the project or to meet legal deadlines.

§ 80.95 How does an agency receive Federal grant funds?

(a) A State fish and wildlife agency may receive Federal grant funds through either:

(1) A request for reimbursement; or

(2) A request for an advance of funds if the agency maintains or demonstrates that it will maintain procedures to minimize time between transfer of funds and disbursement by the agency or its subgrantee.

(b) An agency must use the following procedures to receive a reimbursement or an advance of funds:

(1) Request funds through an electronic payment system designated by the Regional Director; or

(2) Request funds on a standard form for that purpose only if the agency is unable to use the electronic payment system.

(c) The Regional Director will reimburse or advance funds only to the office or official designated by the agency and authorized by State law to receive public funds for the State.

(d) All payments are subject to final determination of allowability based on audit or a Service review. The State fish and wildlife agency must repay any overpayment as directed by the Regional Director.

(e) The Regional Director may withhold payments pending receipt of all required reports or documentation for the project.

§ 80.96 May an agency request funds in excess of the Federal share?

(a) A State fish and wildlife agency must not request Federal grant funds if the requested funds would exceed the Federal share of the total reimbursements and requested advances from the beginning of the grant period through the current request.

(b) An agency may request Federal grant funds for construction work, including land acquisition, even if the requested funds would temporarily violate the prohibition in paragraph (a) of this section under the following conditions:

(1) The Regional Director and the director of the State fish and wildlife agency jointly decide that the request is appropriate; and

(2) The agency will pay its proportional share of the project's total allowable costs before it submits the final Federal financial report.

§ 80.97 May an agency barter goods or services to carry out a grant-funded project?

Yes. A State fish and wildlife agency may barter to carry out a grant-funded project. A barter transaction is the exchange of goods or services for other goods or services without the use of cash. Barter transactions are subject to the Cost Principles at 2 CFR part 220, 2 CFR part 225, and 2 CFR part 230.

§ 80.98 How must an agency report barter transactions?

(a) A State fish and wildlife agency must follow the requirements in the following table when reporting barter transactions in the Federal financial report.

If . . .	Then the agency . . .
(1) The goods or services exchanged have the same market value	(i) Does not have to report bartered goods or services as program income or grant expenses in the Federal financial report; and (ii) Must disclose that barter transactions occurred and state what was bartered in the Remarks section of the report.
(2) The market value of the goods or services relinquished exceeds the market value of the goods and services received.	Must report the difference in market value as grant expenses in the Federal financial report.
(3) The market value of the goods or services received exceeds the market value of the goods and services relinquished.	Must report the difference in market value as program income in the Federal financial report.
(4) The barter transaction was part of a cooperative farming or grazing arrangement meeting the requirements in paragraph (b) of this section.	(i) Does not have to report bartered goods or services as program income or grant expenses in the Federal financial report; and (ii) Must disclose that barter transactions occurred and identify what was bartered in the Remarks section of the Federal financial report.

(b) For purposes of paragraph (a)(4) of this section, cooperative farming or grazing is an arrangement in which an agency:

(1) Allows an agricultural producer to farm or graze livestock on land under the control of the agency; and

(2) Designs the farming or grazing to advance the fish and wildlife management objectives of the agency.

§ 80.99 Are symbols available to identify projects?

Yes. The following distinctive symbols are available to identify projects funded by the Acts and products on which taxes and duties have been collected to support the Acts:

(a) The symbol of the Pittman-Robertson Wildlife Restoration Act is below.

(b) The symbol of the Dingell-Johnson Sport Fish Restoration Act is below.

(c) The symbol of the Acts when used in combination is below.

§ 80.100 Do agencies have to display the symbols in this part on completed projects?

No. State fish and wildlife agencies do not have to display the symbols in § 80.99 on projects completed under the Acts. However, the Service requests agencies to display the appropriate symbol following these requirements or guidelines:

(a) Agencies may display the appropriate symbol(s) on:

(1) Areas such as wildlife management areas, shooting ranges, and sportfishing and boating access facilities that were acquired, developed, operated, or maintained with funds authorized by the Acts; and

(2) Printed or Web-based material or other visual representations of project accomplishments.

(b) Agencies may require subgrantees to display the appropriate symbol or symbols in the places described in paragraph (a) of this section.

(c) The Director or Regional Director may authorize agencies to use the symbols in a manner other than as described in paragraph (a) of this section.

(d) The Director or Regional Director may authorize other persons, organizations, agencies, or governments to use the symbols for purposes related to the Acts by entering into a written agreement with the user. An applicant must state how it intends to use the symbol(s), to what it will attach the symbol(s), and the relationship to the specific Act.

(e) The user of the symbol(s) must indemnify and defend the United States and hold it harmless from any claims, suits, losses, and damages from:

(1) Any allegedly unauthorized use of any patent, process, idea, method or device by the user in connection with its use of the symbol(s), or any other alleged action of the user; and

(2) Any claims, suits, losses, and damages arising from alleged defects in the articles or services associated with the symbol(s).

(f) The appearance of the symbol(s) on projects or products indicates that the manufacturer of the product pays excise taxes in support of the respective Act(s), and that the project was funded under the respective Act(s) (26 U.S.C. 4161, 4162, 4181, 4182, 9503, and 9504). The Service and the Department of the Interior make no representation or endorsement whatsoever by the display of the symbol(s) as to the quality, utility, suitability, or safety of any product, service, or project associated with the symbol(s).

(g) No one may use any of the symbols in any other manner unless the Director or Regional Director authorizes it. Unauthorized use of the symbol(s) is a violation of 18 U.S.C. 701 and subjects the violator to possible fines and imprisonment.

Subpart I—Program Income

§ 80.120 What is program income?

(a) Program income is gross income received by the grantee or subgrantee and earned only as a result of the grant.

(b) Program income includes revenue from any of the following:

(1) Services performed under a grant;

(2) Use or rental of real or personal property acquired, constructed, or managed with grant funds;

(3) Payments by concessionaires or contractors under an arrangement with the agency or subgrantee to provide a service in support of grant objectives on real property acquired, constructed, or managed with grant funds;

(4) Sale of items produced under a grant;

(5) Royalties and license fees for copyrighted material, patents, and inventions developed as a result of a grant; and

(6) Sale of a product of mining, drilling, forestry, or agriculture on real property acquired or directly managed with grant funds.

(c) Program income does not include any of the following:

(1) License revenue collected by the agency for hunting or fishing, including fees for special-area access or recreation;

(2) Interest on grant funds, rebates, credits, discounts, or refunds;

(3) Sales receipts retained by concessionaires or contractors under an arrangement with the agency to provide a service in support of grant objectives on real property acquired, constructed, or managed with grant funds;

(4) Cash received by the agency or volunteer hunter education instructors to cover incidental costs of a hunter education class;

(5) Cooperative farming or grazing arrangements as described at § 80.98; or

(6) Proceeds from the sale of an interest in real property such as fee title, easement, mineral rights, gas and oil rights, water rights, or a leasehold interest for a lease with a term 10 years or longer.

§ 80.121 May an agency earn program income?

Yes. A State fish and wildlife agency may earn income from activities incidental to the grant purposes as long as producing income is not a primary purpose. The agency must account for income and interest received from these activities in the project records and dispose of it according to the terms of the grant.

§ 80.122 May an agency deduct the costs of generating program income from gross income?

(a) A State fish and wildlife agency may deduct its costs of generating program income from gross income when it calculates program income as long as the agency does not do any of the following:

(1) Pay these costs with Federal or matching cash under a grant or with any Federal cash unrelated to a grant;

(2) Cover these costs by using services or real or personal property received as matching in-kind contributions under a Federal grant; or

(3) Cover these costs by accepting volunteer services, donated services, or donations of real or personal property.

(b) The agency may deduct the following costs, but other costs may also qualify for deduction:

(1) Maintenance or operation of facilities that generate program income if a grant funded the construction or operation of the facility;

(2) Publication of a pamphlet or book for sale if a grant funded the writing of the book or pamphlet or the research that led to publication of the book or pamphlet; and

(3) Costs of harvesting timber on lands if a grant funded acquisition of the land, direct management of the land, planting the trees, or managing the forest.

§ 80.123 How may an agency use program income?

(a) A State fish and wildlife agency may choose any of the three methods listed in paragraph (b) of this section for applying program income to Federal and non-Federal outlays. The agency may also use a combination of these methods. The method or methods that the agency chooses will apply to the program income that it earns during the grant period and to the program income that any subgrantee earns during the grant period. The agency must indicate the method that it wants to use in the project statement that it submits with each application for Federal assistance.

(b) The three methods for applying program income to Federal and non-Federal outlays are shown in the following table:

Method	Requirements for using the method
(1) Deduction	(i) The agency must deduct the program income from total allowable costs to determine the net allowable costs. (ii) The agency must use program income for current costs under the grant unless the Regional Director authorizes otherwise. (iii) If the agency does not indicate the method that it wants to use in the project statement, then it must use the deduction method.
(2) Addition	(i) The agency may add the program income to the Federal and matching funds under the grant. (ii) The agency must use the program income for the purposes of the grant and under the terms of the grant.
(3) Matching	(i) The agency must request the Regional Director's approval in the project statement. (ii) The agency must explain in the project statement the need for using program income as match, how it proposes to use the program income as match, and the expected results. (iii) The Regional Director may approve the use of the matching method if the requirements of paragraph (c) of this section are met.

(c) The Regional Director may approve the use of the matching method if the proposed use of the program income would:

(1) Be consistent with the intent of the applicable Act or Acts; and

(2) Result in at least one of the following:

(i) The agency substitutes program income for at least some of the match that it would otherwise have to provide, and then uses this saved match for other fish or wildlife-related projects;

(ii) The agency substitutes program income for at least some of the apportioned Federal funds, and then uses the saved Federal funds for additional eligible activities under the program; or

(iii) A net benefit to the program.

§ 80.124 How may an agency use unexpended program income?

If a State fish and wildlife agency has unexpended program income on its final Federal financial report, the agency may use the income under a subsequent grant. This subsequent grant must have purposes consistent with the grant that generated the program income.

§ 80.125 How must an agency treat income that it earns after the grant period?

(a) The State fish and wildlife agency must treat program income that it earns after the grant period as either:

(1) License revenue for the administration of the agency; or

(2) Additional funding for purposes consistent with the grant or the program.

(b) The agency must indicate its choice of one of the alternatives in paragraph (a) of this section in the project statement that the agency submits with each application for Federal assistance. If the agency does not record its choice in the project statement, the agency must treat the income earned after the grant period as license revenue.

§ 80.126 How must an agency treat income earned by a subgrantee after the grant period?

(a) The State fish and wildlife agency must treat income earned by a subgrantee after the grant period as:

(1) License revenue for the administration of the agency;

(2) Additional funding for purposes consistent with the grant or the program; or

(3) Income subject only to the terms of the subgrant agreement and any subsequent contractual agreements between the agency and the subgrantee.

(b) The agency must indicate its choice of one of the above alternatives in the project statement that it submits with each application for Federal assistance. If the agency does not indicate its choice in the project statement, the subgrantee does not have to account for any income that it earns after the grant period unless required to do so in the subgrant agreement or in any subsequent contractual agreement.

Subpart J—Real Property

§ 80.130 Does an agency have to hold title to real property acquired under a grant?

Yes. A State fish and wildlife agency must hold title to an ownership interest in real property acquired under a grant to the extent possible under State law.

(a) If State law does not authorize the fish and wildlife agency to hold the title to real property, the State or one of its administrative units may hold the title if the agency has the authority to manage the real property for the purpose authorized under the grant. The agency, the State, or another administrative unit of State government must not hold title to an undivided ownership interest in the real property concurrently with a subgrantee or any other entity.

(b) An ownership interest is an interest in real property that gives the person who holds it the right to use and occupy a parcel of land or water and to exclude others. Fee simple and leasehold interests are ownership interests. An easement is not an ownership interest. Another name for an ownership interest is a possessory interest.

§ 80.131 Does an agency have to hold an easement acquired under a grant?

Yes. A State fish and wildlife agency must hold an easement acquired under a grant, but it may share certain rights or responsibilities as described in paragraph (b) of this section if consistent with State law.

(a) Any sharing of rights or responsibilities does not diminish the agency's responsibility to manage the easement for its authorized purpose.

(b) The agency may share holding or enforcement of an easement only in the following situations:

(1) The State or another administrative unit of State government may hold an easement on behalf of its fish and wildlife agency.

(2) The agency may subgrant the concurrent right to hold the easement to a nonprofit organization or to an agency of a local or tribal government.

(3) The agency may subgrant a right of enforcement to a nonprofit organization or to a local or tribal government. This right of enforcement may allow the subgrantee to have reasonable access and entry to property protected under the easement for purposes of inspection, monitoring, and enforcement. The subgrantee's right of enforcement must not supersede and must be concurrent with the agency's right of enforcement.

§ 80.132 Does an agency have to control the land or water where it completes capital improvements?

Yes. A State fish and wildlife agency must control the land or water or both on which it completes capital improvements under a grant. An agency must exercise this control through fee title, lease, or another legally binding agreement. Control must be adequate for the protection, maintenance, and use of the improvement for its authorized purpose during its useful life.

§ 80.133 Does an agency have to maintain acquired or completed capital improvements?

Yes. The State fish and wildlife agency must maintain capital improvements acquired or completed under a grant to ensure that each capital improvement continues to serve its authorized purpose during its useful life.

§ 80.134 How must an agency use real property?

The State fish and wildlife agency must use real property that is acquired, completed, operated, or maintained under a grant for the purpose authorized in the grant. This requirement applies to a capital improvement only during its useful life. The State agency may allow secondary uses of real property acquired, completed, operated, or maintained under a grant if the secondary uses do not interfere with its authorized purpose.

§ 80.135 What if an agency allows a use of real property that interferes with the authorized purpose?

(a) When a State fish and wildlife agency allows a use of real property that interferes with its authorized purpose under a grant, the agency must fully restore the real property to its authorized purpose. If it cannot fully restore the real property to its authorized purpose under the grant, the agency must replace the real property using non-Federal funds. Replacement property must be of equal value at current market prices and must have fish, wildlife, and public-use benefits consistent with the purposes of the original grant.

(b) The State may have a reasonable time, up to 3 years from the date of notification by the Regional Director, to restore the real property to its authorized purpose or acquire replacement property. If the State does not restore the real property to its authorized purpose or acquire replacement property within 3 years, the State becomes ineligible to receive new grants in the program or programs that funded the original acquisition.

§ 80.136 When is a use of real property that interferes with the authorized purpose considered a diversion?

If the State fish and wildlife agency allows a use of grant-funded real property that interferes with the real property's purpose as authorized under a grant, a diversion occurs only if both of the following conditions apply:

(a) The agency used license revenue as match for the grant; and

(b) The interfering use has purposes other than management of the fish- and wildlife-related resources for which the agency has authority under State law.

§ 80.137 What if real property is no longer useful or needed for its original purpose?

If the director of the State fish and wildlife agency and the Regional Director jointly decide that grant-funded real property is no longer useful or needed for its original purpose under the grant, the director of the agency must:

(a) Propose another eligible purpose for the real property under the grant program and ask the Regional Director to approve this proposed purpose; or

(b) Request disposition instructions for the real property.

Subpart K—Amendments and Appeals

§ 80.150 How does an agency ask for an amendment of a grant?

(a) A State fish and wildlife agency must ask for an amendment of a grant by sending the Service the following documents:

(1) The standard form approved by the Office of Management and Budget as an application for Federal assistance. The agency may use this form to update or request a change in the information that it submitted in an approved application. The director of the agency or his or her designee must sign this form.

(2) A statement attached to the application for Federal assistance that explains:

(i) How the requested amendment would affect the information that the agency submitted with the original grant application; and

(ii) Why the requested amendment is necessary.

(b) An agency must send any amendments of scope to the State Clearinghouse or Single Point of Contact if the State maintains this process under Executive Order 12372, Intergovernmental Review of Federal Programs.

§ 80.151 May an agency appeal a decision?

An agency may appeal the Director's or Regional Director's decision on any matter subject to this part.

(a) The State fish and wildlife agency must send the appeal to the Director within 30 days of the date that the Director or Regional Director mails or otherwise informs an agency of a decision.

(b) The agency may appeal the Director's decision under paragraph (a) of this section to the Secretary within 30 days of the date that the Director mailed the decision. An appeal to the Secretary must follow procedures in title 43, part 4, subpart G, of the Code of Federal Regulations, "Special Rules Applicable to Other Appeals and Hearings."

Subpart L—Information Collection

§ 80.160 What are the information collection requirements of this part?

(a) This part requires each State fish and wildlife agency to provide the following information to the Service. The State agency must:

(1) Certify the number of people who have paid licenses to hunt and the number of people who have paid licenses to fish in a State during the State-specified certification period (OMB control number 1018–0007).

(2) Provide information for a grant application on a Government-wide standard form (OMB control number 4040–0002).

(3) Certify on a Government-wide standard form that it:

(i) Has the authority to apply for the grant;

(ii) Has the capability to complete the project; and

(iii) Will comply with the laws, regulations, and policies applicable to construction projects, nonconstruction projects, or both (OMB control numbers 4040–0007 and 4040–0009).

(4) Provide a project statement that describes the need, objectives, results expected, approach, location, explanation of costs, and other information that demonstrates that the project is eligible under the Acts and meets the requirements of the Federal Cost Principles and the laws, regulations, and policies applicable to the grant program (OMB control number 1018–0109).

(5) Change or update information provided to the Service in a previously approved application (OMB control number 1018–0109).

(6) Report on a Government-wide standard form on the status of Federal grant funds and any program income earned (OMB control number 0348–0061).

(7) Report as a grantee on progress in completing the grant-funded project (OMB control number 1018–0109).

(b) The authorizations for information collection under this part are in the Acts and in 43 CFR part 12, subpart C, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

(c) Send comments on the information collection requirements to: U.S. Fish and Wildlife Service, Information Collection Clearance Officer, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203.

Dated: March 23, 2010.

Will Shafroth,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–13817 Filed 6–9–10; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 75, No. 111
Thursday, June 10, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS-2010-0058]

Notice of Availability of a Pest Risk Analysis for the Importation of Sweet Limes From Mexico Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have prepared a pest risk analysis that evaluates the risks associated with the importation of sweet limes from Mexico into the continental United States. Based on that analysis, we have concluded that the application of one or more designated phytosanitary measures will be sufficient to mitigate the pest risk. We are making the pest risk analysis available to the public for review and comment.

DATES: We will consider all comments that we receive on or before **August 9, 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-2010-0058*) 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-2010-0058, 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-2010-0058.

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: Mr. David Lamb, Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734-0627.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56-1 through 319.56-50, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56-4 contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. These measures are:

- The fruits or vegetables are subject to inspection upon arrival in the United States and comply with all applicable provisions of § 319.56-3;
- The fruits or vegetables are imported from a pest-free area in the country of origin that meets the requirements of § 319.56-5 for freedom from that pest and are accompanied by a phytosanitary certificate stating that the fruits or vegetables originated in a pest-free area in the country of origin;
- The fruits or vegetables are treated in accordance with 7 CFR part 305;
- The fruits or vegetables are inspected in the country of origin by an inspector or an official of the national plant protection organization of the exporting country, and have been found free of one or more specific quarantine pests identified by the risk analysis as likely to follow the import pathway; and/or
- The fruits or vegetables are a commercial consignment.

APHIS received a request from the Government of Mexico to allow the importation of sweet limes (*Citrus limetta)* into the continental United States. Currently, sweet limes are not authorized for entry from Mexico, although related varieties of citrus with similar pest complexes are enterable under certain conditions. We completed a pest risk analysis to identify pests of quarantine significance that could follow the pathway of importation and identify phytosanitary measures that could be applied to sweet limes to mitigate the pest risk. We have concluded that sweet limes can safely be imported into the continental United States from Mexico using one or more of the five designated phytosanitary measures listed in § 319.56-4(b). Therefore, in accordance with § 319.56-4(c), we are announcing the availability of our pest risk analysis for public review and comment. The analysis may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the analyses by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the analysis that you wish to review when requesting copies.

After reviewing any comments we receive, we will announce our decision regarding the import status of sweet limes from Mexico in a subsequent notice. If the overall conclusions of the analysis and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will begin issuing permits for the importation of sweet limes from Mexico into the continental United States subject to the requirements specified in the risk management document.

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 3rd day of June 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–13934 Filed 6–9–10; 8:45 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2009-0082]

Notice of Determination of Pest-Free Areas in the Republic of Chile

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we are recognizing an additional area of the Republic of Chile as a pest-free area for *Ceratitis capitata*, Mediterranean fruit fly (Medfly). Based on our site visit to the area and our review of the documentation submitted by the Republic of Chile, which we made available to the public review and comment through a previous notice, the Administrator has determined that the area meets the criteria in our regulations for recognition as a pest-free area for Medfly.

EFFECTIVE DATE: June 10, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Phillip B. Grove, Regulatory Coordination Specialist, Regulatory Coordination and Compliance, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737; (301) 734-6280.

SUPPLEMENTARY INFORMATION: Under the regulations in "Subpart-Fruits and Vegetables" (7 CFR 319.56 through 319.56-50, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56-4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. One of the designated phytosanitary measures is that the fruits or vegetables are imported from a pest-free area in the country of origin that meets the requirements of § 319.56-5 for freedom from that pest and are accompanied by a phytosanitary certificate stating that the fruits or vegetables originated in a pest-free area in the country of origin.

Under the regulations in § 319.56-5, APHIS requires that determinations of pest-free areas be made in accordance with the criteria for establishing freedom from pests found in International Standard for Phytosanitary Measures (ISPM) No. 4, "Requirements for the establishment of pest-free areas." The international standard was established by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization and is incorporated by reference in our regulations in 7 CFR 300.5. In addition, APHIS must also approve the survey protocol used to determine and maintain pest-free status, as well as protocols for actions to be performed upon detection of a pest. Pest-free areas are subject to audit by APHIS to verify their status.

In accordance with that process, we published a notice[1] in the **Federal Register** on February 1, 2010 (75 FR 5034-5035, Docket No. APHIS-2009-0082), in which we announced the availability, for review and comment, of a commodity import evaluation document titled "Recognition of an Additional Region as Medfly Pest-Free Area (PFA) for the Republic of Chile." In this document, we examined the survey protocols and other information provided by the Republic of Chile relative to its system to establish freedom, phytosanitary measures to maintain freedom, and system for the verification of the maintenance of freedom from Mediterranean fruit fly (Medfly, *Ceratitis capitata*). Prior to this notice, APHIS recognized the Republic of Chile, except for the Arica Province, as free of Medfly. Therefore, recognizing the Arica Province as free of Medfly would result in the entire Republic of Chile as being recognized as free of that pest.

We solicited comments on the notice for 60 days ending on April 2, 2010. We received four comments by that date, from packers, importers, and a fresh produce company, that all supported the recognition of the Arica Province of the Republic of Chile as a pest-free area.

Therefore, in accordance with § 319.56-5(c), we are announcing the Administrator's determination that the Arica Province meets the criteria of § 319-56(a) and (b) with respect to freedom from Medfly. Accordingly, we are recognizing the Republic of Chile as a pest-free area for Medfly and have added it to the list of pest-free areas, which may be viewed at (*http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/DesignatedPestFreeAreas.pdf*). The list of pest-free areas may also be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 3rd day of June 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–13933 Filed 6–9–10; 8:45 am]

BILLING CODE 3410–34–S

[1] To view the notice, the commodity import evaluation document, and the comments we received, go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0082*).

DEPARTMENT OF COMMERCE

International Trade Administration

Colorado State University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8 a.m. and 5 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Avenue., NW., Washington, DC.

Docket Number: 10–008. *Applicant:* Colorado State University, Fort Collins, CO 80523. *Instrument:* Electron Microscope. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 75 FR 23669, May 4, 2010.

Docket Number: 10–009. *Applicant:* University of Oregon, Eugene, OR 97401–3753. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* See notice at 75 FR, 23669, May 4, 2010.

Comments: None received. *Decision: Approved.* No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: May 3, 2010.

Christopher Cassel,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2010–13975 Filed 6–9–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–950]

Wire Decking from the People's Republic of China: Final Affirmative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of wire decking from the People's Republic of China (the PRC). For information on the estimated subsidy rates, see the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: June 10, 2010.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson and John Conniff, AD/CVD Operations, Office 3, Operations, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4793 and (202) 482–1009, respectively.

SUPPLEMENTARY INFORMATION:

Background

This investigation covers 32 programs and the following producers/exporters: Dalian Eastfound Metal Products Co., Ltd. (Eastfound Metal) and its affiliate Dalian Eastfound Material Handling Products Co., Ltd. (Eastfound Material) (collectively, the Eastfound Companies) and Dalian Huameilong Metal Products Co., Ltd. (DHMP). The petitioners in this investigation are AWP Industries, Inc., ITC Manufacturing, Inc., J&L Wire Cloth, Inc., Nashville Wire Products Mfg., Co., Inc., and Wireway Husky Corporation (collectively, the petitioners). In addition, the Nucor Corporation is participating as a domestic interested party.

Period of Investigation

The period of investigation (the POI) for which we are measuring subsidies is January 1, 2008, through December 31, 2008, which corresponds to the PRC's most recently completed fiscal year at the time we initiated this investigation. *See* 19 CFR 351.204(b)(2).

Case History

The following events have occurred since the Department announced the *Preliminary Determination* on November 9, 2009. *See Wire Decking From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 74 FR 57629 (November 9, 2009) (*Preliminary Determination*).

From November 17, 2009, through December 23, 2009, we issued supplemental questionnaires to the Government of the PRC (the GOC), the Eastfound Companies, and DHMP. From December 1, 2009, through January 5, 2010, the GOC, the Eastfound Companies, and DHMP submitted supplemental questionnaire responses. On December 4 and 8, 2009, the GOC and the Eastfound Companies submitted requests for a public hearing. From January 8 through January 20, 2010, the Department issued verification outlines to the GOC, the Eastfound Companies, and DHMP. The Department conducted verification of the questionnaire responses submitted by the GOC on January 27 and 29, 2010. The Department conducted verification of the questionnaire responses submitted by the Eastfound Companies from February 1 through February 4, 2010. The Department conducted verification of the questionnaire responses submitted by DHMP from January 25 through 27, 2010. From February 17 through February 24, 2010, the Department released verification reports for the GOC, the Eastfound Companies, and DHMP. Interested parties submitted the case and rebuttal briefs on March 9 and March 19, respectively. On March 19, 2010, and April 6, 2010, the GOC and the Eastfound Companies withdrew their requests for a public hearing, respectively. No other interested party requested a hearing. As such, the Department did not hold a public hearing in this investigation.

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for this countervailing duty (CVD) investigation is now June 3, 2010. *See* Memorandum to the Record from Ronald K Lorentzen, Deputy Assistant Secretary for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

Scope of Investigation

The scope of the investigation covers welded–wire rack decking, which is also known as, among other things, "pallet rack decking," "wire rack decking," "wire mesh decking," "bulk storage shelving," or "welded–wire decking." Wire decking consists of wire mesh that is reinforced with structural supports and designed to be load bearing. The structural supports include sheet metal support channels, or other structural supports, that reinforce the wire mesh and that are welded or otherwise affixed to the wire mesh, regardless of whether the wire mesh and supports are assembled or unassembled and whether shipped as a kit or packaged separately. Wire decking is produced from carbon or alloy steel wire that has been welded into a mesh pattern. The wire may be galvanized or plated (*e.g.*, chrome, zinc, or nickel coated), coated (*e.g.*, with paint, epoxy, or plastic), or uncoated ("raw"). The wire may be drawn or rolled and may have a round, square or other profile. Wire decking is sold in a variety of wire gauges. The wire diameters used in the decking mesh are 0.105 inches or greater for round wire. For wire other than round wire, the distance between any two points on a cross-section of the wire is 0.105 inches or greater. Wire decking reinforced with structural supports is designed generally for industrial and other commercial storage rack systems.

Wire decking is produced to various profiles, including, but not limited to, a flat ("flush") profile, an upward curved back edge profile ("backstop") or downward curved edge profile ("waterfalls"), depending on the rack storage system. The wire decking may or may not be anchored to the rack storage system. The scope does not cover the metal rack storage system, comprised of metal uprights and cross beams, on which the wire decking is ultimately installed. Also excluded from the scope is wire mesh shelving that is not reinforced with structural supports and is designed for use without structural supports.

Wire decking enters the United States through several basket categories in the Harmonized Tariff Schedule of the United States (HTSUS). U.S. Customs and Border Protection (CBP) has issued a ruling (NY F84777) that wire decking is to be classified under HTSUS 9403.90.8040. Wire decking has also been entered under the following HTSUS subheadings:

7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.4030, 7217.10.4090, 7217.10.5030, 7217.10.5090, 7217.10.6000, 7217.10.7000, 7217.10.8010, 7217.10.8020, 7217.10.8025, 7217.10.8030, 7217.10.8045, 7217.10.8060, 7217.10.8075, 7217.10.8090, 7217.10.9000, 7217.20.1500, 7217.20.3000, 7217.20.4510, 7217.20.4520, 7217.20.4530, 7217.20.4540, 7217.20.4550, 7217.20.4560, 7217.20.4570, 7217.20.4580, 7217.20.6000, 7217.20.7500, 7326.20.0010, 7326.20.0020, 7326.20.0070, 7326.90.1000, 7326.90.2500, 7326.90.3500, 7326.90.4500, 7326.90.6000, 7326.90.8505, 7326.90.8510, 7326.90.8530, 7326.90.8535, 7326.90.8545, 7326.90.8560, 7326.90.8575, 7326.90.8576, 7326.90.8577, 7326.90.8588, 9403.20.0020, and 9403.20.0030.[1]

While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of the investigation is dispositive.

Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (the ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On July 31, 2009, the ITC published its preliminary determination in which it found that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of wire decking from the PRC. *See Wire Decking From China*, Investigation Nos. 701–TA–466 and 731–TA–1162 (Preliminary), 74 FR 38229 (July 31, 2009).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Decision Memorandum. Attached to this notice as an Appendix is a list of the issues that parties raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at http://ia.ita.doc.gov/frn/. The paper copy and electronic version of the Decision Memorandum are identical in content.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated individual rates for the Eastfound Companies and DHMP. For the non–cooperative companies, pursuant to sections 776(a)(2)(A) and (C) of the Act, we have based their CVD rates on facts otherwise available.

Section 705(c)(5)(A)(i) of the Act states that for companies not investigated, we will determine an all–others rate equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act.

Notwithstanding the language of section 705(c)(1)(B)(i)(I) of the Act, we have not calculated the all–others rate by weight averaging the rates of the Eastfound Companies and DHMP, because doing so risks disclosure of proprietary information. Therefore, for the all–others rate, we have calculated a simple average of the two responding firms' rates.

Producer/Exporter	Net Subsidy Ad Valorem Rate
Dalian Eastfound Metal Products Co., Ltd. (Eastfound Metal) and its affiliate Dalian Eastfound Material Handling Products Co., Ltd. (Eastfound Material) (collectively, the Eastfound Companies)	3.55%
Dalian Huameilong Metal Products Co., Ltd. (DHMP)	1.52%
Aceally (Xiamen) Technology Co., Ltd.	437.11%
Alida Wire Mesh &Wire Cloth Mfg.	37.11%
Anping Ankai Hardware & Mesh Products Co., Ltd	437.11%
Anping County Jincheng Metal Products Co., Ltd.	437.11%
Anping County Yuantong Hardware Net Industry Co., Ltd.	437.11%
Anping Ruiqilong Wire Mesh Co., Ltd.	437.11%
Anping Web Wire Mesh Co., Ltd.	437.11%
Anping Yilian Metal Products Co., Ltd.	437.11%
Aplus Industrial (HK) Ltd.	437.11%
Beijing Jiuwei Storage Equipment Co., Ltd.	437.11%
Dalian Aipute Industry & Trade Co., Ltd.	437.11%
Dalian Best Metal Products Co., Ltd.	437.11%
Dalian Jianda Metal Products Co., Ltd.	437.11%
Dalian Litainer Logistic Equipment Co., Ltd.	437.11%
Dalian Litainer Metal Products Co., Ltd.	437.11%
Dalian Pro Metal Co., Ltd.	437.11%
Dalian Traction Motor Co., Ltd.	437.11%
Dalian Yutiein Storage Manufacture Co., Ltd.	437.11%
Dalian Zengtian Metal–Net Production Co., Ltd.	437.11%
Dandong Riqian Equipment Co., Ltd.	437.11%
Deyoma Wire Decking Factory	437.11%
Global Storage Equipment Manufacturer Ltd.(Huade Industries)	437.11%
Hebei Dongshengyuan Trading Co., Ltd.	437.11%
Hebei Tengyue Trading Co., Ltd.	437.11%
High Hope Int'l Group Jiangsu Native Produce Imp &Exp Corp. Ltd.	437.11%
Imex China Ltd.	437.11%
Jiangdong Xinguang Metal Product Co.	437.11%5
Jiangsu Nova Logistics System Co., Ltd.	437.11%
Jiangsu Sainty Shengtong Imp & Exp Co.	437.11%
JP Metal Works Processing Factory	437.11%
Kule (Dalian) Co., Ltd.	437.11%
Kunshan Maxshow Industry Trade Co., Ltd.	437.11%
Lanxuan Metal Product Co., Ltd.	437.11%
Longkou Forever Developed Metal Product Co., Ltd.	437.11%
Nanjing Better Metallic Products Co., Ltd.	437.11%
Nanjing Better Storage Equipment Manufacturing Co., Ltd.	437.11%
Nanjing Dongtuo Logistics Equipment Co., Ltd.	437.11%
Nanjing Ebil Metal Products Co., Ltd.	437.11%

[1] In the Preliminary Determination, we presented in the scope, certain HTSUS categories that wire decking is also entered under, as a six–digit category number (i.e., 7217.10, 7217.20, 7326.20, and 7326.90). Since the Preliminary Determination, we found that CBP required a 10–digit format for these HTSUS categories. Thus, for the final determination, we have determined that wire decking's scope HTSUS categories will be presented in their full 10–digit format.

Producer/Exporter	Net Subsidy Ad Valorem Rate
Nanjing Huade Storage Equipment Manufacture Co., Ltd.	437.11%
Nanjing Jiangrui International Logistics Co.	437.11%
Nanjing Jiangrui Metal Products Co., Ltd.	437.11%
Nanjing Jiangrui Racking Manufacture Co., Ltd.	437.11%
Nanjing Youerda Logistic Equipment Engineering Co. Ltd	437.11%
Nanjing Youerda Metallic Products Co., Ltd.	437.11%
National Sourcing Co., Ltd.	437.11%
Ningbo Beilun Songyi Storage Equipment Manufacturer Co., Ltd.	437.11%
Ningbo Huixing Metal Product, Co., Ltd.	437.11%
Ningbo Telingtong Metal Products Co., Ltd.	437.11%
Ningbo United Group Imp & Exp Co. Ltd.	437.11%
Pinghu Dong Zhi Metal Products	437.11%
Schenker International China Ltd. (Dalian Branch)	437.11%
Shanghai Boracs Logistics Equipment Manufacturing Co., Ltd.	437.11%
Shanghai Bright Imp & Exp Co., Ltd.	437.11%
Shanghai Flory Industries Co., Ltd.	437.11%
Shanghai Hesheng Hardware Products Co.	437.11%
Shanghai Jingxing Storage Equipment Engineering Co., Ltd. (formerly Shanghai Jinxing Rack Factory)	437.11%
Shanghai Yibai Int'l Trading Co.	437.11%
Summit Storage Systems Ltd.	437.11%
Suzhou (China) Sunshine Hardware Equipment Imp &Exp Co., Ltd.	437.11%
Suzhou Jinta Metal Working Co., Ltd.	437.11%
Suzhou Z–TAK Metal and Technology Co., Ltd.	437.11%
Tianjin Dingxing Furniture Company	437.11%
Tianjin Machinery Imp & Exp Corp.	437.11%
Tianjin Mandarin Import & Export Co., Ltd.	437.11%
Tianjin Zhonglian Metals Ware Co., Ltd.	437.11%
TMC Logistic Products	437.11%
Vida Logistics System Co., Ltd.	437.11%
Wuxi Puhui Metal Products Co., Ltd.	437.11%
Wuyi Tianchi Mechanical & Electrical Manufacture Co., Ltd.	437.11%
Xiamen E–Soon Machinery Co., Ltd.	437.11%
Xiamen GaoPing Co., Ltd.	437.11%
Xiamen Luckyroc Industry Co., Ltd.	437.11%
Xiangshan Ningbo General Steel Metal Structure Co., Ltd.	437.11%
Yuyao Sanlian Goods Shelves Manufacture Co., Ltd.	437.11%
All Others	2.54%

As a result of our *Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed CBP to suspend liquidation of all entries of subject merchandise from the PRC which were entered or withdrawn from warehouse, for consumption on or after November 9, 2009, the date of the publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we subsequently issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after March 9, 2010, but to continue the suspension of liquidation of all entries from November 9, 2009, through March 8, 2010.

We will issue a CVD order and reinstate the suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated CVDs for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non–privileged and non–proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/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 violation which is subject to sanction.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: June 3, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

APPENDIX

List of Comments and Issues in the Decision Memorandum

*Comment 1:*Whether the Department May Apply the CVD Law to an NME Country

*Comment 2:*Whether Producer A Constitutes a GOC Authority Capable of Providing a Financial Contribution As Defined by the Act

Comment 3: Whether Producer B Constitutes a GOC Authority Capable of Providing a Financial Contribution As Defined by the Act

*Comment 4:*Whether Producer C Constitutes a GOC Authority Capable of Providing a Financial Contribution As Defined by the Act

*Comment 5:*Whether DHMP's Zinc Supplier(s) Is a GOC Authority

*Comment 6:*Whether Actual Wire Rod and HRS Market Prices in the PRCAre Appropriate Benchmarks

*Comment 7:*Whether Benchmark Prices Should Include Freight

*Comment 8:*Whether Benchmark Prices Should Include Insurance Costs

*Comment 9:*Whether the GOC and DHMP Withheld Information Concerning the Location of DHMP's Facilities and Whether Information They Submitted is Reliable

*Comment 10:*Whether DHMP Is Located In an Industrial Zone Thereby Making Its Purchase of Land from the GOC Regionally Specific Under the Act

*Comment 11:*Whether DHMP Benefitted from an Interest–Free Deferral of its Land–Use Rights Payment

Comment 12: Whether the Eastfound Material's Land Acquisitions Are Countervailable

Comment 13: Whether the Department Should Countervail Eastfound Material's Alleged Unreported Land Payment Refund Discovered at Verification

Comment 14: Whether the Department Should Countervail Eastfound Metal's Land–Use

Comment 15: Whether the Department Should Use Year 2001 as the Cut–off Date or Use the AUL Methodology to Value Subsidies

Comment 16: Whether the GOC Terminated the Income Tax Exemption for Investors In Designated Geographical Regions Within Liaoning Program

Comment 17: Whether the GOC Terminated the Income Tax Benefits for FIEs Based on Geographic Location

Comment 18: Whether the GOC Terminated the VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment Program

Comment 19: Whether the GOC Terminated the Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries Program

Comment 20: Whether the Department Should Initiate an Investigation of the PRC's Currency Manipulation

Comment 21: Benefit Calculation Under the Two Free, Three Half Income Tax Program

Comment 22: Whether DHMP received a Subsidy Under the Income Tax Credits for FIES on Purchases of Domestically Produced Equipment Program

Comment 23: Whether DHMP Failed To Report VAT Deductions on Fixed Assets

[FR Doc. 2010–13971 Filed 6–9–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–949]

Wire Decking 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.

EFFECTIVE DATE: June 10, 2010

SUMMARY: On January 12, 2010, the Department of Commerce ("Department") published its preliminary determination of sales at less than fair value ("LTFV") in the antidumping investigation of wire decking from the People's Republic of China ("PRC"). We invited interested parties to comment on our preliminary determination of sales at LTFV. Based on our analysis of the comments we received, we have made changes to our margin calculations for the mandatory respondents. The final dumping margins for this investigation are listed in the "Final Determination Margins" section below.

FOR FURTHER INFORMATION CONTACT: Frances Veith or Trisha Tran, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4295 or (202) 482–4852, respectively.

Final Determination

We determine that wire decking 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 estimated margins of sales at LTFV are shown in the "Final Determination Margins" section of this notice.

SUPPLEMENTARY INFORMATION:

Case History

The Department published its preliminary determination of sales at LTFV on January 12, 2010. *See Wire Decking From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 1597 (January 12, 2010) ("*Preliminary Determination*").

On January 19, 2010, the Department issued post–Preliminary Determination supplemental questionnaires to DHMP and Eastfound[1] and received responses to these supplemental questionnaires on January 25, 2010. From February 1 through 12, 2010, the Department conducted verifications of DHMP, and Eastfound and released its verification reports for these companies on March 26, 2010, and April 14, 2010, respectively. See the "Verification" section below for additional information. On February 12, 2010, DHMP and Eastfound filed timely requests for a public hearing.

On February 16, 2010, in response to a request filed by DHMP, the Department extended the deadline for submission of publicly available information to March 12, 2010. On March 12, 2010, AWP Industries, Inc., ITC Manufacturing, Inc., J&L Wire Cloth, Inc., Nashville Wire Products Mfg. Co., Inc., and Wireway Husky Corporation ("Petitioners"), DHMP, and Eastfound submitted surrogate value information for the record, and each party submitted rebuttal comments to this information on March 22, 2010. On April 22, 2010, case briefs were filed by Petitioners, Nucor Corporation ("Nucor"), a domestic interested party, DHMP, Eastfound, and the Government of China ("GOC"). On April 30, 2010, Petitioners, Nucor, Eastfound, and the GOC each filed the final version of their rebuttal briefs, and on May 3, 2010, DHMP filed the final version of its rebuttal brief. The Department held a public hearing on May 5, 2010. On May 10, 2010, the Department rejected Nucor's case brief, but provided Nucor an opportunity to correct and resubmit its case brief. On May 11, 2010, Nucor filed its corrected case brief.

Tolling of Administrative Deadlines

The Department postponed the deadline for the final determination to not later than 135 days after publication of the *Preliminary Determination*, (*i.e.*, May 27, 2010). *See Preliminary Determination*, 75 FR at 1599. However, as explained in the memorandum from the Deputy Assistant Secretary ("DAS") for Import Administration, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government, February 5, through February 12, 2010. Thus, all existing deadlines associated with this investigation were postponed by seven days. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010. Accordingly, the revised deadline for this final determination is June 3, 2010.

Period of Investigation

The period of investigation ("POI") is October 1, 2008, through March 31, 2009. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was June 2009. *See* 19 CFR 351.204(b)(1).

Verification

As provided in section 782(i) of the Act, we verified the information submitted by DHMP and Eastfound for use in our final determination. *See* the Department's verification reports on the record of this investigation in the Central Records Unit ("CRU"), Room 1117 of the main Department building,

[1] Mandatory respondents are Dalian Huameilong Metal Products Co., Ltd. ("DHMP") and Dalian Eastfound Material Handling Products Co., Ltd. ("Eastfound Material") and its affiliate Dalian Eastfound Metal Products Co., Ltd. ("Eastfound Metal") (collectively "Eastfound").

with respect to these entities. For all verified companies, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by respondents.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the "Investigation of Wire Decking from the People's Republic of China: Issues and Decision Memorandum," dated concurrently with this notice and hereby adopted by this notice ("Issues and Decision Memorandum"). A list of the issues which parties raised and to which we respond in the Issues and Decision Memorandum is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document on file in the CRU and accessible on the Web at ia.ita.doc.gov/frn. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the *Preliminary Determination*

- Financial statements – In the *Preliminary Determination*, we calculated financial ratios based on three Indian producers' financial statements (*i.e.*, Bansidhar Granites Private Limited, Bedmutha Wire Com. Ltd., and Mekins Agro Products Ltd.), each covering the fiscal period ending March 31, 2008. For the final determination, we have determined to use the Indian financial statements of Rajratan Global Wire Limited, Visakha Wire Ropes Limited, and Nasco Steels Private Limited for the fiscal period ending March 31, 2009. *See* the Issues and Decision Memorandum at Comment 2.
- For DHMP:
  - We used DHMP's commercial invoice date as the date of sale, as opposed to the shipment date used in the *Preliminary Determination*. *See* the Department's Memorandum entitled, "Verification of the Sales and Factors Response of Dalian Huameilong Metal Products Co., Ltd. in the Antidumping Duty Investigation of Wire Decking from the People's Republic of China," dated March 26, 2010 ("DHMP's Verification Report"). *See also* the Issues and Decision Memorandum at Comment 10.
  - At verification, we determined the distances from DHMP to its unaffiliated hot–dip galvanizing toller and its affiliated galvanizing electroplating supplier. For the final determination, we applied a freight–in expense to those CONNUMs that indicated they were galvanized under either of these operations, as opposed to the distance from DHMP to the port for the unaffiliated toller and no distance for the affiliated supplier used in the *Preliminary Determination*. *See* DHMP's Verification Report; *see also* DHMP's Final Analysis Memo.[2]
  - We valued DHMP's hot–rolled steel strip FOP using Indian import data under harmonized tariff schedule ("HTS") category 7211.19.50 from the World Trade Atlas ("WTA") ($0.60247 per kilogram). *See* the Issues and Decision Memorandum at Comment 5; *see also* DHMP's Final Analysis Memo.
  - At verification, we found that DHMP's reported per–unit billing adjustments had been incorrectly reported in DHMP's sales database. DHMP had reported the full amount of the adjustment, instead of the per–unit billing adjustment. For the final determination, in the Department's margin program for DHMP, we changed DHMP's reported billing adjustment to the actual per–unit billing adjustment. *See* DHMP's Verification Report at pages 4 and 22 through 25; *see also* DHMP's Final Analysis Memo.
- For Eastfound:
  - We made the following changes to Eastfound's factors–of-production ("FOP") data: 1) we used facts available and adjusted the consumption for all inputs for certain CONNUMs by the percent difference between the bill of material ("BOM") steel weight and Eastfound's reported FOP consumption of steel; 2) we used facts available and set the actual weight reported for certain CONNUMs in Eastfound's U.S. sales data file equal to the corresponding BOM weight for steel; and 3) we used facts available and adjusted consumption for all inputs for certain CONNUMs by the percent difference between the amount of unreported hot–rolled steel found at verification and the total steel from the BOM. *See* the Department's Memorandum entitled, "Verification of the Sales and Factors Response of Dalian Eastfound Metal Products Co., Ltd., and Dalian Eastfound Material Handling Products Co., Ltd. in the Antidumping Duty Investigation of Wire Decking from the People's Republic of China," dated April 14, 2010 ("Eastfound's Verification Report"); see also the Issues and Decision Memorandum at Comments 7 and 8, and *see* Eastfound's Final Analysis Memo.[3]
  - We have capped the amount of Eastfound's freight revenue by the surrogate value amount deducted for ocean freight in the Department's U.S. net price calculation. See the Issues and Decision Memorandum at Comment 6; *see also* Eastfound's Final Analysis Memo.
  - We are not granting Eastfound a by–product offset. *See* the Issues and Decision Memorandum at Comment 7. *See also* Eastfound's Verification Report; *see also* Eastfound's Final Analysis Memo.
  - We valued Eastfound's unreported galvanizing tolling FOPs using the galvanizing cost from Galrebars (8,000 Rupees per metric ton). See the Issues and Decision Memorandum at Comment 9; *see also* Eastfound's Final Analysis Memo.

Scope of Investigation

The scope of the investigation covers welded–wire rack decking, which is also known as, among other things, "pallet rack decking," "wire rack decking," "wire mesh decking," "bulk storage shelving," or "welded–wire decking." Wire decking consists of wire mesh that is reinforced with structural supports and designed to be load bearing. The structural supports include sheet metal support channels, or other structural supports, that reinforce the wire mesh and that are welded or otherwise affixed to the wire mesh, regardless of whether the wire mesh and supports are assembled or unassembled and whether shipped as a kit or packaged separately. Wire decking is produced from carbon or alloy steel wire that has been welded into a mesh pattern. The wire may be galvanized or plated (*e.g.*, chrome, zinc or nickel coated), coated (*e.g.*, with paint, epoxy, or plastic), or uncoated ("raw"). The

[2] *See* the Department's memorandum entitled, Investigation of Wire Decking from the People's Republic of China: Analysis of the Final Determination Margin Calculation for Dalian Huameilong Metal Products Co., Ltd., dated concurrently with this notice ("DHMP's Final Analysis Memo").

[3] *See* the Department's memorandum entitled, Investigation of Wire Decking from the People's Republic of China: Analysis of the Final Determination Margin Calculation for Dalian Eastfound Metal Products Co., Ltd. and Dalian Eastfound Material Handling Products Co., Ltd., dated concurrently with this notice ("Eastfound's Final Analysis Memo").

wire may be drawn or rolled and may have a round, square or other profile. Wire decking is sold in a variety of wire gauges. The wire diameters used in the decking mesh are 0.105 inches or greater for round wire. For wire other than round wire, the distance between any two points on a cross–section of the wire is 0.105 inches or greater. Wire decking reinforced with structural supports is designed generally for industrial and other commercial storage rack systems.

Wire decking is produced to various profiles, including, but not limited to, a flat ("flush") profile, an upward curved back edge profile ("backstop") or downward curved edge profile ("waterfalls"), depending on the rack storage system. The wire decking may or may not be anchored to the rack storage system. The scope does not cover the metal rack storage system, comprised of metal uprights and cross beams, on which the wire decking is ultimately installed. Also excluded from the scope is wire mesh shelving that is not reinforced with structural supports and is designed for use without structural supports.

Wire decking enters the United States through several basket categories in the Harmonized Tariff Schedule of the United States ("HTSUS"). U.S. Customs and Border Protection has issued a ruling (NY F84777) that wire decking is to be classified under HTSUS 9403.90.8040. Wire decking has also been entered under HTSUS 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.4030, 7217.10.4090, 7217.10.5030, 7217.10.5090, 7217.10.6000, 7217.10.7000, 7217.10.8010, 7217.10.8020, 7217.10.8025, 7217.10.8030, 7217.10.8045, 7217.10.8060, 7217.10.8075, 7217.10.8090, 7217.10.9000, 7217.20.1500, 7217.20.3000, 7217.20.4510, 7217.20.4520, 7217.20.4530, 7217.20.4540, 7217.20.4550, 7217.20.4560, 7217.20.4570, 7217.20.4580, 7217.20.6000, 7217.20.7500, 7326.20.0010, 7326.20.0020, 7326.20.0070, 7326.90.1000, 7326.90.2500, 7326.90.3500, 7326.90.4500, 7326.90.6000, 7326.90.8505, 7326.90.8510, 7326.90.8530, 7326.90.8535, 7326.90.8545, 7326.90.8560, 7326.90.8575, 7326.90.8576, 7326.90.8577, 7326.90.8588, 9403.20.0020, and 9403.20.0030.[4] While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of these investigations is dispositive.

Surrogate Country

In the *Preliminary Determination*, we stated that we had 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 level of economic development comparable to that of the PRC, pursuant to section 773(c)(4) of the Act; and (3) we have reliable data from India that we can use to value the FOPs. *See Preliminary Determination*, 75 FR at 1599–1600. For the final determination, we received no comments on surrogate country selection and made no changes to our findings with respect to the selection of a surrogate country.

Separate Rates

In proceedings involving non–market-economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation 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. *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by *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) ("*Silicon Carbide*"), and 19 CFR 351.107(d).

In the *Preliminary Determination*, we found that Eastfound Material, Eastfound Metal, DHMP, Dandong Riqian Logistics Equipment Co. Ltd. ("Riqian"), Globsea Co., Ltd. ("Globsea"), and Ningbo Xinguang Rack Co., Ltd. ("Ningbo Xinguang") demonstrated their eligibility for separate–rate status. For the final determination, we continue to find that the evidence placed on the record of this investigation by Eastfound Material, Eastfound Metal, DHMP, Riqian, Globsea, and Ningbo Xinguang demonstrate both a *de jure* and *de facto* absence of government control, with respect to their respective exports of the merchandise under investigation, and, thus are eligible for separate–rate status. *See Preliminary Determination*, 75 FR at 1600–01.

Companies Not Receiving a Separate Rate

In the *Preliminary Determination*, we found that Dalian Xingbo Metal Products Co. Ltd. ("Dalian Xingbo") did not qualify for a separate rate because Dalian Xingbo did not export wire decking to the United States during the POI. *See* 75 FR at 1601. For the final determination, we continue to find that the evidence placed on the record of this investigation by Dalian Xingbo demonstrate that Dalian Xingbo did not export wire decking to the United States and, therefore, is not eligible for separate rate status.

In the *Preliminary Determination*, we found that Brynick Enterprises Limited ("Brynick") and Shanghai Hesheng Hardware Products Co. ("Hesheng") were not eligible for a separate rate because neither company submitted a separate rate application and, thus, were treated as part of the PRC–wide entity. *See* 75 FR at 1601–02. For the final determination, we continue to find that Brynick and Hesheng are part of the PRC–wide entity and, thus, are not eligible for separate–rate status.

Facts Available and the PRC–wide Entity

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record, or an interested party: (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain its deficiency. If the party fails to remedy the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Pursuant to section 782(e) of the Act, the Department shall not decline to

[4] In the *Preliminary Determination*, we presented in the scope, certain HTSUS categories that wire decking is also entered under, as a six-digit category number (*i.e.*, 7217.10, 7217.20, 7326.20, and 7326.90). Since the *Preliminary Determination*, we found that U.S. Customs and Border Protection ("CBP") requires a 10-digit format for these HTSUS categories. Thus, for the final determination, we have determined that wire decking's scope HTSUS categories will be presented in their full 10-digit format.

consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In the *Preliminary Determination*, the Department preliminarily determined that there were exporters/producers of the subject merchandise during the POI from the PRC that did not respond to the Department's request for information. We treated these PRC producers/exporters as part of the PRC–wide entity because they did not apply for a separate rate. As a result, we found that the use of facts available ("FA") was appropriate to determine the PRC–wide rate pursuant to section 776(a)(2)(A) of the Act. See *Preliminary Determination* at 75 FR at 1602.

Thus, in the *Preliminary Determination*, the Department determined that, in selecting from among the facts available, an adverse inference is appropriate because the PRC–wide entity failed to cooperate by not acting to the best of its ability to comply with requests for information. *See Id.* As adverse facts available ("AFA"), we preliminarily assigned to the PRC–wide entity a rate of 289.00 percent, the highest calculated rate from the petition. *See id; see also Statement of Administrative Action accompanying the URAA*, H.R. Rep. No. 103–316, vol. 1, at 870 (1994) ("SAA").

There have been no changes to the information on the record concerning the PRC–wide entity. Therefore, we have made no changes in our analysis for the final determination. Consequently, we determine that the use of AFA for the PRC–wide entity is warranted for the final determination.

Selection of the Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that the Department may rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. 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."[5] It is also 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."[6]

Generally, the Department finds selecting the highest rate in any segment of the proceeding as AFA to be appropriate.[7] 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.[8] In the instant investigation, as AFA, we have assigned to the PRC–wide entity the highest petition rate on the record of this proceeding that can be corroborated. *See Wire Decking From the People's Republic of China: Initiation of Antidumping Duty Investigation*, 74 FR 31691, 31694 (July 2, 2009) ("*Initiation Notice*"). The Department determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described as "information derived from the petition that gave rise to the investigation or review, the final determination concerning merchandise subject to this investigation, or any previous review under section 751 concerning the merchandise subject to this investigation."[9] To "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value.[10] Independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[11] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.[12]

At the *Preliminary Determination*, in accordance with section 776(c) of the Act, we corroborated our AFA margin by comparing the highest CONNUM–specific margin from the two mandatory respondents to the petition margins.[13] Similarly, for the final determination, we compared the highest CONNUM–specific margin from the two mandatory respondents to the petition margins. We conclude that using the highest CONNUM–specific margin as a reference point, the highest petition margin that can be corroborated within the meaning of the statute is 143.00 percent, which is sufficiently adverse so as to induce cooperation such that the uncooperative companies do not benefit from their failure to cooperate. *See* Memorandum to the File, regarding Corroboration of the PRC–Wide Entity Rate and for the Final Determination in the Antidumping Duty Investigation of Wire Decking from the People's Republic of China, dated concurrently with this notice. Accordingly, we find that the rate of 143.00 percent is corroborated within the meaning of section 776(c) of the Act.

The PRC–wide rate applies to all entries of the merchandise under investigation except for entries from Eastfound, DHMP, Riqian, Globsea, and Ningbo Xinguang as they have demonstrated eligibility for a separate rate. These companies and their corresponding antidumping duty cash deposit rates are listed below in the "Final Determination" section of this notice. Accordingly, we find that the rate of 143.00 percent is corroborated within the meaning of section 776(c) of the Act.

---

[5] *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).

[6] *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); *See also*, SAA at 870.

[7] *See, e.g., Certain Cased Pencils from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part*, 70 FR 76755, 76761 (December 28, 2005) unchanged in final, *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 38366 (July 6, 2006), and accompanying Issues and Decision Memorandum at Comment 10.

[8] *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China*, 65 FR 34660 (May 21, 2000), and accompanying Issues and Decision Memorandum at "Facts Available."

[9] *See Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China*, 73 FR 6479, 6481 (February 4, 2008); *see also*, SAA at 870.

[10] *See id.*

[11] *See id.*

[12] *See Prestressed Concrete Steel Wire Strand From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 28560, 28562-63 (May 21, 2010).

[13] *See* the Department's memorandum entitled, Corroboration of the PRC-Wide Entity Rate and for the Preliminary Determination in the Antidumping Duty Investigation of Wire Decking from the People's Republic of China, dated January 4, 2010.

Combination Rates

In the *Preliminary Determination*, the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation.[14] This practice is described in the *Separate Rate Policy Bulletin*.[15]

Final Determination

The weighted–average dumping margin percentages are as follows:

Exporter	Producer	Percent Margin
Dalian Huameilong Metal Products Co., Ltd.	Dalian Huameilong Metal Products Co., Ltd.	17.75%
Dalian Eastfound Metal Products Co., Ltd. / Dalian Eastfound Material Handling Products Co. Ltd	Dalian Eastfound Metal Products Co., Ltd., or Dalian Eastfound Material Handling Products Co. Ltd.	14.24%
Globsea Co., Ltd	Dalian Yutiein Storage Manufacturing Co. Ltd., or Dalian Xingbo Metal Products Co. Ltd.	16.00%
Ningbo Xinguang Rack Co., Ltd.	Ningbo Xinguang Rack Co., Ltd.	16.00%
Dandong Riqian Logistics Equipment Co. Ltd.	Dandong Riqian Logistics Equipment Co. Ltd.	16.00%
PRC–Wide Entity*		143.00%

* This rate also applies to Brynick Enterprises Limited, Shanghai Hesheng Hardware Products Co., and Dalian Xingbo Metal Products Co. Ltd.

Disclosure

We 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).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing CBP to continue to suspend liquidation of all imports of subject merchandise entered or withdrawn from warehouse, for consumption on or after the date of publication of the *Preliminary Determination* in the **Federal Register**. We will instruct CBP to continue to require a cash deposit or the posting of a bond for all companies based on the estimated weighted–average dumping margins shown above.

Where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct CBP to require a cash deposit or posting of a bond equal to the amount by which the normal value exceeds the export price, less the amount of the countervailing duty determined to constitute an export subsidy.[16] Accordingly, for cash deposit purposes for Eastfound, we will subtract from the antidumping applicable cash deposit rate that portion of the rate attributable to the export subsidies found in the affirmative countervailing duty determination (*i.e.*, 0.01 percent). *See* the final notice for the concurrent CVD investigation of wire decking from the PRC, dated concurrently with this notice. After the adjustment for the export subsidies, the resulting cash deposit rate will be 14.23 percent for Eastfound.[17]

The suspension of liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our final determination of sales at LTFV. As our 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 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 and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: June 3, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I – List of Issues

Case Issues:

Comment 1: Double Remedy
Comment 2: Selection of Financial Statements

Comment 3: Valuation of Electricity
Comment 4: Valuation of Wire Rod
Comment 5: Valuation of Flat Rolled Steel

Comment 6: Eastfound's US Price and Freight Charges
Comment 7: Eastfound's Consumption factors

Comment 8: Eastfound's Wire Rod Correction from Verification
Comment 9: Galvanization
A. Whether to Reject Galvanizing

[14] *See Preliminary Determination*, 75 FR at 1606.

[15] *See* Memorandum entitled "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries" dated April 5, 2005, available at http://ia.ita.doc.gov/policy/index.html.

[16] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from India*, 69 FR 67306, 67307 (November 17, 2004).

[17] Normally, where the non-individually examined entities receiving a separate rate in an AD investigation are found to have benefitted from export subsidies in a concurrent CVD investigation on the same product (either through individual examination or through the "All Others" rate), the Department will instruct CBP to collect a cash deposit or the posting of a bond equal the amount of the AD margin adjusted for the amount of the export subsidy. In this case, none of the non-individually examined entities receiving a separate rate in the AD investigation were individually examined in the companion CVD investigation. Further, the export subsidy found for "All Others" in the CVD companion case is so small (0.005 percent) as to have no impact on the AD margin. Accordingly, we will not adjust the AD margins for these entities in our instructions to CBP.

Information Submitted by Eastfound at Verification

B. Whether the Department Should Use a Surrogate Value for Galvanizing

C. Whether the Department Should Revise the Surrogate Value for Galvanizing

Comment 10: DHMP's Date of Sale

Comment 11: Value of Sulfuric Acid, Thiourea, Caustic Soda, Zinc Oxide, Nitric Acid

[FR Doc. 2010–13977 Filed 6–9–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–894]

Certain Tissue Paper Products from the People's Republic of China: Final Results of Expedited Sunset Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 1, 2010, the Department of Commerce (the Department) initiated a sunset review of the antidumping duty order on certain tissue paper products from the People's Republic of China (PRC) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). The Department conducted an expedited (120–day) sunset review of this order. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to the continuation or recurrence of dumping. The dumping margins are identified in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: June 10, 2010.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Brandon Farlander, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background:

On February 1, 2010, the Department published the notice of initiation of the sunset review of the antidumping duty order on certain tissue paper products from the PRC pursuant to section 751(c) of the Act. *See Initiation of Five–year ("Sunset") Review*, 75 FR 5042, February 1, 2010. The Department received a Notice of Intent to Participate from the following domestic tissue paper producers: Seaman Paper Company of Massachusetts, Inc., Eagle Tissue LLC, Flower City Tissue Mills Co., Garlock Printing & Converting, Inc., and Putney Paper Co., Ltd. (collectively the domestic interested parties), within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as producers of a domestic like product in the United States. We received an adequate substantive response from the domestic interested parties within the 30–day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from any respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120–day) sunset review of the order.

Scope of the Order

The tissue paper products covered by the order are cut–to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to the order may or may not be bleached, dye–colored, surface–colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to the order is in the form of cut–to-length sheets of tissue paper with a width equal to or greater than one–half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to the order may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles.

The merchandise subject to the order does not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may be under one or more of several different subheadings, including: 4802.30, 4802.54, 4802.61, 4802.62, 4802.69, 4804.31.1000, 4804.31.2000, 4804.31.4020, 4804.31.4040, 4804.31.6000, 4804.39, 4805.91.1090, 4805.91.5000, 4805.91.7000, 4806.40, 4808.30, 4808.90, 4811.90, 4823.90, 4802.50.00, 4802.90.00, 4805.91.90, 9505.90.40. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.[1]

Excluded from the scope of the order are the following tissue paper products: (1) tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die–cut to the shape of a toilet seat, *i.e.*, disposable sanitary covers for toilet seats; (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers (HTSUS 4803.00.20.00 and 4803.00.40.00).

Analysis of Comments Received

All issues raised in this review are addressed in the "Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Antidumping Duty Order on Certain Tissue Paper Products from the People's Republic of China" (Decision Memo), which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of the continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were to be revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room 1117 of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/index.html.* The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on certain

[1] On January 30, 2007, at the direction of U.S. Customs and Border Protection, the Department added the following HTSUS classifications to the antidumping duty/countervailing duty module for tissue paper: 4802.54.3100, 4802.54.6100, and 4823.90.6700. However, we note that the six-digit classifications for these numbers were already listed in the scope.

tissue paper products from the PRC would be likely to lead to the continuation or recurrence of dumping at the following weighted–average percentage margins:

Manufacturers/Exporters/Producers	Weighted–Average Margin (percent)
Qingdao Wenlong Co. Ltd	112.64
Fujian Nanping Investment & Enterprise Co	112.64
Fuzhou Light Industry Import & Export Co. Ltd	112.64
Guilin Qifeng Paper Co. Ltd	112.64
Ningbo Spring Stationary Limited Company	112.64
Everlasting Business & Industry Corporation Ltd	112.64
BA Marketing & Industrial Co. Ltd	112.64
Samsam Production Limited & Guangzhou Baxi Printing Products Limited	112.64
Max Fortune Industrial Limited	112.64
PRC–wide rate	112.64

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: June 3, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–13972 Filed 6–9–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Informational Meeting for the i6 Challenge Under EDA's Economic Adjustment Assistance Program

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The i6 Challenge is a new, multi-agency innovation competition led by the Economic Development Administration (EDA), a bureau of the U.S. Department of Commerce (DOC). The i6 Challenge is designed to encourage and reward innovative, ground-breaking ideas that will accelerate technology commercialization and new-venture formation across the United States, for the ultimate purpose of helping to drive economic growth and job creation. To accomplish this, the i6 Challenge targets sections of the research-to-deployment continuum that are in need of additional support, in order to strengthen regional innovation ecosystems. Applicants to the i6 Challenge are expected to propose mechanisms to fill in existing gaps in the continuum or leverage existing infrastructure and institutions, such as economic development organizations, academic institutions, or other non-profit organizations, in new and innovative ways to achieve the i6 objectives. Under the i6 Challenge, EDA intends to fund implementation grants for technical assistance through its Economic Adjustment Assistance Program (42 U.S.C. 3149). The federal funding opportunity for the i6 Challenge was announced on May 3, 2010, and a notice and request for applications was published in the **Federal Register** (75 FR 23676).

DATES: EDA will hold an additional informational meeting via conference call at 4 p.m. (Eastern time) on Monday, June 21, 2010, to answer questions about the i6 Challenge. More details on the meeting and any updates will be posted at the i6 Challenge Web site at *http://www.eda.gov/i6.*

FOR FURTHER INFORMATION CONTACT: For additional information, please send questions via e-mail to *i6@doc.gov.* EDA's Web site at *http://www.eda.gov/i6* also has information on EDA and the i6 Challenge.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To communicate the goals and requirements of the i6 Challenge and to answer questions related to the federal funding opportunity announcement.

Public Participation: To participate in the informational meeting, please call 1–800–779–5194. Please give the operator the passcode "EDA." Because of the anticipated number of callers, callers should plan to dial-in 10 minutes early. Please be advised that the organizers of the meeting intend to (1) record the full conference call and all questions and answers, and (2) post the recording at *http://www.eda.gov/i6.*

Dated: June 7, 2010.

Hina Shaikh,

Deputy Chief Counsel, Economic Development Administration.

[FR Doc. 2010–13970 Filed 6–9–10; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–008]

Preliminary Results of Antidumping Duty Administrative Review: Circular Welded Carbon Steel Pipes and Tubes From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Taiwan for the period May 1, 2008, to April 30, 2009 (the POR). We preliminarily determine that sales of subject merchandise by Yieh Phui Enterprise Co., Ltd. (Yieh Phui) have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries. Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the publication of this notice.

DATES: *Effective Date:* June 10, 2010.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution

Avenue, NW., Washington, DC 20230; telephone: (202) 482–1131 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 29, 2002, the Department published in the **Federal Register** an antidumping duty order on circular welded carbon steel pipes and tubes from Taiwan. *See Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Antidumping Duty Order,* 49 FR 19369 (May 7, 1984) (*Antidumping Duty Order*). On May 1, 2009, the Department issued a notice of opportunity to request an administrative review of this order for the POR. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 74 FR 20278 (May 1, 2009). On June 1, 2009, a domestic producer, Wheatland Tube Company (petitioner), requested an administrative review of Yieh Phui Enterprise Co., Ltd. On June 24, 2009, the Department published the notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 74 FR 30052 (June 24, 2009).

Yieh Phui submitted a response to Section A of the Department's questionnaire on July 31, 2009, and a response to Sections B, C, and D of the Department's questionnaire on August 31, 2009. In response to the Department's August 25, 2009, supplemental questionnaire pertaining to Yieh Phui's Section A response, Yieh Phui submitted a response on September 18, 2009. In response to the Department's November 6, 2009, supplemental questionnaire covering Yieh Phui's Sections A–D responses, Yieh Phui submitted a response for Section A on November 30, 2009, and a response for Sections B–D on December 8, 2009. On December 15, 2009, the Department issued a supplemental questionnaire covering product characteristic issues, to which Yieh Phui responded on December 22, 2009. In response to the Department's January 29, 2010, supplemental questionnaire covering Yieh Phui's earlier Section A–D and product characteristic questionnaire responses, Yieh Phui submitted responses on February 16, 2010 (Section A) and March 10, 2010 (Sections B–D). On April 22, 2010, the Department issued a supplemental questionnaire relating to information from various Yieh Phui submissions. Yieh Phui submitted a response (including its final sales and cost databases) on May 14, 2010.

On January 11, 2010, the Department published an extension of the preliminary results of the administrative review. *See Circular Welded Carbon Steel Pipes and Tubes from Taiwan; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 1335 (January 11, 2010). On February 12, 2010, the Department tolled administrative deadlines, including in the instant review, by one calendar week. *See* "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010. As a result, the deadline for the issuance of the preliminary results of the instant review is June 7, 2010.

Scope of the Order

The merchandise covered by this order is certain circular welded carbon steel pipes and tubes from Taiwan, which are defined as: Welded carbon steel pipes and tubes, of circular cross section, with walls not thinner than 0.065 inch, and 0.375 inch or more but not over 4.5 inches in outside diameter, currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.5025, 7306.30.5032, 7306.30.5040, and 7306.30.5055. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise subject to this order is dispositive.

Export Price

For the price to the United States, we used export price (EP), as defined in section 772(a) of the Tariff Act of 1930, as amended (the Act). Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the producer or exporter outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. We calculated an EP for Yieh Phui's U.S. sales because they were made directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP) was not otherwise warranted based on the facts on the record.

For EP sales, we made deductions from the starting price (gross unit price), where appropriate, for movement expenses in accordance with section 772(c)(2)(A) of the Act. Movement expenses included inland freight, warehousing expenses, brokerage fees, trade promotion fees, harbor maintenance fees, and international freight.

Normal Value

A. Selection of Comparison Market

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is not a particular market situation that prevents a proper comparison with sales to the United States. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States. *See* section 773(a)(1) of the Act.

We found that Yieh Phui had a viable home market for circular welded carbon steel pipes and tubes because its home market sales, by quantity, exceeded the five percent threshold. *See* "Analysis Memorandum for Yieh Phui Enterprise Co., Ltd. (Yieh Phui): Circular Welded Carbon Steel Pipes and Tubes from Taiwan (A–583–008), May 1, 2008—April 30, 2009" (Yieh Phui Preliminary Analysis Memorandum) at 2. Yieh Phui submitted home market sales data for purposes of the calculation of NV. In deriving NV, we made adjustments as detailed in the "Calculation of Normal Value Based on Comparison Market Prices" section below.

B. Arm's-Length Sales

The respondent reported sales of the foreign like product to affiliated customers, which, according to Yieh Phui, consumed the merchandise. To test whether these sales to affiliated customers were made at arm's length, where possible, we compared the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, and packing. Where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade, we determined that the sales made to the affiliated party were at arm's length. *See Modification Concerning Affiliated Party Sales in the Comparison Market,* 67 FR 69186 (November 15, 2002). Yieh Phui's sales to affiliated parties that were determined not to be at arm's length were disregarded in the cost test and in the comparison to U.S. sales.

C. Cost of Production Analysis

Because we disregarded below-cost sales in the most recently completed segment of the proceeding, we had reasonable grounds to believe or suspect that home market sales of the foreign like product by the respondent were made at prices below the cost of production (COP) during the POR, in accordance with section 773(b)(2)(A)(ii) of the Act. *See* "Yieh Phui Preliminary Analysis Memorandum" at 7. Therefore, we required Yieh Phui to submit a response to Section D of the Department's Questionnaire.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP by model based on the sum of materials, fabrication, general and administrative (G&A), and interest expenses. For more details, *see* "Yieh Phui Preliminary Analysis Memorandum" at 7–8.

2. Test of Comparison Market Sales Prices

We compared the weighted-average COPs for the respondent to its home market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.,* normally a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a model-specific basis, we compared the COP to the home market prices, less any applicable movement charges, discounts, rebates, and direct and indirect selling expenses.

3. Results of the COP Test

We disregard below-cost sales where: (1) 20 percent or more of the respondent's sales of a given product during the POR were made at prices below the COP in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on comparisons of price to weighted-average COPs for the POR, we determine that the below-cost sales of the product were at prices that would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act. We found Yieh Phui made sales below cost and we disregarded such sales where appropriate. *See* "Yieh Phui Preliminary Analysis Memorandum" at 8.

D. Calculation of Normal Value Based on Comparison-Market Prices

We determined NV for Yieh Phui as follows. We made deductions from the gross price to account for discounts and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act. We also deducted home market movement expenses pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act. Specifically, we made adjustments to normal value for comparison to Yieh Phui's EP transactions by deducting direct selling expenses incurred for home market sales (*i.e.,* credit expenses) and adding U.S. direct selling expenses (*i.e.,* credit expenses, bank charges, and cargo certification fees) and U.S. commissions. *See* section 773(a)(6)(C)(iii) of the Act, and 19 CFR 351.410(c). Where we compared Yieh Phui's U.S. sales to home market sales of merchandise, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

E. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that, where NV cannot be based on comparison-market sales, NV may be based on constructed value (CV). Accordingly, for those models of circular welded carbon steel pipes and tubes for which we could not determine the NV based on comparison-market sales, either because there were no sales of a comparable product or all sales of the comparison products failed the COP test, we based NV on CV.

Section 773(e)(1) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise plus amounts for selling, general, and administrative expenses (SG&A), interest expenses, profit, and U.S. packing expenses. We calculated the cost of materials and fabrication based on the methodology described in the COP section of this notice. We based SG&A and profit on the actual amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

We made adjustments to CV for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. We deducted direct selling expenses incurred for home market sales (*i.e.,* credit expenses). *See* section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c). We added U.S. direct selling expenses (*i.e.,* credit expenses, bank charges, and cargo certification fees) and U.S. commissions to the NV.

F. Level of Trade/Constructed Export Price Offset

In accordance with section 773(a)(1)(B) of the Act, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP and CEP sales, to the extent practicable. When there are no sales at the same LOT, we compare U.S. sales to comparison market sales at a different LOT. When NV is based on CV, the NV LOT is that of the sales from which we derive SG&A expenses and profit.

Pursuant to 19 CFR 351.412(c)(2), to determine whether comparison market sales were at a different LOT, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's-length) customers. The Department identifies the LOT based on: The starting price or constructed value (for normal value); the starting price (for EP sales); and the starting price, as adjusted under section 772(d) of the Act (for CEP sales). If the comparison-market sales were at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we will make an LOT adjustment under section 773(a)(7)(A) of the Act.

Finally, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the differences in LOT between NV and CEP affected price comparability, we will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.

Yieh Phui indicated there was a single level of trade for all sales in both markets, and petitioner has not claimed that multiple levels of trade existed for Yieh Phui. Yieh Phui provided responses to the Department's questions regarding channels of distribution and selling activities performed for different categories of customers. *See* Yieh Phui's July 31, 2009 Section A response, at 12–14. Yieh Phui's chart of numerous specific selling functions indicates the selling functions performed for sales in both markets are virtually identical, with no significant variation across the broader categories of sales process/marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services. For more details, *see* "Yieh Phui Preliminary Analysis Memorandum." We have

preliminarily determined there is one single level of trade for all sales in both the home market and the U.S. market, and, therefore, that no basis exists for a level of trade adjustment.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act, based on exchange rates in effect on the date of the U.S. sale, as provided by the Federal Reserve Bank. *See also* 19 CFR 351.415.

Preliminary Results of Review

As a result of this review, we preliminarily determine the following weighted-average margin exists for the period May 1, 2008, through April 30, 2009:

Producer/exporter	Weighted-average margin (percentage)
Yieh Phui Enterprise Co., Ltd ...	5.04

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), the Department will disclose calculations performed within five days of publication of this notice. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after submission of case briefs. *See* 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument: (1) A statement of the issues; (2) a brief summary of the arguments; and (3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held two days after the date for submission of rebuttal briefs, or the first working day thereafter. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3) of the Act.

Assessment

Upon completion of the administrative review, pursuant to 19 CFR 351.212(b), the Department will calculate an assessment rate on all appropriate entries. The Department will issue appropriate appraisement instructions for the company subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

Because Yieh Phui did not report the entered value of its sales, we will calculate importer-specific (or customer-specific) per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales of each importer (or customer) and dividing each of these amounts by the respective quantities (by weight) associated with those sales. To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer-specific (or customer-specific) *ad valorem* ratios based on estimated entered values.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review for each importer (or customer) for which the importer-specific (or customer-specific) ad valorem ratio is above *de minimis* (*i.e.,* at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the importer-specific (or customer-specific) *ad valorem* ratio is *de minimis* (*i.e.,* less than 0.50 percent).

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by the company included in the final results where the reviewed companies did not know the merchandise it sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there was no rate calculated in this review for the intermediary involved in the transaction. *See id.,* 68 FR at 23954.

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of circular welded carbon steel pipes and tubes from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Yieh Phui will be the rate established in the final results of this review, except if a rate is less than 0.50 percent, and therefore *de minimis,* the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 9.70 percent, the all-others rate established in the LTFV investigation. *See Antidumping Duty Order.*

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 4, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–13974 Filed 6–9–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–838]

Certain Frozen Warmwater Shrimp From Brazil: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Rebecca Trainor, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4929 or (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2010, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" of the antidumping duty order on certain frozen warmwater shrimp from Brazil for the period of review (POR) February 1, 2009, through January 31, 2010. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 75 FR 5037 (February 1, 2010). The Department received a timely request from the Ad Hoc Shrimp Trade Action Committee (Domestic Producers) in accordance with 19 CFR 351.213(b), for an administrative review of the antidumping duty order on certain frozen warmwater shrimp from Brazil. On April 7, 2009, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain frozen warmwater shrimp from Brazil with respect to four companies. *See Certain Frozen Warmwater Shrimp from Brazil, India and Thailand: Notice of Initiation of Administrative Reviews,* 75 FR 17693 (April 7, 2010) (*Initiation Notice*).

The Department stated in its initiation of this review that it intended to rely on U.S. Customs and Border Protection (CBP) data to select respondents. *See Initiation Notice.* However, our review of the CBP database showed no entries of certain frozen warmwater shrimp originating in Brazil, subject to AD/CVD duties, during the period February 1, 2009, to January 31, 2010. *See* April 9, 2010, Memorandum to the File from Kate Johnson entitled "Release of POR Entry Data from CBP." We released the results of our CBP data query to interested parties and invited them to comment on the CBP data and respondent selection. No party commented on the CBP data or respondent selection.

On April 12, 2010, we sent a "No Shipments Inquiry" to CBP to confirm that there were no shipments or entries of frozen warmwater shrimp from Brazil during the POR. We received no information from CBP to contradict the results of our data query that there were no shipments or entries of subject merchandise to the United States during the POR.

Rescission of Review

Section 351.213(d)(3) of the Department's regulations stipulates that the Secretary may rescind an administrative review if there were no entries, exports, or sales of the subject merchandise during the POR. As there were no entries, exports, or sales of the subject merchandise during the POR, we are rescinding this review of the antidumping duty order on certain frozen warmwater shrimp from Brazil pursuant to 19 CFR 351.213(d)(3). We intend to issue assessment instructions to CBP 15 days after the date of publication of this notice of rescission of administrative review.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: June 3, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–13976 Filed 6–9–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0076]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend three systems of records.

SUMMARY: The Defense Logistics Agency is proposing to amend three systems of records notices in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective without further notice on July 12, 2010 unless comments are received which would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Privacy Act Officer, Headquarters Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: June 3, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S200.30

SYSTEM NAME:

Reserve Affairs Records Collection (March 8, 2010; 75 FR 10474).

CHANGE:

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency,

ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221."

* * * * *

S200.30

SYSTEM NAME:

Reserve Affairs Records Collection.

SYSTEM LOCATION:

Director, J–9, Joint Reserve Forces, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 3627, Fort Belvoir, VA 22060–6221, and the Heads of the DLA Primary Level Field Activities. Mailing addresses may be obtained from the system manager below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Selected Reserve, Army, Marine Corps, Navy, and Air Force personnel assigned to Defense Logistics Agency (DLA) Reserve units and Individual Mobilization Augmentee (IMA) positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files contain full name, grade, Social Security Number (SSN), service, career specialty, position title, date of birth, commission date, promotion date, release date, medical/dental record information, benefits and allowances, pay records, security clearance, education, home address and civilian occupation of the individuals involved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Part II, Personnel Generally; 10 U.S.C. 133, Under Secretary of Defense for Acquisition, Technology, and Logistics; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

The files are maintained to provide background information on individuals assigned to DLA and to document their assignment. Data is used in preparation of personnel actions such as reassignments, classification actions, promotions, scheduling, and verification of active duty and inactive duty training. The data is also used for management and statistical reports and studies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Records may be stored on paper and on electronic storage media.

RETRIEVABILITY:

Retrieved by last name and Social Security Number (SSN).

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non-duty hours.

RETENTION AND DISPOSAL:

Records are destroyed 2 years after separation or release from mobilization, or after supersession or obsolescence, or after 5 years, as applicable.

SYSTEM MANAGER(S) AND ADDRESS:

Director, J–9, Joint Reserve Forces, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 3627, Fort Belvoir, VA 22060–6221 and the Heads of the DLA Primary Level Field Activities.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the DLA Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the individual's full name and Social Security Number (SSN).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the DLA Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the individual's full name and Social Security Number (SSN).

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Data is provided by the subject individual and their Military Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S500.30

SYSTEM NAME:

Incident Investigation/Police Inquiry Files. (April 8, 2010; 75 FR 17906).

CHANGE:

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221."

* * * * *

S500.30

SYSTEM NAME:

Incident Investigation/Police Inquiry Files.

SYSTEM LOCATION:

Public Safety and Security Office, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the Public Safety and Security Offices of the Defense Logistics Agency Field Activities.

Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been the subject of a non-criminal investigation or police inquiry into incidents occurring on DLA-controlled facilities or installations. The system also covers incidents at other locations that involve individuals assigned to or employed by DLA or employed by agencies that receive security and police force services from DLA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain case number, name of subject, Social Security Number (SSN), address, telephone number, and details

of the incident or inquiry; the investigative report containing details of the investigation, relevant facts discovered, information received from sources and witnesses, the investigator's findings, conclusions, and recommendations; and case disposition details.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 303(b), Oath to Witnesses; 10 U.S.C. 133, Under Secretary of Defense for Acquisition and Technology; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To record information related to investigations of or inquiries into incidents under DLA jurisdiction. Records may be used to make decisions with respect to disciplinary action and/or suitability for employment; to bar individuals from entry to DLA facilities or installations; to evaluate the adequacy of existing physical security safeguards; and to perform similar functions with respect to maintaining a secure workplace. Statistical data, with all personal data removed, may be provided to other offices for purposes of reporting, planning, training, vulnerability assessment, awareness, and similar administrative endeavors. Complaints appearing to involve criminal wrongdoing are referred to the appropriate criminal investigative organization for investigation and disposition.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records or information contained therein may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, state, and local agencies that administer programs or employ individuals involved in an incident or inquiry.

The DoD 'Blanket Routine Uses' also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and electronic storage media.

RETRIEVABILITY:

Records are retrieved by name of subject, subject matter, and by case number.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA Headquarters and Field Activities security and staff personnel who use the records to perform their duties. All records are maintained on closed military installations with security force personnel performing installation access control and random patrols.

Common Access Cards and personal identification numbers are used to authenticate authorized desktop and laptop computer users. Computer servers are scanned monthly to assess system vulnerabilities. Systems security updates are accomplished daily. The computer files are password protected with access restricted to authorized users with a need for the information. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non duty hours, with access restricted during duty hours to authorized users with a need for the information.

RETENTION AND DISPOSAL:

Records are destroyed 5 years after date of last action; incidents involving terrorist threats are destroyed 7 years after the incident is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Program Manager, Law Enforcement Operations, Headquarters, Defense Logistics Agency, Office of Public Safety, 8725 John J. Kingman Road, Suite 3533, Fort Belvoir, VA 22060–6220, and the Security Managers within the DLA Field Activity responsible for the operation of security forces and staff at the DLA Field Activity. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Individuals are required to provide name, Social Security Number (SSN), employing activity name and address, and, if known, place of investigation.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Individuals are required to provide name, Social Security Number, employing activity name and address, and, if known, place of investigation.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is provided by the record subject, victims, witnesses, and investigators.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 323. For additional information contact the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

S335.01

SYSTEM NAME:

Training and Employee Development Record System (April 29, 2010; 75 FR 22562).

CHANGE:

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221."

* * * * *

S335.01

SYSTEM NAME:

Training and Employee Development Record System

SYSTEM LOCATION:

The master file is maintained by the Director, Defense Logistics Agency Training Center, Building 11, Section 5, 3990 E. Broad Street, Columbus, OH 43216–5000.

Subsets of the master file are maintained by DLA Support Services, Business Management Office, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221; the DLA Primary Level Field Activities; and individual supervisors.

Official mailing addresses are published as an appendix to DLA's compilation of systems of records notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals receiving training funded or sponsored by the Defense Logistics Agency (DLA) to include DLA employees, Department of Defense military personnel, non-appropriated fund personnel, DLA contractor personnel, and DLA foreign national personnel may be included in the system at some locations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number (SSN), student identification number, date of birth, e-mail, home addresses; occupational series, grade, and supervisory status; registration and training data, including application or nomination documents, pre- and post-test results, student progress data, start and completion dates, course descriptions, funding sources and costs, student goals, long- and short-term training needs, and related data. The files may contain employee agreements and details on personnel actions taken with respect to individuals receiving apprentice or on-the-job training.

Where training is required for professional licenses, certification, or recertification, the file may include proficiency data in one or more skill areas. Electronic records may contain computer logon and password data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapter 41, Training; E.O. 11348, Providing for the further training of Government employees, as amended by E.O. 12107, Relating to the Civil Service Commission and labor-management in the Federal Service; 5 CFR part 410, Office of Personnel Management-Training and E.O. 9397 (SSN), as amended.

PURPOSE(S):

Information is used to manage and administer training and development programs; to identify individual training needs; to screen and select candidates for training; and for reporting and financial forecasting, tracking, monitoring, assessing, and payment reconciliation purposes. Statistical data, with all personal identifiers removed, are used to compare hours and costs allocated to training among different DLA activities and different types of employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Veterans Affairs for inspecting, surveying, auditing, or evaluating apprentice or on-the-job training programs.

To the Department of Labor for inspecting, surveying, auditing, or evaluating apprentice training programs and other programs under its jurisdiction.

To Federal, state, and local agencies and oversight entities to track, manage, and report on mandatory training requirements and certifications.

To public and private sector educational, training, and conferencing entities for participant enrollment, tracking, evaluation, and payment reconciliation purposes.

To Federal agencies for screening and selecting candidates for training or developmental programs sponsored by the agency.

To Federal oversight agencies for investigating, reviewing, resolving, negotiating, settling, or hearing complaints, grievances, or other matters under its cognizance.

The DoD "Blanket Routine Uses" also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored on paper and/or on electronic storage media.

RETRIEVABILITY:

Records may be retrieved by name, student identification number, or Social Security Number (SSN).

SAFEGUARDS:

Records are maintained in physical and electronic areas accessible only to DLA personnel who must use the records to perform assigned duties. Physical access is limited through the use of locks, guards, card swipe, and other administrative procedures. The electronic records are deployed on accredited systems with access restricted by the use of Common Access Card (CAC) and assigned system roles. The web-based files are encrypted in accordance with approved information assurance protocols. Employees are warned through screen log-on protocols and periodic briefings of the consequences of improper access or use of the data. In addition, users are trained to lock or shutdown their workstations when leaving the work area. During non-duty hours, records are secured in access-controlled buildings, offices, cabinets or computer systems.

RETENTION AND DISPOSAL:

Training files are destroyed when 5 years old or when superseded, whichever is sooner. Employee agreements, individual training plans, progress reports, and similar records used in intern, upward mobility, career management, and similar developmental training programs are destroyed 1 year after employee has completed the program.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Logistics Agency Training Center, Building 11, Section 5, 3990 E. Broad Street, Columbus, OH 43216–5000 and Staff Director, Business Management Office, DLA Enterprise Support, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Written inquiries should contain the individuals name, Social Security Number (SSN), home address and telephone number.

Current DLA employees may determine whether information about themselves is contained in subsets to the master file by accessing the system through their assigned DLA computer or by contacting their immediate supervisor.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Written inquiries should contain the individuals name, Social Security Number (SSN), home address and telephone number.

Current DLA employees may gain access to data contained in subsets to the master file by accessing the system through their assigned DLA computer or by contacting their immediate supervisor.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual, current and past supervisors, personnel offices, educational and training facilities, licensing or certifying entities, the Defense Civilian Personnel Data System (DCPDS) and the Military Online Processing System (MOPS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–13771 Filed 6–9–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare an Environmental Impact Statement for Northwest Aggregates' Previously Authorized Replacement of an Existing Barge Loading Facility in East Passage of Puget Sound on the Southeast Shoreline of Maury Island, King County, WA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps) Seattle District is preparing an Environmental Impact Statement (EIS) to analyze the environmental effects of replacing an existing barge loading dock to facilitate resumption of sand and gravel mining operations at Northwest Aggregates' Maury Island facility. The Corps issued a permit to Northwest Aggregates for the dock replacement project on July 2, 2008, under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Northwest Aggregates has been enjoined by the U.S. District Court for the Western District of Washington from conducting any further marine construction work under the Corps' permit, until the Corps completes an EIS on the project. A portion of this marine construction work was done prior to the Court's 2009 ruling; the balance remains incomplete at this time. The EIS will analyze the environmental effects of the issuance of the Corps permit, including additional analysis of potential impacts of the project on the marine environment, including endangered species (Chinook salmon, Southern Resident Killer whales, rockfish, eulachon, and other listed species) and forage fish, additional analysis and evaluation of the no action and other alternatives to achieve the project purpose, and additional analysis of cumulative impacts associated with the permit project.

DATES: Scoping meetings for this project will be held on (*see* **SUPPLEMENTARY INFORMATION** section).

ADDRESSES: The scoping meeting locations are (*see* **SUPPLEMENTARY INFORMATION** section).

FOR FURTHER INFORMATION CONTACT: Written comments on the scope of the EIS or requests for information should be addressed to Mrs. Olivia Romano, Project Manager, U.S. Army Corps of Engineers, Seattle Regulatory Branch, 4735 E. Marginal Way South, Seattle, Washington 98134; (206) 764–6960 or via e-mail to *NWAEIS@usace.army.mil*.

SUPPLEMENTARY INFORMATION: The EIS process begins with the publication of this Notice of Intent. The scoping period will continue for 60 days after publication of this Notice of Intent and will close on August 9, 2010. During the scoping period the Corps invites Federal agencies, State and local governments, Native American Tribes, and the public to participate in the scoping process by providing written comments at any time during the scoping period or during attendance at one of the public scoping meetings scheduled at the times and locations indicated.

1. July 12, 2010 from 6 p.m. to 8:30 p.m., Seattle, Washington. An open house will be held as part of the meeting from 6 p.m. to 7 p.m. Following a presentation on the project the open house will continue from 7:30 p.m.to 8:30 p.m. Located at Federal Center South, 4735 East Marginal Way South, Seattle, WA.

2. July 14, 2010 from 6 p.m. to 8:30 p.m. Vashon Island, Washington. An open house will be held as part of the meeting from 6 p.m. to 7p.m. Following a presentation on the project the open house will continue from 7:30 p.m. to 8:30 p.m. Located at Vashon High School Commons, 20120 Vashon Highway, SW., Vashon Island, WA.

Written comments will be considered in the preparation of the Draft EIS. Comments postmarked or received by e-mail after the specified date will be considered to the extent feasible.

The purpose of the scoping meetings is to assist the Corps in defining existing conditions, anticipated project impacts, other issues, public concerns, a reasonable range of alternatives, and the depth to which the various alternatives will be evaluated in the EIS. The Corps has prepared a scoping announcement

to familiarize agencies, the public and interested organizations with the Northwest Aggregates dock replacement project and potential environmental issues associated with completed construction work, the remaining construction work, and the operation of the dock. Copies of the scoping announcement will be available at the public meeting or can be requested by contacting the Corps Seattle District as described above. Corps' representatives will answer questions pertaining to the scope of the EIS, and accept scope-related comments.

The EIS will be prepared according to the Corps' procedures for implementing the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4332(C), and consistent with the Corps' policy to facilitate public understanding and review of agency proposals. As part of the EIS process a full range of reasonable alternatives will be evaluated. Development of the Draft EIS will begin after the close of the public scoping period. The Draft EIS is expected to be available for public review in the Fall 2010.

Michelle Walker,

Chief, Regulatory, Seattle District.

[FR Doc. 2010–13929 Filed 6–9–10; 8:45 am]

BILLING CODE 3720–58–P

ELECTION ASSISTANCE COMMISSION

Publication of State Plan Pursuant to the Help America Vote Act

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to sections 254(a)(11)(A) and 255(b) of the Help America Vote Act (HAVA), Public Law 107–252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** changes to the HAVA state plan previously submitted by Illinois.

DATES: This notice is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone 202–566–3100 or 1–866–747–1471 (toll-free).

Submit Comments: Any comments regarding the plan published herewith should be made in writing to the chief election official of the individual state at the address listed below.

SUPPLEMENTARY INFORMATION: On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA state plans filed by the fifty states, the District of Columbia and the Territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that states, territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA section 254(a)(11) through (13). HAVA sections 254(a)(11)(A) and 255 require EAC to publish such updates. This is the fourth revision to the state plan for Illinois.

The amendments to Illinois' state plan include the adoption of a state-based administrative complaint procedure and improvements to the administration of elections for federal office, and address how the state will use Title II, Section 251 funds to meet the requirements of the Military and Overseas Voter Empowerment Act (MOVE Act). In accordance with HAVA section 254(a)(12), all the state plans submitted for publication provide information on how the respective state succeeded in carrying out its previous state plan. Illinois confirms that its amendments to the state plan were developed and submitted to public comment in accordance with HAVA sections 254(a)(11), 255, and 256.

Upon the expiration of thirty days from June 10, 2010, the state is eligible to implement the changes addressed in the plan that is published herein, in accordance with HAVA section 254(a)(11)(C). EAC wishes to acknowledge the effort that went into revising this state plan and encourages further public comment, in writing, to the state election official listed below.

Chief State Election Official

Mr. Daniel W. White, Executive Director, Illinois State Board of Elections, 1020 S. Spring Street, Springfield, Illinois, 62704, Phone: (217) 782–4141, Fax: (217) 782–5959.

Thank you for your interest in improving the voting process in America.

Dated: May 26, 2010.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

HELP AMERICA VOTE ACT

STATE OF ILLINOIS

STATE PLAN

Daniel W. White
Executive Director
Illinois State Board of Elections

April 2010

The state plan is also available at
http://www.elections.il.gov/VotingInformation/HAVA.aspx

Daniel W. White
Executive Director
Illinois State Board of Elections

The State Board of Elections is an independent constitutional agency responsible for general supervision over the administration of the registration and election laws throughout the State of Illinois. The Board consists of eight members – four Democrat and four Republican. The Board appoints an Executive Director and Assistant Executive Director to oversee the day-to-day activities of the State Board of Elections. The Executive Director serves as the Chief Election Officer for the state.

During its thirty year existence, the legislature has expanded the duties of the State Board of Elections to include many other aspects of the election process. The Board oversees and provides services to 110 election jurisdictions throughout the state. With the passage of The Help America Vote Act of 2002 (HAVA), the Board will be responsible for ensuring the provisions of HAVA are implemented in a proper and timely fashion.

Legislation was passed and signed by the Governor to implement provisions under the Help America Vote Act of 2002. Among other things, Public Act 93-0574 established the Help Illinois Vote Act fund so that Illinois could receive federal funds; established new criteria in the Election Code for provisional voting; provided for the definition of a vote for punch card systems, optical scan systems and the Populex system; and authorized the use of direct recording electronic voting systems in Illinois. The Illinois State Board of Elections is now in full compliance with the Help America Vote Act of 2002 and has certified to the Election Assistance Commission that it meets all Title III Requirements.

The State Board of Elections will continue to request state funds to fulfill the HAVA requirement that the state has appropriated funds for carrying out the activities for which the requirements payment is made in an amount equal to 5 percent each year that HAVA Requirements funds are made available to Illinois.

This amended state plan continues to outline how the state will distribute and monitor monies received and how the state is meeting requirements of the Help America Vote Act.

Table of Contents

Illinois State Board of Elections
Amended State Plan – April 2010

Section 1. Title III Requirements Payment

How the State will use the requirements payment to meet the requirements of Title III, and if applicable under section 251(a)(2), to carry out other activities to improve the administration of elections.

Section 301 Voting Systems Standards

Each election jurisdiction now complies with the HAVA requirement that one fully accessible machine be available in each polling place. All other voting systems meet HAVA requirements in that they 1) permit the voter to verify their vote before the ballot is cast and counted, 2) provide the voter with the opportunity to change the ballot before it is cast and counted, and 3) provide notice to the voter of an overvote with an opportunity to correct the ballot before it is cast and counted. All jurisdictions have equipment that meets the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election commission. All voting systems currently produce a permanent paper record. PA 93-0574 also requires a permanent paper record on the DRE's.

Pursuant to Public Act 93-0574, the State Board of Elections, in evaluating the feasibility of any new voting system, shall seek and accept public comment from persons of the disabled community, including but not limited to organizations of the blind.

Jurisdictions continue to purchase equipment (including software/hardware) as necessary for the proper administration of federal elections as funds are available to their jurisdiction. All voting systems purchased will meet Title III, Section 301 requirements. Funds will be made available to assist jurisdictions in paying maintenance costs on the voting equipment as well as storage and delivery of voting equipment. Jurisdictions required under the Voting Rights Act of 1965 to provide alternative language accessibility for all voting systems are allocated funds to purchase items that pertain to the Act. All voting equipment must provide for a voter verified paper trail. The election authorities are encouraged to ensure that each accessible voting machine is in working order and is fully accessible to voters with disabilities during the entire voting process.

The State Board of Elections and election jurisdictions will utilize funding to continue educating the election judges as well as training voters on the election process as well as on the voting equipment. This may include videos, powerpoint presentations and equipment.

Illinois applied for and received the Election Assistance for Individuals for Disabilities grants for FY 03 through FY 09 and will continue to apply for all future HHS funding. Election authorities will continue to audit polling places on a regular basis to ascertain if they meet accessibility standards and also publish the polling places that are accessible. Illinois will strive to have all polling places 100% accessible. This should

include the ability for a voter with a disability to voter privately and independently in the polling place. The Board will encourage the election authorities to utilize federal funds available for this purpose and consider recommendations from the disabled community and advocates.

Section 302 Provisional Voting and Voting Information Requirements

Public Act 93-0574 provided statutory language authorizing provisional voting in Illinois. All provisional voting requirements for this provision are now met. Funds will be used to support the provisional voting requirement. Election authorities shall continue to train election judges on implementing this new provision. As provided in Section 302(a)(5)(3), the State Board of Elections, continues to provide a toll free telephone number for election authorities to utilize for voters who cast provisional ballots to access to discover whether his or her vote was counted. The SBE also provides for a system which allows a voter to access the SBE website with an access code to determine if their vote was counted. The majority of the jurisdictions utilize this website to report provisional voting for all federal elections. Illinois law also allows for provisional voting if the polls remain open after closing time due to a Federal or State court order. Electronic pollbooks enable election judges to verify voter registration status and precinct information immediately, allowing for faster and more accurate processing of provisional ballots.

HAVA funds are available through a grant process for election jurisdictions for preparing and posting Voting Information Requirements in each polling place on the day of each election for Federal office. Funds are also used to purchase kiosks or similar products that provide election-related information to the voters.

The revised voter registration form includes instructions for mail-in registrants and first time voters. An Administrative Complaint procedure is in place that allows individuals who feel their rights have been violated to seek recourse.

Section 303 Computerized Statewide Voter Registration List Requirements and Requirements for Voters Who Register By Mail.

Illinois has completed the single, uniform, official centralized statewide voter registration database. We have coordinated with the Department of Public Health and Department of Corrections for the transfer of deaths and felons via electronic means. The State Board of Elections and the Office of the Secretary of State have entered into an agreement for the sharing of information in the databases. The Secretary of State's office has entered into an agreement with the Social Security office as required by HAVA. Illinois will continue to work with its primary vendor, Catalyst Consulting to perform technical upgrades on the statewide database.

The revised voter registration form allows for the applicant's driver's license number or, if no driver's license, the last 4 digits of the applicant's social security number or their full

Illinois State Board of Elections
Amended State Plan – April 2010

Secretary of State ID number. Measures are provided for in determining the validity of the numbers provided in the statewide voter registration database. The HAVA requirement that every legally registered voter in the State be assigned a unique identifier is now provided for with the statewide voter registration database.

Illinois law now provides for all requirements for a person who has registered by mail. Persons who registered to vote by mail may vote by mail-in absentee, provided they supply sufficient proof of identity. Persons who apply to register to vote by mail but do not provide adequate ID shall be notified by the election authority that the registration is not complete and that the person remains ineligible to vote in person or absentee until such proof is presented. HAVA Funds will continue to be used to upgrade and maintain the database at the state level as well as county level.

Section 402. Establishment of State-based Administrative Complaint Procedures to Remedy Grievances.

The State Board of Elections has adopted a state-based administrative complaint procedure with the adoption of Administrative Complaint Procedures and Remedy Grievance Rules and Regulations.

Section 251(b) Amendment - Military and Overseas Voter Empowerment Act (MOVE Act)

Section 251(b) was amended on the use of requirements funds. Illinois will utilize Requirement funds to meet the requirements under the Uniformed and Overseas Citizens Absentee Voting Act imposed as a result of the provisions of and amendments made by the Military and Overseas Voter Act. This will include establishing procedures for absent uniformed services and overseas voters to request and receive voter registration applications and absentee ballot applications, and transmission of blank absentee ballots by mail and electronically in a timely manner (Illinois law requires a 45 day transmission time); as well as a ballot tracking mechanism that will provide a free access system that allows a UOCAVA voter to determine whether his/her absentee ballot was received by the election official.

Improving the Administration of Elections for Federal Office

The Illinois State Board of Elections is now in full compliance with the Help America Vote Act of 2002 and has certified to the Election Assistance Commission that it meets all Title III Requirements. All HAVA funds, including future requirements payments and interested earned, will be used to improve the administration of elections for federal office, providing grants for continuation of training for election officials, educating voters, replacing and updating voting systems and technology, and improving the accessibility of polling places for individuals with disabilities or the elderly.

The State Board of Elections will perform site visits on all election jurisdictions that have received HAVA funding to ensure that HAVA funding is adequately monitored.

Section 2. Illinois' Distribution of Requirements Payment

How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of

(A) the criteria to be used to determine the eligibility of such units or entities for receiving the payment; and

(B) the methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8).

The State Board of Elections will retain all responsibility for the requirements payments. It will receive, expend and account for all HAVA monies. The SBE will work with the election authorities to determine needs and spending priorities. Funds will be distributed based on availability and set to the priorities established in this plan.

The State Board of Elections will manage the requirements payments and will account for all receipts and expenditures. Election authorities will either be reimbursed for qualifying expenditures or will be awarded grants depending on individual circumstances. However, election authorities will be responsible for financial needs that exceed the specified requirements.

Illinois State Board of Elections provides funds to the 110 election jurisdictions (sub-recipients) through a grant process to comply with the Help America Vote Act. Most grants are allocated via voting age population of the jurisdiction based on the 2000 Census at this time. As the Census is conducted every ten years the allocation process will be updated accordingly. Each grant requires the election jurisdictions to submit requested paperwork. Awards are made upon receipt and approval of the information submitted to HAVA Operations. Following disbursement to the jurisdiction, a copy of the check paid to the vendor is required to ensure payment is being made in a timely manner.

The State Board of Elections will ensure all payments are accounted for by maintaining accurate records of all disbursements and performing site visits.

Section 3. Voter Education Programs

Illinois State Board of Elections
Amended State Plan – April 2010

How the state will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of title III.

I. Voter Education

Voter education is essential to any plan for election reform. The purpose of the voter education program must be to increase voter familiarity with the requirements to register to vote, the type of voting equipment utilized and to inform voters of their rights and responsibilities at the polling place. Voter education should also help to increase voter interest and participation in the election, help attract poll workers, and decrease the voter error rate.

Voter education programs will address all aspects of the voting public with specific emphasis in reaching senior citizens, young adults, minority voters, and voters with disabilities. It will include both pre-election and election day strategies including how to register to vote, how to locate polling places, how to cast a ballot, and voters rights in the polling place.

Pre-election strategies include public service announcements in television and radio format, electronic forms of voter education, community partnerships with outreach organizations, demonstrations of the voting equipment at venues throughout the election jurisdiction, and programs geared toward use in the classroom. The State Board of Elections has and will continue to seek participation from other state agencies. The State Board of Elections will seek assistance from the Department of Rehabilitation Services, Department of Aging and Department of Human Services in providing educational materials to clients of those departments.

Pre-election day strategies include demonstrations of the voting equipment. Election day strategies include having informational posters available in polling places, and printed information regarding voting equipment usage provided in the polling place. We encourage election authorities to request vendors provide to each registered household in that jurisdiction a guide explaining operation of their particular voting equipment. The State Board of Elections will continue to enhance its voter education material already on its website and we encourage election authorities to do the same.

The State Board of Elections provides information on its website and for distribution at other agencies and organizations upon their request. This includes information on registering to vote, absentee voting, election judges, pollwatchers, provisional voting and mock election programs. Funds will continue to be used by the State Board of Elections as well as election jurisdictions through the grant process for expenses related to training and education of election judges and the public on the voting equipment and the election process, and for voter education and election judge training to comply with the Voting Rights Act.

II. Election Administrator Training

The State Board of Elections has prepared and will continue to update a Guide for Election Authorities to ensure that there is adequate knowledge of the state election laws and the implementation of these laws at the local level.

The State Board of Elections will work in conjunction with both the County Clerks Association and the Association of Election Commission Officials to facilitate an education and training program for their members. This program should include a framework for providing practical learning experiences in the administration of elections. A workshop is conducted for all newly elected county clerks and any interested current county clerks. This workshop will include presentations by State Board of Elections staff on election procedures, voting system testing, HAVA, NVRA and MOVE. All election authorities are encouraged to attend. A HAVA manual will be made available to ensure uniform implementation throughout the state.

III. Poll Worker Training

The State Board of Elections will establish uniform requirements for poll worker training throughout the state and will oversee the implementation of this training. The local election authority should be responsible for conducting most of the training programs to ensure the unique aspects of the election in each jurisdiction are clearly explained to the poll worker.

Audio-visual aids will be used for the training program. As part of the training, the program will include a portion on sensitivity for voters with disabilities. The State Board of Elections recommends election authorities involve the disabled community and advocates in their poll worker training to achieve a more comprehensive understanding of accessible voting. In establishing a uniform training program for poll workers, the State Board of Elections will serve as the liaison among all election authorities within the state to ensure participation in the training development and coordination of the information. In implementing this training program, the State Board of Elections will provide a training plan to the local election authority and will assist, where necessary, in the execution of the training. Training manuals will include, but not be limited to, information about the nature of various disabilities, the rights of voters, access to and maneuverability within polling places and the use of machines and ballots. HAVA funds are made available through a grant process for the jurisdictions for training of pollworkers and are funded as an improvement to the administration of elections for Federal office.

Section 4. Voting Systems Guidelines and Processes

How the state will adopt voting system guidelines and processes which are consistent with the requirements of section 301.

Illinois State Board of Elections
Amended State Plan – April 2010

Illinois adopted procedures in 1978 that allows no voting system to be used in the state unless approved for use by the State Board of Elections in accordance with rules set forth. The requirements for approval are found in the Illinois Election Code, 10 ILCS 5/24A-16, 24B-16, and 24C-16 as well as in State Board of Elections Rules and Regulations, 26 Illinois Administrative Code, Chapter 1, Section 204.10 - 204.180.

As required in PA 93-0574 the State Board of Elections, in evaluating the feasibility of any new voting system, will accept public comment from persons in the disabled community.

Section 5. Illinois HAVA Fund

How the state will establish a fund described in subsection (b) for purposes of administering the State's activities under this part, including information on fund management.

With the passage of SB 428 in the spring 2003 legislative session, the Help Illinois Vote Fund to implement HAVA was established. It authorized appropriation from the Fund solely to the State Board of Elections for use in accordance with the federal Act. Illinois plans to use interest generated from the Fund to help fund future needs in implementing HAVA.

As part of each year's fiscal appropriation, language will be included to give the State Board of Elections spending authority to use the funds in accordance with the Help America Vote Act of 2002 (as long as federal funds remain available).

The SBE Executive Director and Chief Fiscal Officer will work with the State Comptroller and State Treasurer to follow and enforce all mandated fiscal controls and policies.

Section 6. Illinois Proposed HAVA Budget

The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on

(A) the costs of the activities required to be carried out to meet the requirements of title III;
(B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and
(C) the portion of the requirements payment which will be used to carry out other activities.

It is apparent that the costs of implementing the "Help America Vote Act" will not be fully covered by the monies authorized in the Act. Priorities must be set and basic requirements of the Act must be met.

Disbursements Of Section 101 And 102 Monies

Illinois continues to utilize Section 101 monies on improving the administration of elections for Federal office, polling place accessibility, the statewide registration database, costs involved with the toll free hotline, and miscellaneous expenses relating to HAVA implementation. Section 101 continues to earn interest in the appropriate HAVA account and will be used to comply with HAVA. Monies remaining from the Section 102 funding will be distributed to election jurisdictions for additional voting equipment.

Title I	Received	Expended (as of 4/1/10)*
Section 101	$11,129,030	$8,381,346
Section 102	$33,805,617	$33,669,569

*Does not include expenditure of interest earned on cash balances. Interest earned to date from Title I funding is $2,360,600.

Section 251 Monies

The State Board of Elections will continue to request state matching funds each fiscal year funds are made available before requesting any Title II Requirements funds as appropriated by Congress. The matching funds and Title II Requirements funds will be used to meet the current and any amended Title III Requirements as well as improving the administration of federal elections. The State Board of Elections will utilize the funds as well as distribute funds to the election jurisdictions for local use.

Section 251	Received	Expended (as of 4/1/10)	State Match
FY 03	$35,283,025	$35,283,025[*1]	[*2]
FY 04	$63,312,227 (allocated) $63,309,068 (received)	$54,313,751[*1]	$5,341,749[*2]
FY 08	$4,822,248	$ 0	$253,803

[*1] Does not include expenditure of interest earned on cash balances. Interest earned to date from Section 251 funds is $7,601,500.
[*2] Combined State Match contribution for FY 03 and FY 04 fiscal years

Section 251	Allocated	State Match
FY 09	$4,193,259	$220,698
FY 10	$2,935,281	$154,490
FY 11*		
FY 12*		
FY 13*		
FY 14*		

*Future 251 funding will be used to continue supporting activities described in this plan unless otherwise noted in an amended state plan.

Section 254(A)(7) - Disbursements (State Funds)

The State Board of Elections will continue to request the maintenance of effort state funding of $550,000 each fiscal year that Federal funds are spent on the activities funded by the State for the fiscal year ending prior to November 2000. This funding reflects spending on the statewide voter registration database.

Section 261 - Disbursements

The State Board of Elections will continue to request Section 261 funds each fiscal year they are made available. This HHS grant money will be 1) distributed through a grant process using a voting age population formula for each jurisdiction, or 2) used to fund accessibility through the State Board of Elections. Either option will be using the funds to make the voting process accessibility for the elderly or voters with disabilities or to ensure the polling place itself it accessible.

Section 261	Received	Expended (as of 4/1/10)
FY 03	$511,102	$511,102
FY 04	$359,062	$359,062
FY 05	$357,156	$357,156
FY 06	$401,375	$401,375
FY 07	$397,711	$312,317
FY 08	$457,121	$ 0
FY 09	$454,764	$ 0

Section 261	Allocated
FY 10	$453,238

Section 7. Maintenance of Effort

How the State, in using the requirements payment, will maintain the expenditures of the state for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

In FY00, Illinois had an appropriation of $550,000 for the uniform registration formatting project (now called the statewide voter registration system project). This amount will continue to be appropriated in the agency's budget each fiscal year that requirement funding is utilized for this purpose. Funding will continue to be used for development, updating and maintenance of the Statewide Voter Registration Database as dictated by the mandates of HAVA.

The State Board of Elections will establish a Maintenance of Expenditure policy based on final guidance from the EAC. The plan will capture an MOE from all eligible state and local entities that spent state funds on HAVA eligible expenses during FY 99 – July 1, 1999 through June 30, 2000. Progress or changes to MOE will be reported in the annual HAVA report.

Section 8. Performance Goals and Measures

How the state will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

After a review of applicable State Laws and Administrative Codes, the State Board of Elections and the Committee determined its performance goals and set timelines in order to meet the requirements of HAVA. Each performance goal has been met and continues to be followed.

Punch Card Buyout completed January 1, 2006 (waiver approved). Replaced punch card voting systems in 10,590 eligible precincts. SBE maintains a database of voting systems used by each county.

Accessible voting machines – completed January 1, 2006 – Each polling place now has voting equipment which allows a disabled voter to vote unassisted.

Polling place accessibility – November 2006 - Provide accessible polling places for each precinct. Election Authorities report polling place accessibility to SBE through surveys. Staff continues to work with election authorities to ensure all polling places are accessible to the elderly and voters with disabilities.

Provisional ballot - Completed January 2004 - Procedures provided for by PA 93-0574. Procedures were developed for voting and processing ballots and to inform provisional voter of outcome. Provisional ballots must be tracked for the purposes of adding to final canvass and reporting to provisional voter.

Illinois State Board of Elections
Amended State Plan – April 2010

Definition of vote – Completed January 2004 – Provides for standards for recount procedures.

State-wide voter registration system – Completed April 2009. System provides means for uploading voter information from counties to state-wide database.

Administrative Complaint procedure – Completed November 2004 – Board Rules provide a means of receiving, reporting and resolving complaints from voters. Track complaints and resolutions through an annual report.

Education and Training – Completed January 2004 - Provide voter education and enhanced election judges training; report voter education through election authority surveys. Election Authorities currently report the # of Election Judges who have tested for each election.

Section 9. State-Based Administrative Complaint Procedures

A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 402.

The Illinois State Board of Elections developed administrative rules that allows any person who believes there is, has been, or is about to be a violation of Title III of HAVA to file a complaint.

The complaint must be in writing, sworn and notarized. At the complainant's request, there will be a hearing on the record. If the State finds a violation, it will provide an appropriate remedy. If the State determines a violation has not occurred, the complaint will be dismissed and the results will be published. The State will make a final determination on a complaint within 90 days, unless the complainant consents to a longer period for making such a determination.

The 90-day period begins on the date the complaint is filed. If the State cannot meet this 90-day deadline, the complaint will be resolved within 60 days under an alternative dispute resolution procedure. This 60-day period for resolving a complaint under an alternative dispute resolution process begins after the 90-day period expires. The record and other materials from any proceedings conducted under the complaint procedures shall be made available for use under the alternative dispute resolution procedures. All procedures will be administered in a uniform and nondiscriminatory manner.

The State Board of Elections has adopted a state-based administrative complaint procedure with the adoption of Administrative Complaint Procedures and Remedy Grievance Rules and Regulations.

Section 10. Effect of Title I Payments

If the State received any payment under title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.

Title I money (Section 101 – payments to states to improve administration of elections) received are being used to

1) comply with the requirements under Title III;
2) educate voters concerning voting procedures, voting rights, voting technology ;
3) train election officials, poll workers and election volunteers;
4) prepare the state plan;
5) improve the voting process by purchasing or replacing voting systems and technology; and
6) improve the accessibility of polling places.

Title I money (Section 102) was used to replace punch card machines in 10,590 precincts. The punch card buyout task force recommended that punch card buyout funds be distributed to each eligible local election jurisdiction based upon the number of precincts in that jurisdiction that used punch cards for the November 2000 election. All 97 eligible jurisdictions requested the funds to replace their existing punch card voting equipment. Remaining Section 102 funds will be provided to election jurisdictions to purchase additional voting equipment.

Section 11. Illinois State Plan Management

How the State will conduct ongoing management of the plan, except that the State may not make any material change in the administration of the plan unless the change –

(A) is developed and published in the Federal Register in accordance with section 255 in the same manner as the State plan;
(B) is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and
(C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A).

Illinois will manage the ongoing plan in the manner described in the State Plan. No material changes will be made to the Plan unless the change is adopted in conformance with language found in Section 254 (a) (11) of the Help America Vote Act 2002.

The Chief Election Official will conduct meetings with the HAVA State Planning Committee and its task forces as necessary to discuss the progress and objectives of the State Plan and will continue to comply with the HAVA deadlines for submitting

Illinois State Board of Elections
Amended State Plan – April 2010

HAVA state plans in future years. HAVA Operations staff has and will continue to review the State Plan periodically. If necessary, the plan is revised and submitted to the State Planning Committee for comments as well as published for public comment before submission to the Election Assistance Commission.

Section 12. Changes to Plan from Previous Fiscal Year

In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.

The State Board of Elections and/or all election jurisdictions will continue to use Title II, Section 251 funds, made available to them to meet the requirements of Title III and/or to improve the administration of elections for Federal office. Funds will also be used for other purchases related to HAVA, Section 101.

Illinois will continue to disperse Health and Human Services funds to the jurisdictions to provide for polling place accessibility improvements or will provide accessibility services itself. Illinois will continue to provide for voters with disabilities as more HAVA funds become available.

Illinois will comply with the Military and Overseas Voter Empowerment Act and HAVA funding will be used to meet these requirements. Illinois will comply with Maintenance of Expenditure in accordance with the guidance provided by the Election Assistance Commission.

Section 13. State Planning Committee

A description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section and section 256.

The first state plan was developed through a committee of appropriate individuals, including the chief election officials of the two most populous jurisdictions, other election officials, stakeholders (such as representatives of groups of individuals with disabilities) and other citizens, as well as the Chief State Election Official. This year's state plan was updated by HAVA Operations staff and distributed to all members of the State Planning Committee.

The draft State plan will be available on the Board's website and published for public comment for 30 days (comments due no later than May 10, 2010). Comments from the Committee will be taken into account before the Plan is submitted to the Board for approval on May 17, 2010. The amended state plan will be submitted to the Election

Assistance Commission for posting in the Federal Register. The full committee may meet again as necessary.

Daniel W. White, Executive Director, Illinois State Board of Elections,

Members of the Updated State Planning Committee are:

Matt Abrahamson, Dept. of Rehabilitation Services
Steve Bean, Macon County Clerk
Tom Benzinger, Access Living
Bill Blessman, Mason County Clerk
Bernice Bloom, Citizen
Kathy Bruns, House Republican Staff
Hollister Bundy, Inclusion Solutions, Inc.
Ray Campbell, Illinois Council of the Blind
Cynthia Canary, Illinois Campaign for Political Reform
Rance Carpenter, Department of Aging
Bruce Clark, Kankakee County Clerk
Laurie Dittman, Chicago Mayor's Office for People with Disabilities
Heather Wier Vaught, Office of the House Speaker Michael Madigan
Krista Erickson, Lake County Center for Independent Living
Alan Gitelson, Professor of Political Science, Loyola University - Chicago
Lance Gough, Chicago Board of Election Commissioners
Debbie Grant, Springfield Branch NAACP
Barb Gross, Morgan County Clerk
Harvey Grossman, ACLU
Steve Handschu, National Federation of the Blind of Illinois
Sharon Holmes, DeKalb County Clerk
Bill Houlihan, Office of Senator Richard Durbin
Roger Huebner, General Counsel, IL Municipal League
Pat Hughes, Inclusion Solutions, Inc.
Becky Huntley, Ogle County Clerk
John Jackson, Public Policy Institute, Southern Illinois University – Carbondale
Curt Conrad, Illinois Republican Party
Robin Jones, Great Lakes DPTAC
Mike Kasper, Illinois Democratic Party
Jan Kralovec, Office of Cook County Clerk
League of Women Voters
James Lewis, East St. Louis Board of Election Commissioners
Bill Looby, AFL/CIO
Bill Luking, Attorney
Rene Luna, Access Living
Todd Maisch, IL Chamber of Commerce
Peggy Ann Milton, McLean County Clerk
Saul Morse, Illinois State Medical Society

Illinois State Board of Elections
Amended State Plan – April 2010

Peg Mosgers, Office of Senate Republican Leader
Zena Naiditch, Equip for Equality, Inc.
Doreen Nelson, DuPage County Election Commission
Sara Nelson, Office of U.S. Senator Richard Durbin
David Orr, Cook County Clerk
Pat Plotner, former SBE employee
Brendt Ramsey, Coalition of Citizens with Disabilities
Kent Redfield, Department of Political Science, University of Illinois - Springfield
Larry Reinhardt, Jackson County Clerk
Randy Reitz, Bond County Clerk
Pete Roberts, IL Network of Centers for Independent Living
Steve Rotello, Office of the Attorney General
Bob Saar, Executive Director, DuPage County Election Commission
Mary Ann Scanlan, Office of the Secretary of State
Kathie Schultz, McHenry County Clerk
Leslie Stanberry, Director, Decatur-Macon County Senior Center
Nancy Strain, Executive Director, Rockford Board of Election Commissioners
Maria Valdez, MALDEF
Mark Von Nida, Madison County Clerk
Karen Ward, Equip for Equality
Carol Wozniewski, Mental Health Association Illinois
Ralph Yaniz, American Association of Retired Persons
Jill Zwick, Office of Secretary of State

[FR Doc. 2010–13961 Filed 6–9–10; 8:45 am]
BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, July 14, 2010 5 p.m.

ADDRESSES: Atomic Testing Museum, 755 East Flamingo Road, Las Vegas, Nevada 89119.

FOR FURTHER INFORMATION CONTACT: Denise Rupp, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. Phone: (702) 657–9088; Fax (702) 295–5300 or E-mail: *ntscab@nv.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Presentation—Fiscal Year 2011 Nevada Site Office Environmental Management Activities
2. Sub-Committee Updates
- Industrial Sites Committee
- Membership Committee
- Soils Committee
- Transportation/Waste Committee
- Underground Test Area Committee

Public Participation: The EM SSAB, Nevada Test Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Denise Rupp at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Denise Rupp at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing to Denise Rupp at the address listed above or at the following Web site: *http://www.ntscab.com/MeetingMinutes.htm.*

Issued at Washington, DC on June 3, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–13940 Filed 6–9–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, July 1, 2010—6 p.m.

ADDRESSES: Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: Joel Bradburne, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–3822, *Joel.Bradburne@lex.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

- Call to Order, Introductions, Review of Agenda
- Approval of May Minutes
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaisons' Comments
- Administrative Issues:
  - Subcommittee Updates
  - Recommendation on Baseline Funding Support
- Public Comments
- Final Comments
- Adjourn

Breaks taken as appropriate.

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Joel Bradburne at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Joel Bradburne at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Joel Bradburne at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.ports-ssab.org/publicmeetings.html.*

Issued at Washington, DC on June 4, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–13941 Filed 6–9–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

June 2, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP08–104–002.

Applicants: Colorado Interstate Gas Company.

Description: Colorado Interstate Gas Company Fuel Reimbursement Percentage Compliance Filing.

Filed Date: 05/27/2010.

Accession Number: 20100527–5180.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 8, 2010.

Docket Numbers: RP09–466–004.

Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Company submits First Revised Sheet 215 *et al.* to its FERC Gas Tariff, Second Revised Volume 1 to be effective 6/28/10.

Filed Date: 05/28/2010.
Accession Number: 20100601–0246.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010.

Docket Numbers: RP10–134–001.
Applicants: Columbia Gulf Transmission Company.
Description: Columbia Gulf Transmission Company submits Fifty-Second Revised Sheet No. 18 *et al.* to FERC Gas Tariff, Second Revised Volume No. 1, to be effective 7/1/2010.
Filed Date: 05/28/2010.
Accession Number: 20100601–0208.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010.

Docket Numbers: RP10–450–001.
Applicants: Columbia Gulf Transmission Company.
Description: Columbia Gulf Transmission Company submits Fifty-Second Revised Sheet No. 18 *et al.* to FERC Gas Tariff, Second Revised Volume No. 1, to be effective 7/1/2010.
Filed Date: 05/28/2010.
Accession Number: 20100601–0208.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010.

Docket Numbers: RP10–779–001.
Applicants: Dominion Transmission, Inc.
Description: Dominion Transmission, Inc. submits tariff filing per 154.203: DTI 5–28–10 Volume 1A Compliance Baseline, to be effective 5/28/2010.
Filed Date: 05/28/2010.
Accession Number: 20100528–5187.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010.

Docket Numbers: RP10–782–001.
Applicants: Columbia Gas Transmission, LLC.
Description: Columbia Gas Transmission, LLC submits tariff filing per 154.203: Offsystem Errata to Compliance Filing to be effective 5/1/2010.
Filed Date: 06/01/2010.
Accession Number: 20100601–5151.
Comment Date: 5 p.m. Eastern Time on Monday, June 14, 2010.

Docket Numbers: CP09–54–004.
Applicants: Ruby Pipeline, L.L.C.
Description: Supplemental Agreement Information of Ruby Pipeline, L.L.C.
Filed Date: 05/05/2010.
Accession Number: 20100505–5105.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–13912 Filed 6–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

June 2, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–790–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits a capacity release agreement containing negotiated rate provisions with Texla Energy Management, Inc.
Filed Date: 05/28/2010.
Accession Number: 20100528–0245.
Comment Date: 5 p.m. Eastern Time on Wednesday, *June* 9, 2010.

Docket Numbers: RP10–792–000
Applicants: Gulfstream Natural Gas System, L.L.C.
Description: Gulfstream Natural Gas System, LLC submits Third Revised Sheet 1 *et al.* to FERC Gas Tariff, Original Volume 1 to be effective 6/28/10.
Filed Date: 05/28/2010.
Accession Number: 20100601–0207.
Comment Date: 5 p.m. Eastern Time on Wednesday, *June* 9, 2010.

Docket Numbers: RP10–794–000.
Applicants: National Fuel Gas Supply Corporation.
Description: National Fuel Gas Supply Corporation submits 136th Revised Sheet No 9 to FERC Gas Tariff, Fourth Revised Volume No 1, to be effective 6/1/2010.
Filed Date: 05/28/2010.
Accession Number: 20100601–0279.
Comment Date: 5 p.m. Eastern Time on Wednesday, *June* 9, 2010.

Docket Numbers: RP10–795–000.
Applicants: Gas Transmission Northwest Corporation.
Description: Gas Transmission Northwest Corporation submits Forty-Ninth Revised Sheet No 15 *et al.* to FERC Gas Tariff, Third Revised Volume No 1–A, to be effective 6/1/2010.
Filed Date: 05/28/2010.
Accession Number: 20100601–0280.
Comment Date: 5 p.m. Eastern Time on Wednesday, *June* 9, 2010.

Docket Numbers: RP10–798–000.
Applicants: North Baja Pipeline, LLC.
Description: North Baja Pipeline, LLC submits tariff filing per 154.203: NAESB Compliance RP09–689 to be effective 6/1/2010.
Filed Date: 06/01/2010.
Accession Number: 20100601–5053.
Comment Date: 5 p.m. Eastern Time on Monday, June 14, 2010.

Docket Numbers: RP10–799–000.
Applicants: Eastern Shore Natural Gas Company.
Description: Eastern Shore Natural Gas Company submits Twenty-Sixth Revised Sheet 4 *et al.* to FERC Gas Tariff, Second Revised Volume 1 to be effective 7/1/10.
Filed Date: 05/28/2010.
Accession Number: 20100601–0243.
Comment Date: 5 p.m. Eastern Time on Wednesday, *June* 9, 2010.

Docket Numbers: RP10–800–000.
Applicants: National Fuel Gas Supply Corporation.
Description: National Fuel Gas Supply Corporation submits Original Sheet 14 *et al.* to its FERC Gas Tariff, Fourth Revised Volume 1 to be effective 7/1/10.
Filed Date: 05/28/2010.
Accession Number: 20100601–0244.
Comment Date: 5 p.m. Eastern Time on Wednesday, *June* 9, 2010.

Docket Numbers: RP10–801–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: Midcontinent Express Pipeline LLC submits Original Sheet 14U *et al.* to FERC Gas Tariff, Original Volume 1 to be effective 6/1/10.
Filed Date: 06/01/2010.

Accession Number: 20100601–0245.
Comment Date: 5 p.m. Eastern Time on Monday, June 14, 2010.

Docket Numbers: RP10–802–000.
Applicants: Discovery Gas Transmission LLC.
Description: Report of Discovery Gas Transmission LLC.
Filed Date: 06/01/2010.
Accession Number: 20100601–5110.
Comment Date: 5 p.m. Eastern Time on Monday, June 14, 2010.

Docket Numbers: RP10–803–000.
Applicants: Pine Prairie Energy Center, LLC.
Description: Pine Prairie Energy Center, LLC resubmits its Baseline Tariff Filing of its FERC Gas Tariff, First Revised Volume 1, to be effective 5/26/2010.
Filed Date: 06/02/2010.
Accession Number: 20100602–5000.
Comment Date: 5 p.m. Eastern Time on Monday, June 14, 2010.

Docket Numbers: RP10–804–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.204: Volume Negotiated Rate and Non-Conforming Agreement and Chesapeake Agreement to be effective 6/1/2010.
Filed Date: 06/02/2010.
Accession Number: 20100602–5003.
Comment Date: 5 p.m. Eastern Time on Monday, June 14, 2010.

Docket Numbers: RP10–805–000.
Applicants: Williston Basin Interstate Pipeline Co.
Description: Petition of Williston Basin Interstate Pipeline Company for a Limited Waiver of Tariff Provision.
Filed Date: 06/01/2010.
Accession Number: 20100601–5206.
Comment Date: 5 p.m. Eastern Time on Monday, June 14, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–13913 Filed 6–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

May 27, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–260–005.
Applicants: Tres Palacios Gas Storage LLC.
Description: Tres Palacios Gas Storage LLC submits Second Substitute First Revised Sheet 138 to FERC Gas Tariff, Original Volume 1.
Filed Date: 05/17/2010.
Accession Number: 20100517–0206.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 1, 2010.

Docket Numbers: RP10–725–001.
Applicants: Pine Needle LNG Company, LLC.
Description: Pine Needle LNG Company, LLC submits tariff filing per 154.203: Pine Needle Order No. 714 Baseline Tariff—Refiling to be effective 5/12/2010.
Filed Date: 05/17/2010.
Accession Number: 20100517–5064.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 1, 2010.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–13915 Filed 6–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

May 25, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–751–000.
Applicants: CenterPoint Energy Gas Transmission Company.
Description: CenterPoint Energy Gas Transmission Company submits negotiated rate agreement for service for KGen Hot Spring LLC.

Filed Date: 05/20/2010.

Accession Number: 20100521–0203.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 1, 2010.

Docket Numbers: RP10–752–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits Capacity Release Agreement containing negotiated rate provisions by Gulf South and Texla Energy Management, Inc.

Filed Date: 05/21/2010.

Accession Number: 20100521–0205.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 2, 2010.

Docket Numbers: RP10–753–000.

Applicants: Nexen Marketing, J. Aaron & Company.

Description: Joint Petition for Temporary Waivers of Capacity Release Regulations and Related Pipeline Tariff Provisions and Request for Expedited Consideration of Nexen Marketing U.S.A. Inc. and J. Aaron & Company.

Filed Date: 05/21/2010.

Accession Number: 20100521–5088.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 2, 2010.

Docket Numbers: RP10–754–000.

Applicants: Northwest Pipeline GP.

Description: Northwest Pipeline GP submits its tariff filing to FERC Gas Tariff, Fifth Revised Volume No 1 pursuant to Part 154 of the FERC's regulations, to be effective 5/21/2010 under RP10–754.

Filing Type: 740.

Filed Date: 05/24/2010.

Accession Number: 20100524–5000.

Comment Date: 5 p.m. Eastern Time on Monday, June 7, 2010.

Docket Numbers: RP10–755–000.

Applicants: Gulf South Pipeline Company.

Description: Gulf South Pipeline Company, LP submits capacity release agreement containing negotiated rate provisions by Gulf South and Texla Energy Management, Inc.

Filed Date: 05/24/2010.

Accession Number: 20100524–0216.

Comment Date: 5 p.m. Eastern Time on Monday, June 7, 2010.

Docket Numbers: RP10–756–000.

Applicants: Viking Gas Transmission Company.

Description: Viking Gas Transmission Company submits tariff filing per 154.202: Viking Baseline Filing to be effective 5/24/2010.

Filed Date: 05/24/2010.

Accession Number: 20100524–5087.

Comment Date: 5 p.m. Eastern Time on Monday, June 7, 2010.

Docket Numbers: RP10–757–000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.204: RP10–757–000 Inclusion of Updated System Map to be effective 6/1/2010.

Filed Date: 05/25/2010.

Accession Number: 20100525–5009.

Comment Date: 5 p.m. Eastern Time on Monday, June 7, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–13918 Filed 6–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

May 25, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–1051–002.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits the Seventh Revised Sheet 99A to Gas Tariff, Third Revised Volume 1.

Filed Date: 05/18/2010.

Accession Number: 20100518–0216.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 1, 2010.

Docket Numbers: RP10–699–001.

Applicants: Equitrans, L.P.

Description: Equitrans, LP submits pagination errata filing.

Filed Date: 05/18/2010.

Accession Number: 20100518–0215.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 1, 2010.

Docket Numbers: RP99–106–016.

Applicants: TransColorado Gas Transmission Company LLC

Description: TransColorado Gas Transmission Company LLC submits its annual revenue sharing report.

Filed Date: 05/18/2010.

Accession Number: 20100518–5044.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 1, 2010.

Docket Numbers: RP09–447–006.

Applicants: Monroe Gas Storage Company, LLC.

Description: Monroe Gas Storage Company, LLC submits FERC Gas Tariff Compliance Filing.

Filed Date: 05/19/2010.

Accession Number: 20100520–0204.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 1, 2010.

Docket Numbers: RP10–726–001.

Applicants: TransColorado Gas Transmission Company LLC.

Description: TransColorado Gas Transmission Company LLC submits tariff filing per 154.203: Compliance Filing of Baseline Filing to be effective 5/12/2010.

Filed Date: 05/21/2010.

Accession Number: 20100521–5114.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 2, 2010.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–13917 Filed 6–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

May 27, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–758–000.

Applicants: Portland Natural Gas Transmission System.

Description: Portland Natural Gas Transmission System submits First Revised Sheet 1 *et al.* of its FERC Gas Tariff, Second Revised Volume 1 effective 7/1/2010.

Filed Date: 05/24/2010.

Accession Number: 20100525–0205.

Comment Date: 5 p.m. Eastern Time on Monday, June 7, 2010.

Docket Numbers: RP10–759–000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.204: Updated System Map to be effective 6/1/2010.

Filed Date: 05/25/2010.

Accession Number: 20100525–5025.

Comment Date: 5 p.m. Eastern Time on Monday, June 7, 2010.

Docket Numbers: RP10–760–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company LP submits capacity release agreement containing negotiated rate provisions.

Filed Date: 05/25/2010.

Accession Number: 20100525–0209.

Comment Date: 5 p.m. Eastern Time on Monday, June 7, 2010.

Docket Numbers: RP10–761–000.

Applicants: White River Hub, LLC

Description: White River Hub, LLC submits its annual fuel reimbursement report for the period ended 3/31/2010 under RP10–761.

Filed Date: 05/26/2010.

Accession Number: 20100525–0264.

Comment Date: 5 p.m. Eastern Time on Monday, June 7, 2010.

Docket Numbers: RP10–762–000.

Applicants: Pine Prairie Energy Center, LLC.

Description: Pine Prairie Energy Center, LLC submits tariff filing per 154.202: Pine Prairie Baseline Tariff Filing to be effective 5/26/2010.

Filed Date: 05/26/2010.

Accession Number: 20100526–5109.

Comment Date: 5 p.m. Eastern Time on Monday, June 7, 2010.

Docket Numbers: RP10–763–000.

Applicants: Transcontinental Gas Pipe Line Company,

Description: Transcontinental Gas Pipe Line Co., LLC submits First Revised Sheet No. 336 *et al.* to FERC Gas Tariff, Fourth Revised Volume No. 1.

Filed Date: 05/26/2010.

Accession Number: 20100525–0272.

Comment Date: 5 p.m. Eastern Time on Monday, June 7, 2010.

Docket Numbers: RP10–764–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Co., LP submits a negotiated rate capacity release agreement.

Filed Date: 05/26/2010.

Accession Number: 20100525–0271.

Comment Date: 5 p.m. Eastern Time on Monday, June 7, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–13916 Filed 6–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

June 1, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–765–000
Applicants: Panhandle Eastern Pipe Line Company, LP
Description: Panhandle Eastern Pipe Line Company, LP submits tariff filing per 154.203: Baseline Filing to be effective 6/1/2010.
Filed Date: 05/27/2010
Accession Number: 20100527–5060
Comment Date: 5 p.m. Eastern Time on Tuesday, June 8, 2010

Docket Numbers: RP10–766–000
Applicants: Horizon Pipeline Company, L.L.C.
Description: Horizon Pipeline Company, L.L.C. submits tariff filing per 154.203: Baseline Filing to be effective 5/27/2010.
Filed Date: 05/27/2010
Accession Number: 20100527–5089
Comment Date: 5 p.m. Eastern Time on Tuesday, June 8, 2010

Docket Numbers: RP10–767–000
Applicants: CenterPoint Energy Gas Transmission Company
Description: CenterPoint Energy Gas Transmission Company submits Seventh Revised Sheet No. 604 *et al.* to FERC Gas Tariff, Sixth Revised Volume No. 1.
Filed Date: 05/27/2010
Accession Number: 20100527–0187
Comment Date: 5 p.m. Eastern Time on Tuesday, June 8, 2010

Docket Numbers: RP10–768–000
Applicants: Dominion Transmission, Inc.
Description: Dominion Transmission, Inc submits Second Revised Sheet 61 *et al.* to FERC Gas Tariff, Second Revised Volume 1 to be effective 7/1/10.
Filed Date: 05/27/2010
Accession Number: 20100527–0154
Comment Date: 5 p.m. Eastern Time on Tuesday, June 8, 2010

Docket Numbers: RP10–769–000
Applicants: Questar Southern Trails Pipeline Company
Description: Questar Southern Trails Pipeline Company submits Fuel reimbursement report and variance adjustment calculation *et al.* to FERC Gas Tariff, Original Volume 1.
Filed Date: 05/27/2010
Accession Number: 20100527–0153
Comment Date: 5 p.m. Eastern Time on Tuesday, June 8, 2010

Docket Numbers: RP10–770–000
Applicants: Columbia Gulf Transmission Company
Description: Columbia Gulf Transmission Company submits tariff filing per 154.203: Baseline Filing to be effective 5/27/2010.
Filed Date: 05/27/2010
Accession Number: 20100527–5115
Comment Date: 5 p.m. Eastern Time on Tuesday, June 8, 2010

Docket Numbers: RP10–771–000
Applicants: Columbia Gas Transmission, LLC
Description: Columbia Gas Transmission, LLC submits tariff filing per 154.204: NTS–S Conversion to be effective 6/1/2010.
Filed Date: 05/27/2010
Accession Number: 20100527–5123
Comment Date: 5 p.m. Eastern Time on Tuesday, June 8, 2010

Docket Numbers: RP10–772–000
Applicants: Blue Lake Gas Storage Company
Description: Blue Lake Gas Storage Company submits tariff filing per 154.203: Baseline Filing to be effective 5/27/2010.
Filed Date: 05/27/2010
Accession Number: 20100527–5128
Comment Date: 5 p.m. Eastern Time on Tuesday, June 8, 2010

Docket Numbers: RP10–773–000
Applicants: Tuscarora Gas Transmission Company
Description: Tuscarora Gas Transmission Company submits tariff filing per 154.203: Baseline Filing to be effective 5/27/2010.
Filed Date: 05/27/2010
Accession Number: 20100527–5132
Comment Date: 5 p.m. Eastern Time on Tuesday, June 8, 2010

Docket Numbers: RP10–774–000
Applicants: Kinder Morgan Louisiana Pipeline Company
Description: Kinder Morgan Louisiana Pipeline LLC submits First Revised Sheet No. 6 to FERC Gas Tariff, Original Volume No. 1.
Filed Date: 05/27/2010
Accession Number: 20100527–0180
Comment Date: 5 p.m. Eastern Time on Tuesday, June 8, 2010

Docket Numbers: RP10–775–000
Applicants: Maritimes & Northeast Pipeline, L.L.C.
Description: Maritimes & Northeast Pipeline, LLC submits Seventh Revised Sheet No. 1 *et al.* to FERC Gas Tariff, First Revised Volume No. 1.
Filed Date: 05/27/2010
Accession Number: 20100527–0185
Comment Date: 5 p.m. Eastern Time on Tuesday, June 8, 2010

Docket Numbers: RP10–776–000
Applicants: Transcontinental Gas Pipe Line Company
Description: Transcontinental Gas Pipe Line Co LLC submits Original Sheet No. 59 *et al.* to FERC Gas Tariff, Fourth Revised Sheet No. 1.
Filed Date: 05/27/2010
Accession Number: 20100527–0186
Comment Date: 5 p.m. Eastern Time on Tuesday, June 8, 2010

Docket Numbers: RP10–777–000
Applicants: Gulf Crossing Pipeline Company LLC
Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.203: RP10–666–001 Compliance Filing to be effective 5/7/2010.
Filed Date: 05/28/2010
Accession Number: 20100528–5047
Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010

Docket Numbers: RP10–778–000
Applicants: Stingray Pipeline Company, L.L.C.
Description: Stingray Pipeline Company, L.L.C. submits tariff filing per 154.203: Baseline Filing to be effective 6/30/2010.
Filed Date: 05/28/2010
Accession Number: 20100528–5059
Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010

Docket Numbers: RP10–779–000
Applicants: Dominion Transmission, Inc.
Description: Dominion Transmission, Inc. submits tariff filing per 154.203: DTI 5–28–10 Baseline Filing Volume No. 1 to be effective 5/28/2010.
Filed Date: 05/28/2010
Accession Number: 20100528–5093
Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010

Docket Numbers: RP10–780–000
Applicants: Northern Natural Gas Company
Description: Northern Natural Gas Company submits Eighth Revised Sheet 67 to FERC Gas Tariff, Fifth Revised Volume 1 to be effective 6/1/10.
Filed Date: 05/28/2010
Accession Number: 20100528–0207
Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010

Docket Numbers: RP10–781–000
Applicants: Algonquin Gas Transmission, LLC
Description: Algonquin Gas Transmission, LLC submits tariff filing per 154.204: NJR Energy Services negotiated rate for contract 781744 to be effective 6/1/2010.
Filed Date: 05/28/2010
Accession Number: 20100528–5111
Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010

Docket Numbers: RP10–782–000

Applicants: Columbia Gas Transmission, LLC

Description: Columbia Gas Transmission, LLC submits tariff filing per 154.203: Offsystem Pipeline Capacity to be effective 5/1/2010.

Filed Date: 05/28/2010

Accession Number: 20100528–5160

Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010

Docket Numbers: RP10–783–000

Applicants: Southeast Supply Header, LLC

Description: Southeast Supply Header, LLC submits First Revised Sheet No 1 *et al.* to its FERC Gas Tariff, Original Volume 1, to be effective 6/28/10.

Filed Date: 05/28/2010

Accession Number: 20100528–0244

Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010

Docket Numbers: RP10–785–000

Applicants: Gulf South Pipeline Company, LP

Description: Gulf South Pipeline Company, LP submits a capacity release agreement containing negotiated rate provisions with Texla Energy Management, Inc.

Filed Date: 05/28/2010

Accession Number: 20100528–0241

Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010

Docket Numbers: RP10–786–000

Applicants: Texas Gas Transmission, LLC

Description: Texas Gas Transmission LLC submits a Negotiated Rate Letter Agreement with Tennessee Valley Authority.

Filed Date: 05/28/2010

Accession Number: 20100528–0242

Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010

Docket Numbers: RP10–787–000

Applicants: Natural Gas Pipeline Company of America LLC

Description: Natural Gas Pipeline Company of American, LLC submits Fourth Revised Sheet 539 *et al.* to FERC Gas Tariff, Seventh Revised Volume 1, to be effective 7/1/10.

Filed Date: 05/28/2010

Accession Number: 20100528–0239

Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010

Docket Numbers: RP10–788–000

Applicants: Kinder Morgan Interstate Gas Transmission LLC

Description: Kinder Morgan Interstate Gas Transmission LLC submits Twenty-seventh Revised Sheet No 4G.01 to its FERC Gas Tariff, Fourth Revised Volume 1A, to be effective 6/1/10.

Filed Date: 05/28/2010

Accession Number: 20100528–0240

Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010

Docket Numbers: RP10–789–000

Applicants: Rockies Express Pipeline LLC

Description: Rockies Express Pipeline, LLC submits Ninth Revised Sheet 8B *et al.* to FERC Gas Tariff, Second Revised Volume 1, to be effective 6/1/10.

Filed Date: 05/28/2010

Accession Number: 20100528–0231

Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010

Docket Numbers: RP10–791–000

Applicants: Rockies Express Pipeline LLC

Description: Rockies Express Pipeline LLC—Penalty Charge Reconciliation Filing.

Filed Date: 05/28/2010

Accession Number: 20100528–5193

Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010

Docket Numbers: RP10–793–000

Applicants: Colorado Interstate Gas Company

Description: Colorado Interstate Gas Company Lost, Unaccounted-for and Other Fuel; Gas Reimbursement Percentage Filing.

Filed Date: 05/28/2010

Accession Number: 20100528–5229

Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010

Docket Numbers: RP10–796–000

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: Southern Star Central Gas Pipeline, Inc. submits tariff filing per 154.203: Baseline Filing to be effective 6/1/2010.

Filed Date: 06/01/2010

Accession Number: 20100601–5048

Comment Date: 5 p.m. Eastern Time on Monday, June 14, 2010

Docket Numbers: RP10–797–000

Applicants: North Baja Pipeline, LLC

Description: North Baja Pipeline, LLC submits tariff filing per 154.203: Compliance 6/1/10, to be effective 5/18/2010.

Filed Date: 06/01/2010

Accession Number: 20100601–5052

Comment Date: 5 p.m. Eastern Time on Monday, June 14, 2010

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–13914 Filed 6–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

June 2, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER94–1384–038; ER00–1803–008; ER01–457–009; ER02–1485–011; ER03–1108–011; ER03–1109–011; ER04–733–007; ER08–1432–005; ER99–2329–009.

Applicants: Morgan Stanley Capitol Group Inc., Naniwa Energy LLC, Power Contract Finance, L.L.C., South Eastern Generating Corp., South Eastern Electric

Development Corp., Utility Contract Funding II, LLC, MS Solar Solutions Corp., Power Contract Financing II, L.L.C., Power Contract Financing II, Inc.

Description: Notice of Change in Status and Request for Confirmation of Category 1 Status of Morgan Stanley Capital Group Inc., *et al.*

Filed Date: 06/01/2010.

Accession Number: 20100601–5199.

Comment Date: 5 p.m. e.t. on Tuesday, June 22, 2010.

Docket Numbers: ER01–3001–026.

Applicants: New York Independent System Operator, Inc.

Description: NYISO filing its Semi-Annual Reports on Demand Side Management programs and new generation projects in the New York Control Area.

Filed Date: 06/01/2010.

Accession Number: 20100601–5187.

Comment Date: 5 p.m. e.t. on Tuesday, June 22, 2010.

Docket Numbers: ER04–1181–005; ER04–1182–005; ER04–1184–005; ER04–1186–005.

Applicants: KGen Hot Spring LLC, KGEN Murray I and II LLC, KGEN Sandersville LLC, KGen Hinds LLC.

Description: Notification of Change in Status of KGen Hinds LLC, *et al.*

Filed Date: 06/01/2010.

Accession Number: 20100601–5205.

Comment Date: 5 p.m. e.t. on Tuesday, June 22, 2010.

Docket Numbers: ER10–64–002; ER04–222–008; ER07–1193–003.

Applicants: CPV Liberty, LLC, CPV Milford, LLC, CPV Keenan II Renewable Energy Co.

Description: Notification of Change in Status of CPV Keenan II Renewable Energy Company, LLC, *et al.*

Filed Date: 06/01/2010.

Accession Number: 20100601–5161.

Comment Date: 5 p.m. e.t. on Tuesday, June 22, 2010.

Docket Numbers: ER08–1314–001.

Applicants: Wheelabrator Frackville Energy Company I.

Description: Notice of Change in Status of Wheelabrator Frackville Energy Company Inc.

Filed Date: 06/01/2010.

Accession Number: 20100601–5094.

Comment Date: 5 p.m. e.t. on Tuesday, June 22, 2010.

Docket Numbers: ER09–711–002.

Applicants: Freeport-McMoRan Copper & Gold Inc.

Description: Freeport-McMoRan Copper *et al.* submits First Revised Sheet No.1 to FERC Electric Tariff Effective, June 1, 2010.

Filed Date: 05/27/2010.

Accession Number: 20100528–0201

Comment Date: 5 p.m. e.t. on Thursday, June 17, 2010.

Docket Numbers: ER10–1376–000.

Applicants: Arizona Public Service Co., San Diego Gas & Electric Co., California Independent System Operator Corp.

Description: Arizona Public Service Co. *et al.* submits a large generator interconnection agreement.

Filed Date: 05/28/2010.

Accession Number: 20100601–0262.

Comment Date: 5 p.m. e.t. on Friday, June 18, 2010.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR10–10–000.

Applicants: North American Electric Reliability Corp.

Description: North American Electric Reliability Corporation's Report of Comparisons of Budgeted to Actual Costs for 2009 for NERC and the Regional Entities.

Filed Date: 06/01/2010.

Accession Number: 20100601–5188.

Comment Date: 5 p.m. e.t. on Tuesday, June 22, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. e.t. on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–13919 Filed 6–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

June 1, 2010.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG10–39–000.

Applicants: Hatchet Ridge Wind, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Hatchet Ridge Wind, LLC.

Filed Date: 05/28/2010.

Accession Number: 20100528–5219.

Comment Date: 5 p.m. Eastern Time on Friday, June 18, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–4102–009.

Applicants: Milford Power Company, LLC.

Description: Notice of Change in Status of Milford Power Company, LLC.

Filed Date: 06/01/2010.

Accession Number: 20100601–5068.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 22, 2010.

Docket Numbers: ER07–876–002.

Applicants: Chevron Coalinga Energy Company.

Description: Chevron Coalinga Energy Company submits Order No 697 Compliance filing.

Filed Date: 05/28/2010.

Accession Number: 20100601–0215.

Comment Date: 5 p.m. Eastern Time on Friday, June 18, 2010.

Docket Numbers: ER08–444–004.

Applicants: NSTAR Electric Company, Medical Area Total Energy Plant, Inc., MATEP LLC.

Description: Letter regarding compliance obligation of NSTAR Electric Company.

Filed Date: 06/01/2010.

Accession Number: 20100601–5111.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 22, 2010.

Docket Numbers: ER08–1314–001.

Applicants: Wheelabrator Frackville Energy Company I.

Description: Notice of Change in Status of Wheelabrator Frackville Energy Company Inc.

Filed Date: 06/01/2010.

Accession Number: 20100601–5094.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 22, 2010.

Docket Numbers: ER10–319–001.

Applicants: California Independent System Operator Corporation.

Description: The California Independent System Operator Corporation submits revisions to its tariff in compliance with the Commission's order issued in proceeding on 4/30/10.

Filed Date: 05/28/2010.

Accession Number: 20100528–0206.

Comment Date: 5 p.m. Eastern Time on Friday, June 18, 2010.

Docket Numbers: ER10–810–001.

Applicants: Midwest Independent System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits proposed amendments to its Open Access Transmission, Energy and Operating Reserve Markets Tariff.

Filed Date: 05/27/2010.

Accession Number: 20100528–0200.

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010.

Docket Numbers: ER10–893–001.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits the revised Open Access Tariff.

Filed Date: 05/27/2010.

Accession Number: 20100527–0165.

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010.

Docket Numbers: ER10–1151–001.

Applicants: AmerenEnergy Resources Generating Company.

Description: AmerenEnergy Resources Generating Company submits tariff filing per 35: Corrected AERG Schedule 3 Section 2, Ancillary Services, Term to be effective 5/28/2010.

Filed Date: 05/27/2010.

Accession Number: 20100527–5168.

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010.

Docket Numbers: ER10–1319–001.

Applicants: CMS Generation Michigan Power, LLC.

Description: CMS Generation Michigan Power, LLC submits tariff filing per 35: CMS Gen MI Power LLC Power Sales & Reactive Supply & Voltage Control Service Tariff to be effective 5/28/2010.

Filed Date: 05/28/2010.

Accession Number: 20100528–5056.

Comment Date: 5 p.m. Eastern Time on Friday, June 18, 2010.

Docket Numbers: ER10–1347–000.

Applicants: Vermont Electric Power Company, Inc.

Description: Vermont Electric Power Co, Inc on behalf of Vermont Joint Owners submits a request for limited waiver of the minimum ICAP Import Commitment Duration under ISO New England Market Rule 1.

Filed Date: 05/27/2010.

Accession Number: 20100527–0188.

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010.

Docket Numbers: ER10–1349–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits Amended and Restated Facilities Construction Agreement with Minnkota Power Cooperative, Inc.

Filed Date: 05/27/2010.

Accession Number: 20100527–0178.

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010.

Docket Numbers: ER10–1350–000.

Applicants: Entergy Services, Inc.

Description: Entergy Operating Companies submits rates to implement the decision of the Commission as contained in Opinion Nos 480 and 480–A.

Filed Date: 05/27/2010.

Accession Number: 20100528–0204.

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010.

Docket Numbers: ER10–1351–000.

Applicants: Maine Public Service Company.

Description: Maine Public Service Company submits proposed revisions to its FERC Open Access Transmission Tariff to be effective 6/1/10.

Filed Date: 05/27/2010.

Accession Number: 20100528–0203.

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010.

Docket Numbers: ER10–1352–000.

Applicants: ISO New England Inc., New England Power Pool.

Description: ISO New England Inc *et al.* submits revisions to the Forward Capacity Market rules, as well as a revision to Section III.12.7 of Market Rule 1 etc.

Filed Date: 05/27/2010.

Accession Number: 20100528–0202.

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010.

Docket Numbers: ER10–1353–000.

Applicants: Dearborn Industrial Generation, L.L.C.

Description: Dearborn Industrial Generation, L.L.C. submits tariff filing per 35.12: Dearborn Industrial Generation, LLC FERC Elec Rate Sched No 1 Tariff to be effective 5/28/2010.

Filed Date: 05/28/2010.

Accession Number: 20100528–5013.

Comment Date: 5 p.m. Eastern Time on Friday, June 18, 2010.

Docket Numbers: ER10–1355–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits tariff filing per 35.12: MBR Tariff Baseline 052810 to be effective 5/28/2010.

Filed Date: 05/28/2010.

Accession Number: 20100528–5060.

Comment Date: 5 p.m. Eastern Time on Friday, June 18, 2010.

Docket Numbers: ER10–1356–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits tariff filing per 35.12: Whole Dist Acc Tariff Baseline 052810 to be effective 5/28/2010.

Filed Date: 05/28/2010.

Accession Number: 20100528–5061.

Comment Date: 5 p.m. Eastern Time on Friday, June 18, 2010.

Docket Numbers: ER10–1357–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits tariff filing per 35.12: TO Tariff Baseline 052810 to be effective 6/1/2010.

Filed Date: 05/28/2010.

Accession Number: 20100528–5062.

Comment Date: 5 p.m. Eastern Time on Friday, June 18, 2010.

Docket Numbers: ER10–1358–000.
Applicants: The Empire District Electric Company.
Description: The Empire District Electric Company submits notice of termination of its cost-based Wholesale Electric Service Schedule W–1, as well as all Wholesale Electric Service Agreements under the Schedule W–1 effective 7/31/10.
Filed Date: 05/28/2010.
Accession Number: 20100528–0205.
Comment Date: 5 p.m. Eastern Time on Friday, June 18, 2010.

Docket Numbers: ER10–1359–000.
Applicants: TC Ravenswood, LLC.
Description: TC Ravenswood, LLC submits Rate Schedule FERC No 2 and Minimum Fuel Oil Supply Agreement with Westport Petroleum, Inc dated May 27, 2010, to implement a Variable Cost of Service Recovery Rate etc.
Filed Date: 05/27/2010.
Accession Number: 20100528–0224.
Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010.

Docket Numbers: ER10–1360–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits amendments to the FERC Electric Tariff to Include Multi-Stage Generating Resource Modeling.
Filed Date: 05/28/2010.
Accession Number: 20100528–0249.
Comment Date: 5 p.m. Eastern Time on Friday, June 18, 2010.

Docket Numbers: ER10–1361–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc's submits proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff.
Filed Date: 05/28/2010.
Accession Number: 20100601–0213.
Comment Date: 5 p.m. Eastern Time on Friday, June 18, 2010.

Docket Numbers: ER10–1362–000.
Applicants: Hatchet Ridge Wind, LLC.
Description: Hatchet Ridge Wind, LLC submits an application for authorization to sell energy and capacity in wholesale transactions at negotiated, market-based rates.
Filed Date: 05/28/2010.
Accession Number: 20100601–0212.
Comment Date: 5 p.m. Eastern Time on Friday, June 18, 2010.

Docket Numbers: ER10–1363–000.
Applicants: Potomac-Appalachian Transmission Highline, LLC.
Description: Potomac-Appalachian Transmission Highline, LLC submits Substitute Original Sheet No 314S *et al.* to FERC Electric Tariff, Sixth Revised Volume No 1.
Filed Date: 05/28/2010.
Accession Number: 20100601–0211.
Comment Date: 5 p.m. Eastern Time on Friday, June 18, 2010.

Docket Numbers: ER10–1364–000.
Applicants: New England Power Pool Participants Committee.
Description: The New England Power Pool Participants Committee submits signature pages to the New England Power Pool Agreement with Ameresco DR, LLC *et al.*
Filed Date: 05/28/2010.
Accession Number: 20100601–0214.
Comment Date: 5 p.m. Eastern Time on Friday, June 18, 2010.

Docket Numbers: ER10–1365–000.
Applicants: Florida Power Corporation.
Description: Florida Power Corporation submits an amendment to the 2/9/04 Power Sales Agreement with Progress and Seminole Electric Cooperative, Inc.
Filed Date: 05/28/2010.
Accession Number: 20100601–0210.
Comment Date: 5 p.m. Eastern Time on Friday, June 18, 2010.

Docket Numbers: ER10–1366–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits Attachment X to the FERC Electric Tariff, Fourth Revised Volume No 1.
Filed Date: 05/28/2010.
Accession Number: 20100601–0209.
Comment Date: 5 p.m. Eastern Time on Friday, June 18, 2010.

Docket Numbers: ER10–1368–000.
Applicants: Union Electric Company.
Description: Union Electric Company submits tariff filing per 35: UE Reactive Supply and Voltage Control to be effective 6/1/2010.
Filed Date: 06/01/2010.
Accession Number: 20100601–5054.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 22, 2010.

Docket Numbers: ER10–1372–000.
Applicants: Pacific Gas and Electric Company.
Description: Notice of Termination of Aera Energy LLC GSFA and GIA of Pacific Gas and Electric Company.
Filed Date: 05/28/2010.
Accession Number: 20100528–5234.
Comment Date: 5 p.m. Eastern Time on Friday, June 18, 2010.

Docket Numbers: ER10–1373–000.
Applicants: Pacific Gas and Electric Company.
Description: Notices of Termination for CCSF GSFA and LGIA of Pacific Gas and Electric Company.
Filed Date: 05/28/2010.
Accession Number: 20100528–5235.
Comment Date: 5 p.m. Eastern Time on Friday, June 18, 2010.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10–47–000.
Applicants: Indianapolis Power & Light Company.
Description: Application of Indianapolis Power & Light Company under FPA Section 204 for an Order Authorizing the Issuance of Short-Term Debt Instruments.
Filed Date: 05/28/2010.
Accession Number: 20100528–5199.
Comment Date: 5 p.m. Eastern Time on Friday, June 18, 2010.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA10–1–000.
Applicants: Order 697–C 2010 1st Qtr Site Acquisition.
Description: Notice of Non-Material Change in Status; Sites for New Generation Capacity Development.
Filed Date: 05/28/2010.
Accession Number: 20100528–5211.
Comment Date: 5 p.m. Eastern Time on Friday, June 18, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to

challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–13920 Filed 6–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Western Area Power Administration

Request for Proposals for New or Upgraded Transmission Line Projects Under Section 1222 of the Energy Policy Act of 2005

AGENCY: Southwestern Power Administration and Western Area Power Administration, Department of Energy.

ACTION: Request for Project Proposals.

SUMMARY: The Department of Energy (DOE or Department), acting through the Southwestern Power Administration (Southwestern) and the Western Area Power Administration (Western), both power marketing administrations (PMAs) within the Department, is seeking Project Proposals from entities that are interested in providing contributed funds under section 1222 of the Energy Policy Act of 2005 (EPAct) for Southwestern or Western's participation in the upgrade of existing transmission facilities owned by either PMA, or the construction of new transmission lines in the states in which either PMA operates.

DATES: Project Proposals will be accepted beginning on June 10, 2010 and continuing until September 30, 2015, or until DOE accepts $100,000,000 in contributed funds under section 1222, whichever comes sooner. Due to the $100,000,000 statutory limitation on the amount of contributed funds DOE may accept under section 1222 through the end of fiscal year 2015, interested entities are encouraged to submit Project Proposals by July 26, 2010, when DOE will begin considering submitted Project Proposals. Project Proposals submitted after July 26, 2010 will be accepted and considered on a rolling basis, subject to the $100,000,000 limitation in contributed funds under section 1222 through 2015.

ADDRESSES: Project Proposals should be mailed or e-mailed to DOE, with an additional copy mailed or e-mailed to the relevant PMA. All Project Proposals should be mailed or e-mailed to: Mr. Steven Porter, Assistant General Counsel for Electricity & Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; or *steven.porter@hq.doe.gov.*

An additional copy of any Project Proposal involving Southwestern should be mailed or e-mailed to: Mr. James K. McDonald, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, One West Third Street, Tulsa, OK 74103; or *jim.mcdonald@swpa.gov.*

An additional copy of any Project Proposal involving Western should be mailed or e-mailed to: Craig Knoell, Transmission Infrastructure Program Manager, P.O. Box 281213, Lakewood, CO 80228–8213; or *Knoell@wapa.gov.*

FOR FURTHER INFORMATION CONTACT: For further information concerning Project Proposals, contact Mr. Steven Porter, Assistant General Counsel for Electricity & Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; or *steven.porter@hq.doe.gov.* For specific details about Southwestern's system in regard to Project Proposals involving Southwestern, contact Mr. James K. McDonald, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, One West Third Street, Tulsa, OK 74103; or *jim.mcdonald@swpa.gov.* For specific details about Western's system in regard to Project Proposals involving Western, contact Craig Knoell, Transmission Infrastructure Program Manager, P.O. Box 281213, Lakewood, CO 80228–8213; or *Knoell@wapa.gov.*

SUPPLEMENTARY INFORMATION: Southwestern is an agency within DOE authorized under Section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s) to market and transmit wholesale electrical power from 24 multipurpose reservoir projects operated by the U.S. Army Corps of Engineers to cooperatives, government agencies, and municipalities in several states. Southwestern operates and maintains 1,380 miles of high voltage transmission lines in Arkansas, Missouri, and Oklahoma. Southwestern also markets power in Arkansas, Kansas, Louisiana, Missouri, Oklahoma, and Texas.

Western is an agency within DOE and operates under the authority of federal reclamation laws, in particular section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and consistent with section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s). Western markets power in Arizona, California, Colorado, Iowa, Kansas, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Texas, Utah, and Wyoming. Western's 17,000-mile high-voltage transmission system carries electricity from 57 power plants encompassing 14 multi-purpose water resource projects operated primarily by the Bureau of Reclamation, the U.S. Army Corps of Engineers, and the International Boundary and Water Commission.

Pursuant to section 1222 of EPAct (42 U.S.C. 16421), the Secretary of Energy (Secretary), acting through the Administrator of Southwestern or Western, has the authority to design, develop, construct, operate, own, or participate with other entities in designing, developing, constructing, operating, maintaining, or owning two types of Projects: (1) Electric power transmission facilities and related facilities needed to upgrade existing transmission facilities owned by Southwestern or Western (42 U.S.C. 16421(a)), or (2) New electric power transmission facilities and related facilities located within any State in which Southwestern or Western *operates* (42 U.S.C. 16421(b)). In carrying out either type of Project, the

Secretary may accept and use funds contributed by another entity for the purpose of executing the Project (42 U.S.C. 16421(c)). For the period encompassing fiscal years 2006 through 2015, the Secretary may not accept or use more than $100,000,000 in contributed funds under *section* 1222. As of the date of this Notice, the Secretary has not accepted any contributed funds for section 1222 Projects.[1]

In order to exercise the authority to engage in these activities under section 1222, the Secretary, in consultation with the applicable PMA Administrator, must first determine that a proposed Project satisfies certain statutory criteria. Accordingly, the Secretary requests that any entity interested in providing contributed funds for upgraded or new transmission facilities under section 1222 submit a Project Proposal that, at a minimum, contains all of the following:

1. The name and a general description of the entity submitting the Project Proposal;

2. A Project description which provides:

a. An overview of the proposed Project, including the Project location, proposed routing, and minimum transfer capability;

b. *(For Proposals for Projects for non-DOE entities to participate with Southwestern or Western in designing, developing, constructing, operating maintaining or owning an electric power transmission facility and related facilities needed to upgrade existing transmission facilities owned by Southwestern or Western):* A statement, supported by the best available data, demonstrating how the proposed Project meets all of the following three eligibility criteria:

i. The *proposed* Project must be either:

(A) Located in a national interest electric transmission corridor designated under section 216(a) of the Federal Power Act (16 U.S.C. 824p(a)) and will reduce congestion of electric transmission in interstate commerce; or

(B) Necessary to accommodate an actual or projected increase in demand for electric transmission capacity;

ii. The proposed Project must be consistent with both:

(A) Transmission needs identified, in a transmission expansion plan or otherwise, by the appropriate Transmission Organization (as defined in the Federal Power Act, 16 U.S.C. 791a *et seq.*), if any, or approved regional reliability organization; and

(B) Efficient and reliable operation of the transmission grid;

iii. The proposed Project must be operated in conformance with prudent utility practice.

c. (*For Proposals for Projects for non-DOE entities to participate with Southwestern or Western in designing, developing, constructing, operating, maintaining, or owning a new electric power transmission facility and related facilities located within any State in which Southwestern or Western operates*) A statement, supported by the best available data, demonstrating how the proposed Project meets all of the following five eligibility criteria:

i. The proposed Project must be either:

(A) Located in an area designated under section 216(a) of the Federal Power Act (16 U.S.C. 824p(a) and will reduce congestion of electric transmission in interstate commerce; or

(B) Necessary to accommodate an actual or projected increase in demand for electric transmission capacity;

ii. The proposed Project must be consistent with both:

(A) Transmission needs identified, in a transmission expansion plan or otherwise, by the appropriate Transmission Organization (as defined in the Federal Power Act, 16 U.S.C. 791a *et seq.*) if any, or approved regional reliability organization; and

(B) Efficient and reliable operation of the transmission grid;

iii. The proposed Project will be operated in conformance with prudent utility practice;

iv. The proposed Project will be operated by, or in conformance with the rules of, the appropriate Transmission Organization, if any; or if such an organization does not exist, regional reliability organization;

v. The proposed Project will not duplicate the functions of existing transmission facilities or proposed facilities which are the subject of ongoing or approved siting and related permitting proceedings;

3. A financing statement, detailing the amount of funds the submitting entity would contribute to DOE for purposes of carrying out the Project, including the expected Project costs for which those contributed funds would be used, and the fiscal year(s) in which any contributed funds would be provided to DOE.

Project Proposals will be evaluated by the Department of Energy and the relevant PMA to determine whether—based on the best available data provided by the submitter—the Project meets the following eligibility requirements:

1. The Project meets, or will meet by the time the Secretary makes a final decision whether to proceed with the development of the proposed Project, the statutory eligibility criteria specified above in paragraph 2(b) for upgraded transmission facilities, or paragraph 2(c) for new transmission facilities; and

2. DOE, in accepting the amount of funds the submitting entity proposes to contribute, would not exceed the $100,000,000 limit before September 15, 2015.

DOE can at any time reject a Project Proposal, in whole or in part, that does not meet these eligibility requirements.

If a proposed Project meets the eligibility requirements, DOE and the relevant PMA will conduct an initial evaluation of the eligible Project Proposals, considering criteria including, but not limited to, the following:

1. Whether the Project is in the public interest;

2. Whether the Project will facilitate the reliable delivery of power generated by renewable resources;

3. The benefits and impacts of the Project in each state it traverses, including economic and environmental factors;

4. The technical viability of the Project, considering engineering, electrical, and geographic factors; and

5. The financial viability of the Project.

In order for DOE to undertake an initial evaluation of eligible Project Proposals, submitting entities are urged to provide for consideration information in their Project Proposals, as described below. If the information described below is unknown at the time of submission, submitters are invited to provide a timeline estimating when any of the applicable information may become known or available.

1. *Public interest.* A brief description of how the Project is in the public interest, including, but not limited to, advancing the purposes of EPAct.

2. *Resource description.* A description of the energy resources (wind, solar, hydro, coal, natural gas, nuclear, etc.) for which the proposed Project would facilitate delivery; the size and location of the resources; schedule for resource development; specific location of load or markets; availability of generation-related ancillary services, including regulation and frequency response and

[1] On November 21, 2008, Southwestern and Western issued separate Solicitations of Interest for Transmission Line Projects under section 1222 of EPAct (73 FR 70636 and 70638 respectively). Southwestern received no response to its solicitation. Western received five responses which were forwarded for consideration of financing under Western's Transmission Infrastructure Program.

operating reserves; a description of the entity's involvement in the development of the energy resources to be delivered; and/or any commitments to purchase the resulting energy and capacity from the proposed resource.

3. *Interconnection request.* If the proposed Project involves an interconnection request, a description of the interconnection request, including, but not limited to, the names of the entities involved in the request, such as transmission facility owners, Regional Transmission Organizations, Independent System Operators, or any other relevant entities, and the status of that request, including queue position and estimated date the transmission facility owner(s) expect to be ready to provide transmission service.

4. *Transmission Rights and/or Service.* Description of transmission rights or long-term service the entity may desire when the Project is completed.

5. *Participant roles.* Description of the proposed role that the submitting entity, the relevant PMA, the Secretary, and any other Project participants might play in the development, ownership, operation, and maintenance of the Project.

6. *Prior experience.* A brief description of the submitting entity's prior experience related to constructing, financing, facilitating, or studying construction of upgraded and/or new electric power transmission lines and related facilities for the primary purpose of delivering or facilitating the delivery of power generated by resources constructed or reasonably expected to be constructed.

7. *Participation of other entities.* A brief description of any steps the entity has taken to seek interest from other entities in participating in developing the proposed Project or in seeking interest in subscribers for the additional transmission capacity resulting from the proposed Project.

8. *Financial viability.* Verifiable information demonstrating that the entity is in sound financial condition and has the ability to secure the necessary financing to meet the Project's requirements at all relevant phases of the Project.

9. *Other information.* Any other information that the submitting entity thinks would be useful for consideration as part of its Project Proposal.

During or upon completion of the evaluation of an eligible Project, DOE and the relevant PMA may initiate negotiations and, subject to the advancement of funds by the requesting entity, undertake more detailed analysis—including National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) scoping and environmental impact statement preparation processes—for any eligible Project that meets the evaluation criteria.

Only an Agreement executed between DOE, the relevant PMA, and the submitting entity can contractually obligate the DOE or the relevant PMA to design, develop, construct, operate, maintain, or own, or participate with other entities in designing, developing, constructing, operating, maintaining, or owning, upgraded existing transmission facilities owned by either PMA, or new transmission lines constructed in the states in which either PMA operates.

Environmental Compliance: In compliance with NEPA (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508), and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), DOE has determined that this action is categorically excluded from further NEPA analysis. Future actions that the Secretary, Southwestern, and/or Western may undertake pursuant to EPAct section 1222 as a result of this request will undergo separate NEPA analysis on a project-by-project basis.

Dated: June 4, 2010.

Daniel B. Poneman,

Deputy Secretary.

[FR Doc. 2010–13943 Filed 6–9–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM): Availability of the Biennial Progress Report of the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM)

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH) .

ACTION: Availability of the ICCVAM Biennial Progress Report.

SUMMARY: NICEATM announces the availability of the *Biennial Progress Report 2008–2009: Interagency Coordinating Committee on the Validation of Alternative Methods.* In accordance with requirements of the ICCVAM Authorization Act of 2000 (Pub. L. 106–545, 42 U.S.C. 285*l*–3(e)(7)), this report describes progress and activities during 2008–2009 by ICCVAM and NICEATM. The report is available on the NICEATM–ICCVAM Web site at *http://iccvam.niehs.nih.gov/about/ICCVAMrpts.htm.* Copies can also be requested from NICEATM at the address given below.

ADDRESSES: Requests for copies of the report should be sent by mail, fax, or e-mail to Dr. William S. Stokes, NICEATM Director, NIEHS, P.O. Box 12233, MD K2–16, Research Triangle Park, NC, 27709, (phone) 919–541–2384, (fax) 919–541–0947, (e-mail) *niceatm@niehs.nih.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. William S. Stokes, NICEATM Director (phone 919–541–2384 or *niceatm@niehs.nih.gov).*

SUPPLEMENTARY INFORMATION:

Background Information on ICCVAM and NICEATM

ICCVAM is an interagency committee composed of representatives from 15 U.S. Federal regulatory and research agencies that require, use, or generate toxicological information. ICCVAM conducts technical evaluations of new, revised, and alternative methods with regulatory applicability, and promotes the scientific validation and regulatory acceptance of toxicological test methods that more accurately assess the safety and health hazards of chemicals and products and that refine (less pain and distress), reduce, or replace animal use. The ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–3(a), available at *http://iccvam.niehs.nih.gov/about/PL106545.htm*) established ICCVAM as a permanent interagency committee of the NIEHS under NICEATM. NICEATM administers ICCVAM, provides scientific and operational support for ICCVAM-related activities, and coordinates international validation studies. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of U.S. Federal agencies. Additional information about ICCVAM and NICEATM, guidelines for nomination of test methods for validation studies, and guidelines for submission of test methods to ICCVAM for evaluation are available at *http://iccvam.niehs.nih.gov.*

Dated: June 3, 2010.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2010–13952 Filed 6–9–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–N–0451] (formerly Docket No. 2004N–0226)

Food and Drug Administration Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 024

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a publication containing modifications the agency is making to the list of standards FDA recognizes for use in premarket reviews (FDA recognized consensus standards). This publication, entitled "Modifications to the List of Recognized Standards, Recognition List Number: 024" (Recognition List Number: 024), will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: Submit either electronic or written comments concerning this document at any time. See section VII of this document for the effective date of the recognition of standards announced in this document.

ADDRESSES: Submit written requests for single copies of "Modifications to the List of Recognized Standards, Recognition List Number: 024" to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4617, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests, or fax your request to 301–847–8149. Submit written comments concerning this document, or recommendations for additional standards for recognition, to the contact person (see **FOR FURTHER INFORMATION CONTACT**). Submit electronic comments by e-mail: *standards@cdrh.fda.gov*. This document may also be accessed on FDA's Internet site at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm*. See section VI of this document for electronic access to the searchable database for the current list of FDA recognized consensus standards, including Recognition List Number: 024 modifications and other standards related information.

FOR FURTHER INFORMATION CONTACT: Carol L. Herman, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 3632, Silver Spring, MD 20993–0002, 301–796–6574.

SUPPLEMENTARY INFORMATION:

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360d). Amended section 514 allows FDA to recognize consensus standards developed by international and national organizations for use in satisfying portions of device premarket review submissions or other requirements.

In a notice published in the **Federal Register** of February 25, 1998 (63 FR 9561), FDA announced the availability of a guidance entitled "Recognition and Use of Consensus Standards." The notice described how FDA would implement its standard recognition program and provided the initial list of recognized standards.

Modifications to the initial list of recognized standards, as published in the **Federal Register**, are identified in table 1 of this document.

TABLE 1.—PREVIOUS PUBLICATIONS OF STANDARD RECOGNITION LISTS

February 25, 1998 (63 FR 9561)	November 8, 2005 (70 FR 67713)
October 16, 1998 (63 FR 55617)	March 31, 2006 (71 FR 16313)
July 12, 1999 (64 FR 37546)	June 23, 2006 (71 FR 36121)
November 15, 2000 (65 FR 69022)	November 3, 2006 (71 FR 64718)
May 7, 2001 (66 FR 23032)	May 21, 2007 (72 FR 28500)
January 14, 2002 (67 FR 1774)	September 12, 2007 (72 FR 52142)
October 2, 2002 (67 FR 61893)	December 19, 2007 (72 FR 71924)
April 28, 2003 (68 FR 22391)	September 9, 2008 (73 FR 52358)
March 8, 2004 (69 FR 10712)	March, 18, 2009 (74 FR 11586)
June 18, 2004 (69 FR 34176)	September 8, 2009 (74 FR 46203)
October 4, 2004 (69 FR 59240)	May 5, 2010 (75 FR 24711)
May 27, 2005 (70 FR 30756)	

These notices describe the addition, withdrawal, and revision of certain standards recognized by FDA. The agency maintains "hypertext markup language (HTML)" and "portable document format (PDF)" versions of the list of "FDA Recognized Consensus Standards." Both versions are publicly accessible at the agency's Internet site. See section VI of this document for electronic access information. Interested persons should review the supplementary information sheet for the standard to understand fully the extent to which FDA recognizes the standard.

II. Modifications to the List of Recognized Standards, Recognition List Number: 024

FDA is announcing the addition, withdrawal, correction, and revision of certain consensus standards the agency will recognize for use in satisfying premarket reviews and other requirements for devices. FDA will incorporate these modifications in the list of FDA Recognized Consensus Standards in the agency's searchable database. FDA will use the term "Recognition List Number: 024" to identify these current modifications.

In table 2 of this document, FDA describes the following modifications: (1) The withdrawal of standards and their replacement by others; (2) the correction of errors made by FDA in listing previously recognized standards; and (3) the changes to the supplementary information sheets of recognized standards that describe revisions to the applicability of the standards.

In section III of this document, FDA lists modifications the agency is making that involve the initial addition of standards not previously recognized by FDA.

TABLE 2.—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS

Old Recognition No.	Replacement Recognition No.	Title of Standard[1]	Change
A. Dental/ENT			
4–122	4–187	IEC 60601–2–18 Edition 3.0 2009–08 Medical electrical equipment—Part 2–18: Particular requirements for the basic safety and essential performance of endoscope equipment	Newer version with transition period
B. General			
5–4	5–52	ANSI/AAMI ES60601–1:2005, Medical Electrical Equipment—Part 1: General requirements for basic safety and essential performance	Newer version with transition period
5–28	5–53	IEC 60601–1–2 Third edition 2007–03 Medical electrical equipment—Part 1–2: General requirements for basic safety and essential performance—Collateral standard: Electromagnetic compatibility—Requirements and tests	Newer version with transition period
5–30	5–54	ANSI/AAMI/IEC 60601–1–2:2007 Medical electrical equipment—Part 1–2: General requirements for basic safety and essential performance—Collateral standard: Electromagnetic compatibility—Requirements and tests	Newer version with transition period
5–34	5–53	IEC 60601–1–2 Third edition 2007–03 Medical electrical equipment—Part 1–2: General requirements for basic safety and essential performance—Collateral standard: Electromagnetic compatibility—Requirements and tests	Newer version with transition period
5–35	5–54	ANSI/AAMI/IEC 60601–1–2:2007 Medical electrical equipment—Part 1–2: General requirements for basic safety and essential performance—Collateral standard: Electromagnetic compatibility—Requirements and tests	Newer version with transition period
5–49	5–55	IEC 60601–1–8 Second edition 2006–10 Medical electrical equipment—Part 1–8: General requirements for basic safety and essential performance—Collateral Standard: General requirements, tests and guidance for alarm systems in medical electrical equipment and medical electrical systems	Newer version with transition period
C. General Hospital/General Plastic Surgery			
6–9	6–227	ANSI/AAMI/IEC 60601–2–21: 2009 Medical electrical equipment—Part 2–21: Particular requirements for the basic safety and essential performance of infant radiant warmers	Newer version with transition period
6–29		ANSI/AAMI/IEC 60601–2–19: 2009 Medical Electrical Equipment—Part 2–19: Particular requirements for the basic safety and essential performance of infant incubators	Newer version with transition period Refer to recognition no. 6–230
6–32		ANSI/AAMI/IEC60601–2–20: 2009 Medical Electrical Equipment—Part 2–20: Particular requirements for the basic safety and essential performance of infant transport incubators	Newer version with transition period Refer to recognition no. 6–231
6–142		AAMI/ANSI II36:2004 Medical electrical equipment—Part 2: Particular requirements for safety of baby incubators	Newer version with transition period. Refer to recognition no. 6–230
6–143		AAMI/ANSI II51:2004 Medical electrical equipment—Part 2: Particular requirements for safety of transport incubators	Newer version with transition period. Refer to recognition no. 6–231
6–146	6–227	ANSI/AAMI/IEC 60601–2–21:2009 Medical Electrical Equipment—Part 2–21: Particular requirements for the basic safety and essential performance of infant radiant warmers	Newer version with transition period
6–182		IEC 60601–2–38 1996/Amendment 1:1999 Medical electrical—Part 2–38: Particular requirements for the safety of electrically operated hospital beds	Newer version with transition period. Refer to recognition no. 6–233
6–197	6–228	IEC 60601–2–2 Edition 5.0 2009–02 Medical electrical equipment—Part 2–2: Particular requirements for the basic safety and essential performance of high frequency surgical equipment and high frequency surgical accessories	Newer version with transition period
D. OB–GYN/Gastroenterology			

TABLE 2.—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old Recognition No.	Replacement Recognition No.	Title of Standard[1]	Change
9–4	9–60	IEC 60601–2–16 Edition 3.0 2008–04 Medical electrical equipment—Part 2–16: Particular requirements for basic safety and essential performance of haemodialysis, haemodiafiltration and haemofiltration equipment	Newer version with transition period
9–42	9–61	IEC 60601–2–18 Edition 3.0 2009–08 Medical electrical equipment—Part 2–18: Particular requirements for the basic safety and essential performance of endoscopic equipment	Newer version with transition period
9–46	9–62	IEC 60601–2–2 Edition 5.0 2009–02 Medical electrical equipment—Part 2–2: Particular requirements for the basic safety and essential performance of high frequency surgical equipment and high frequency surgical accessories	Newer version with transition period
E. Radiology			
12–34		IEC 60601–2–7 Second edition 1998–02 Medical electrical equipment—Part 2–7: Particular requirements for the safety of high-voltage generators of diagnostic X-ray generators	Newer version with transition period. Refer to recognition no. 12–201
12–36		IEC 60601–2–9 (1996–10) Medical electrical equipment—Part 2: Particular requirements for the safety of patient contact dosimeters used in radiotherapy with electrically connected radiation detectors—Ed. 2.0	Withdrawn
12–63	12–202	IEC 60601–2–43 Edition 2.0 2010–03 Medical electrical equipment—Part 2–43: Particular requirements for the basic safety and essential performance of X-ray equipment for interventional procedures	Newer version with transition period
12–120	12–203	IEC 60601–2–44 Edition 3.0 2009–02 Medical electrical equipment—Part 2–44: Particular requirements for the basic safety and essential performance of X-ray equipment for computed tomography	Newer version with transition period
12–126	12–204	IEC 60601–2–28 Edition 2.0 2010–03 Medical electrical equipment—Part 2–28: Particular requirements for the basic safety and essential performance of X-ray tube assemblies for medical diagnosis	Newer version with transition period
12–127		IEC 60601–2–32 First edition 1994–03 Medical electrical equipment Part 2: Particular requirements for the safety of associated equipment of X-ray equipment	Newer version with transition period. Refer to recognition no. 12–201
12–147	12–205	IEC 60601–2–5 Edition 3.0 2009–07 Medical electrical equipment Part 2–5: Particular requirements for the basic safety and essential performance of ultrasonic physiotherapy equipment	Newer version with transition period
12–152	12–206	IEC 60601–2–1 Edition 3.0 2009–10 Medical electrical equipment Part 2–1: Particular requirements for the basic safety and essential performance of electron accelerators in the range 1 MeV to 50 MeV	Newer version with transition period
12–189	12–207	IEC 60601–2–33 Edition 3.0 2010–03 Medical electrical equipment—Part 2–33: Particular requirements for the basic safety and essential performance of magnetic resonance equipment for medical diagnosis	Newer version with transition period
12–197	12–208	IEC 60601–2–22 Third edition 2007–05 Medical electrical equipment—Part 2–22: Particular requirements for basic safety and essential performance of surgical, cosmetic, therapeutic and diagnostic laser equipment	Newer version with transition period
12–198	12–209	IEC 60601–2–37 Edition 2.0 2007–08 Medical electrical equipment—Part 2–37: Particular requirements for the basic safety and essential performance of ultrasonic medical diagnostic and monitoring equipment	Newer version with transition period
12–199	12–210	IEC 60601–1–3 Edition 2.0 2008–01 Medical electrical equipment—Part 1–3: General requirements for basic safety and essential performance—Collateral Standard: Radiation protection in diagnostic X-ray equipment	Newer version with transition period
12–200	12–211	IEC 60601–2–29 Edition 3.0 2008–06 Medical electrical equipment—Part 2–29: Particular requirements for the basic safety and essential performance of radiotherapy simulators	Newer version with transition period

[1] All standard titles in this table conform to the style requirements of the respective organizations.

III. Listing of New Entries

In table 3 of this document, FDA provides the listing of new entries and consensus standards added as modifications to the list of recognized standards under Recognition List Number: 024.

TABLE 3.—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS

Recognition No.	Title of Standard[1]	Reference No. & Date
A. Cardiology		
3–78	Medical electrical equipment—Part 2–30: Particular requirements for the basic safety and essential performance of automated noninvasive sphygmomanometers	ANSI/AAMI/IEC 80601–2–30:2009
B. General Hospital/General Plastic Surgery		
6–229	Medical electrical equipment—Part 2–2: Particular requirements for the basic safety and essential performance of high frequency surgery equipment and high frequency surgical accessories	ANSI/AAMI/IEC 60601–2–2:2009
6–230	Medical Electrical Equipment—Part 2–19: Particular requirements for the basic safety and essential performance of infant incubators	ANSI/AAMI/IEC 60601–2–19:2009
6–231	Medical Electrical Equipment—Part 2–20: Particular requirements for the basic safety and essential performance of infant transport incubators	ANSI/AAMI/IEC 60601–2–20:2009
6–232	Medical electrical equipment—Part 2–56: Particular requirements for basic safety and essential performance of clinical thermometers for body temperature measurement	ISO 80601–2–56 First Edition 2009–10–01
6–233	Medical electrical equipment—Part 2–52: Particular requirements for the basic safety and essential performance of medical beds	IEC 60601–2–52 Edition 1.0 2009–12
6–234	Medical Electrical Equipment—Part 2–50: Particular requirements for the basic safety and essential performance of infant phototherapy equipment	IEC 60601–2–50 Edition 2.0 2009–03
6–235	Medical Electrical Equipment—Part 2–50: Particular requirements for the basic safety and essential performance of infant phototherapy equipment	ANSI/AAMI/IEC 60601–2–50: 2009
6–236	Medical electrical equipment—Part 2–59: Particular requirements for the basic safety and essential performance of screening thermographs for human febrile temperature screening	IEC 80601–2–59 Edition 1.0 2008–10
6–237	CORRIGENDUM 1 Medical electrical equipment—Part 2–59: Particular requirements for the basic safety and essential performance of screening thermographs for human febrile temperature screening	IEC 80601–2–59 Edition 1.0 2008–10
6–238	Medical electrical equipment—Part 2–35: Particular requirements for the basic safety and essential performance of heating devices using blankets, pads or mattresses and intended for heating in medical use	IEC 80601–2–35 Edition 2.0 2009–10
C. OB–GYN/Gastroenterology		
9–63	Medical electrical equipment—Part 2–16: Particular requirements for basic safety and essential performance of haemodialysis, haemodiafiltration and haemofiltration equipment CORRIGENDUM 1	IEC 60601–2–16 (Third edition—2008)
9–64	Medical electrical equipment—Part 2–2: Particular requirements for the basic safety and essential performance of high frequency surgery equipment and high frequency surgical accessories	ANSI/AAMI/IEC 60601–2–2:2009
D. Radiology		
12–201	Medical electrical equipment—Part 2–54: Particular requirements for the basic safety and essential performance of X-ray equipment for radiography and radioscopy	IEC 60601–2–54 Edition 1.0 2009–06

[1] All standard titles in this table conform to the style requirements of the respective organizations.

IV. List of Recognized Standards

FDA maintains the agency's current list of FDA recognized consensus standards in a searchable database that may be accessed directly at FDA's Internet site at *http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm*. FDA will incorporate the modifications and minor revisions described in this notice into the database and, upon publication in the **Federal Register**, this recognition of consensus standards will be effective. FDA will announce additional modifications and minor revisions to the list of recognized consensus standards, as needed, in the **Federal Register** once a year, or more often, if necessary.

V. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under the new provision of section 514 of the act by submitting such recommendations, with reasons for the recommendation, to the contact person (see **FOR FURTHER INFORMATION CONTACT**). To be properly considered, such recommendations should contain,

at a minimum, the following information: (1) Title of the standard; (2) any reference number and date; (3) name and address of the national or international standards development organization; (4) a proposed list of devices for which a declaration of conformity to this standard should routinely apply; and (5) a brief identification of the testing or performance or other characteristics of the device(s) that would be addressed by a declaration of conformity.

VI. Electronic Access

You may obtain a copy of "Guidance on the Recognition and Use of Consensus Standards" by using the Internet. CDRH maintains a site on the Internet for easy access to information including text, graphics, and files that you may download to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes the guidance as well as the current list of recognized standards and other standards related documents. After publication in the **Federal Register**, this notice announcing "Modification to the List of Recognized Standards, Recognition List Number: 024" will be available on the CDRH home page. You may access the CDRH home page at *http://www.fda.gov/MedicalDevices*.

You may access "Guidance on the Recognition and Use of Consensus Standards," and the searchable database for "FDA Recognized Consensus Standards" through the hyperlink at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards*.

This **Federal Register** document on modifications in FDA's recognition of consensus standards is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm*.

VII. Submission of Comments and Effective Date

Interested persons may submit to the contact person (see **FOR FURTHER INFORMATION CONTACT**) 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. Comments are to be identified with the docket number found in brackets in the heading of this document. FDA will consider any comments received in determining whether to amend the current listing of modifications to the list of recognized standards, Recognition List Number: 024. These modifications to the list or recognized standards are effective upon publication of this notice in the **Federal Register**.

Dated: June 4, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–13874 Filed 6–9–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Cross-community Evaluation of the Native Aspirations Project—NEW

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services (CMHS) will conduct the Cross-Community Evaluation of the Native Aspirations Project. The cross-community evaluation has two tiers. Community-specific activities (Tier 1) are tied to key components of a community plan developed in each participating community that guides program planning and local evaluation through data-driven frameworks and inquiry. Tier I activities will include process and impact evaluation activities to determine the stage of readiness of communities to implement programs, how accurately community plans reflect the needs and characteristics of each community, how well local resources for American Indian/Alaska Native (AI/AN) youth are mobilized, the experience and impact of the Gathering of Native Americans (GONA), and the impact of the Native Aspirations program on the community. Core cross-community data collection activities (Tier II) are cross-community and include process and impact indicators such as community-level knowledge and awareness of suicide, violence, bullying, and substance abuse; pro-social and help-seeking behaviors among Native youth; and the provision of services specific to Native youth through existing service systems. Tier II activities are directly tied to the primary objectives of the Native Aspirations Project and are designed to augment data collection through the collection of community- and systems-level change measurement. Activities include the Service Provider Focus Groups and the Community Knowledge, Awareness, and Behavior Survey (C–KABS).

Data will be collected from Native adults and youth involved in the Community Mobilization Plan (CMP) meeting and the Gathering of Native Americans (GONA), key program stakeholders, Native youth service providers (*e.g.,* teachers, mental health providers, case workers, juvenile justice providers), and other community members (Native youth and adults). Data collection will take place in 25 AI/AN communities across three cohorts. Data collection for the Native Aspirations Cross-community Evaluation will occur over a three-year period of funding for each cohort. Clearance is requested for a three-year period of data collection that spans FY2009 through FY2012 during which Cohorts 3 and 4 will receive three years of data collection and Cohort 5 will receive two years of data collection with the final year to be submitted in an OMB renewal package. The following describes the specific data collection activities and the nine data collection instruments to be used, followed by a summary table of respondents and respondent burden.

Community Specific Data Collection Activities—Tier I

• *GONA—Baseline Interviews (1 Version).* Each participating community will have the opportunity to hold a GONA focused on youth violence, bullying, substance abuse, and suicide concerns. Community GONAs follow four themes that correspond to indigenous values and are core resiliency factors for Native people. These values—belonging, mastery, interdependence, and generosity—are the framework for this collaborative community event that focuses on individual and community healing, envisioning community wellness, mapping the assets of the community, and committing action in the community toward prevention efforts centered on youth violence, bullying, substance abuse, and suicide. Baseline GONA interviews will be conducted prior to the GONA in each community and will center on the four values and how respondents view and describe their relationships in and with the community; how people in the community deal with youth violence, bullying, substance abuse, and suicide; community members' willingness to work together to address these issues;

community protective factors; and suggestions for how community members can work together to address these issues. The GONA baseline interviews will be conducted by telephone in year 1 of funding with a maximum of 6 adults per funded community who will attend the GONA in each Cohort. The total number of participants across Cohorts 3, 4, and 5 for 3 years is 150. Items are formatted as open-ended and semi-structured questions. The GONA baseline telephone interviews include 6 items and will take approximately 20 minutes to complete. By using either the GONA Evaluation—Baseline Consent Form, Phone Script or Verbal Consent Form, verbal consent will be received from each respondent prior to administration of the GONA Baseline Interviews.

• *GONA—Follow-up Interviews (1 Version).* The GONA follow-up interviews will be conducted several weeks after the GONA in each community. Follow-up interviews will center around the four values (belonging, mastery, interdependence, and generosity) and respondents' experience during the GONA; participation in activities; views on community relationships; knowledge of the Native Aspirations Project; knowledge of risk factors for youth violence, bullying, substance abuse, and suicide; community protective factors; willingness of community members to work together and suggestions for working together; and next steps. The GONA follow-up interviews will be conducted in person with a total of 9 adult respondents who attended the GONA from each of the funded communities. Items are formatted as open-ended and semi-structured questions. The GONA follow-up interviews include 11 questions and will take approximately 60 minutes to complete. These follow-up interviews will occur during a site visit in year 1 for Cohorts 3, 4, and 5. The total number of participants across the three cohorts is 225. Each participant will provide written consent prior to the interview through the GONA Evaluation—Follow-up Interview Consent Form.

• *GONA—Youth Follow-up Focus Group Moderator's Guide (1 Version).* The GONA follow-up focus groups will be conducted several weeks after the GONA with youth who attended the GONA. The focus group moderator's guide follows the same content as the GONA Follow-up Interviews (*see* above). Cross-community evaluation staff will conduct up to 2 focus groups with youth in each funded community. Focus groups will consist of a maximum of 9 participants per group and will occur during a site visit in year 1 for Cohorts 3, 4, and 5. Focus group guides contain 11 items and the session will last 2 hours. A total of 450 respondents will participate in GONA focus groups. Caregivers will give consent for youth to participate using the GONA Follow-Up Youth Focus Group Caregiver Consent form and youth will assent to participate using the GONA Follow-Up Youth Focus Group Youth Assent form.

• *Community Plan Focus Group Moderator's Guide (1 Version).* Respondents participating in the Community Plan Focus Groups include youth and adults who attended the Community Mobilization Plan (CMP) meeting in year 1. The guide consists of questions designed to facilitate group communication around the community mobilization planning process, early implementation of the plan, and organizational and community awareness and involvement. Focus group guides contain 7 items and the session will last 2 hours. The cross-community evaluation team will conduct up to 3 focus groups with a maximum of 9 participants each in year 1 for each funded community in Cohorts 3, 4, and 5. The total number of participants across cohorts is 675. Consent to participate will be obtained from adult participants through the Community Plan Focus Group Consent form and youths' caregivers will use the Community Plan Focus Group Caregiver Consent form to give consent and youth will assent to participate using the Community Plan Focus Group Youth Assent—Attachment B.6).

• *Community Plan In-depth Interviews (2 Versions).* The Community Plan In-depth Interviews will be conducted in person during year 3. The interviews will be conducted with the same individuals who participated in the CMP focus groups; however, the participants will be divided into two groups with two respective guides. Version 1 will be conducted with participants who remained active in the community mobilization process and Version 2 will be used with respondents who discontinued their involvement with Native Aspirations. The interviews will be used to gather information on the CMP implementation process, organizational and community awareness and involvement with Native Aspirations, and the impact of the Native Aspirations program on the community. The Community Plan In-depth Interview—Version 1 consists of 24 open-ended and semi-structured questions and will take 60 minutes to complete. Version 1 will be conducted with up to 9 participants, including Native youth and adults, in year 3 for a maximum total of 225 respondents across Cohorts 3, 4, and 5. The Community Plan In-depth Interview—Version 2 consists of 11 open-ended and semi-structured questions and will take 20 minutes to complete. Up to 9 respondents, including Native youth and adults, will be interviewed using Version 2 in year 3. The maximum total of respondents from each funded community across Cohorts 3, 4, and 5 is 225 for Version 2 over the life of the project. Adult participants for both versions will be required to provide written consent prior to participation using the Community Plan In-Depth Interview V.1 Consent form or the Community Plan In-Depth Interview V.2 Consent and youth participants will need written caregiver consent collected on the Community Plan Interview V.1 & V.2 Caregiver Consent forms and youth assent using the Community Plan Interview V.1 & V.2 Youth Assent forms.

Cross Community Data Collection Activities—Tier II

• *Service Provider Focus Group Moderator's Guide (2 Versions).* The Service Provider Focus Groups are designed to facilitate conversation and information sharing with youth service providers across communities to acquire a broader understanding of provider and service availability for Native youth. Version 1 participants will include agency staff such as teachers, mental health professionals, justice providers, and welfare providers. Version 2 participants will include non-agency staff such as paraprofessional providers or "natural helpers." However, specific provider types will be identified for each participating community as a function of their existence and number. Version 1 of the focus group guides consists of 9 items and Version 2 consists of 7 items, each with additional sub-questions/probes covering the availability of wellness and mental health services, how agencies work together, awareness of violence/suicide prevention activities, and areas for improvement. Focus groups will include a maximum of 9 participants per group, with up to 3 focus groups in each community in each of years 1 (baseline) and 3 (follow up). Two focus groups will be conducted with agency staff using Version 1, for a maximum total of 900 respondents across the life of the project. One focus group will be conducted with non-agency staff using Version 2 for a maximum number of 450 participants for each Cohort. Focus groups will last approximately 2 hours. Written consent will be obtained prior to focus group participation using the Service Provider Focus Group V.1

Consent form and Service Provider Focus Group V.2 Consent form.

• *Community Knowledge, Awareness, and Behavior Survey (C–KABS)—Adult Version.* The C–KABS—Adult Version is designed to gather knowledge and awareness information from adult community members related to suicide, substance abuse, violence, and bullying. In addition, respondents will report on their exposure to Native Aspirations Project activities regarding the prevention of suicide, substance abuse, violence, and bullying. Other constructs include the availability of services, knowledge of youth risk factors, and stigma around and attitude toward seeking services for wellness. The C–KABS—Adult Version will be administered annually, for all three years of the project, to 100 Native adults from each funded community. The survey consists of 36 open and closed-ended questions that include Likert-type agreement scales, prevalence scales and questions, behavior scales and questions, true/false items, and demographic questions. The survey takes approximately 45 minutes to complete. A total of 7,500 respondents will participate from Cohorts 3, 4, and 5. Written consent will be obtained using the C–KABS Adult Consent form.

• *Community Knowledge, Awareness, and Behavior Survey (C–KABS)—Youth Version.* The C–KABS Youth Version will be administered to youth participants (age 11 and older) to gather information about existing social norms around help-seeking behavior, pro-social behavior (*e.g.,* traditional Indian activities) among youth, and the extent to which respondent youth have been exposed to risky behaviors (suicide, violence, substance abuse, and/or bullying), as well as their exposure to prevention efforts for risky behaviors related to the Native Aspirations Project. The survey will also contain items about youths' access to pathways to risky behaviors (*e.g.,* how hard/easy is it to get drugs/alcohol), access to and awareness of/willingness to seek help for these behaviors for themselves or others, and youths' engagement in risky and protective behaviors. The C–KABS Youth Version will be administered annually, for all three years of the project, to 100 Native youth from each funded community. The survey consists of 38 open and closed-ended questions that include Likert-type agreement scales, prevalence scales and questions, behavior scales and questions, true/false items, and demographic questions. A total of 7,500 youth will participate from Cohorts 3, 4 and 5. Youths' caregivers will provide consent for youth to participate using the C–KABS Youth Caregiver Consent form and youth will assent to participate using the C–KABS Youth Assent form.

• *Community Readiness Assessment (1 Version).* The CRA addresses six readiness dimensions focused on identified social concern (*i.e.,* youth violence, bullying, and suicide). These dimensions include (a) community prevention efforts, (b) community knowledge of prevention efforts, (c) leadership, (d) community climate, (e) knowledge about the problem, and (f) resources for prevention efforts. In addition, there are nine developmental levels of readiness within which a community must progress through. CRAs include 26 interview questions which address each of the six community readiness dimensions; most items are formatted as open-ended questions with three items scored on a scale of 1 to 10. During years 1 and 3, CRAs will be conducted with each funded community in Cohorts 3, 4, and 5 to address youth violence, bullying, and suicide from a multi-faceted perspective. Telephone interviews will be conducted with up to six key informants in the community. Interviews will last 60 minutes and a maximum of 300 respondents will be interviewed. Overall readiness scores will be determined based on key informants' responses and will indicate the community's status with respect to each of these dimensions. Consent will be obtained using either the Community Readiness Assessment Verbal Consent form or the Community Readiness Assessment Written Consent form.

Data Abstraction and Submission. In addition to the above described data collection activities, data from existing sources abstracted using the Data Abstraction and Submission Form (*i.e.,* management information systems (MIS), administrative records, case files, etc.) will be analyzed across communities to support the impact stage of Tier I of the cross-community evaluation. To minimize data collection burden on community members, this activity will be tailored to key components identified in the community plan and will be developed around existing data systems and related infrastructures. Cross-community technical assistance providers will assist in the identification of existing data sources and their relevance to locally planned Native Aspirations activities. Data elements may be requested from educational systems, juvenile justice/law enforcement sources, mental health agencies, child welfare, Medicaid, and community organizations (*e.g.,* YMCA, Boys and Girls Clubs, *etc.*). A maximum of 10 data elements each will be requested from education and juvenile justice/law enforcement sources and a maximum of 5 data elements each will be requested from mental health, child welfare, Medicaid, and community organizations. These data will be aggregated from existing data sources, some of which are attendance sheets, management information systems, etc. Communities are responsible for aggregating these data and submitting them to the Native Aspirations Cross-community Evaluation team by mail, electronic mail, or by uploading the data. The burden associated with accessing, aggregating, and submitting existing data is approximately 6 hours per activity per year. Data abstraction and submission will occur two times per year in each funded community in Cohorts 3, 4 and 5. Seven respondents (one each representing education, juvenile justice, law enforcement, mental health, child welfare, Medicaid, and community organizations) in each community will perform data abstraction and submission for a total of 175 respondents and 2,100 hours across three years of data collection for Cohorts 3, 4, and 5.

Given the expected variation in available technology (*e.g.,* Internet) and geographic spread of the target populations, flexible implementation options for surveys include local distribution or administration of surveys, in-person group, and Internet options and will be determined with each participating community and used when relevant and viable.

The average annual respondent burden is estimated below. The estimate reflects the average annual number of respondents, the average annual number of responses, the time it will take for each response, and the average annual burden across three years of OMB clearance, which includes three years of data collection for Cohorts 3 and 4 and two years of data collection for Cohort 5.

ANNUALIZED AVERAGES: RESPONDENTS, RESPONSES AND HOURS

Measure name	Number of respondents	Number of responses per respondent	Hours/response	Response burden*
Community Specific Data Collection Activities—Tier I	.....	.....	.....	.....
GONA Baseline Interviews	50	1	0.33	17
GONA Follow-up Interviews	75	1	1.0	75
GONA Youth Follow-up Focus Groups	150	1	2.0	300
Community Plan Focus Groups	225	1	2.0	450
Community Plan In-depth Interviews—V. 1	51	1	1.0	51
Community Plan In-depth Interviews—V. 2	51	1	0.33	17
Service Provider Focus Groups—V. 1	252	1	2.0	504
Service Provider Focus Groups—V. 2	126	1	2.0	252
Cross Community Data Collection Activities—Tier II	.....	.....	.....	.....
C–KABS Adult Version	2,234	1	0.75	1,676
C–KABS Youth Version	2,234	1	0.75	1,676
Community Readiness Assessment	84	1	1.0	84
Data Abstraction and Submission Form	156	2.0	6.0	1,872
Total	5,688	.....	.....	6,974

*Rounded to the nearest whole number.

Written comments and recommendations concerning the proposed information collection should be sent July 12, 2010 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–5806.

Dated: June 3, 2010.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. 2010–13824 Filed 6–9–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Mandatory Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227. 414–328–7840/800–877–7016. (Formerly: Bayshore Clinical Laboratory.)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624. 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118. 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN 37210. 615–255–2400. (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.)

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053. 504–361–8989/800–433–3823. (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236. 804–378–9130. (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.;

Kroll Scientific Testing Laboratories, Inc.)
Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299. 501–202–2783. (Formerly: Forensic Toxicology Laboratory Baptist Medical Center.)
Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802. 800–445–6917.
Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602. 229–671–2281.
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974. 215–674–9310.
DynaLIFE Dx,* 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2. 780–451–3702/800–661–9876. (Formerly: Dynacare Kasper Medical Laboratories.)
ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655. 662–236–2609.
Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4. 519–679–1630.
Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040. 713–856–8288/800–800–2387.
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869. 908–526–2400/800–437–4986. (Formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709. 919–572–6900/800–833–3984. (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group.)
Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671. 866–827–8042/800–233–6339. (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center.)
LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219. 913–888–3927/800–873–8845. (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)
Maxxam Analytics,* 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8. 905–817–5700. (Formerly: Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.)
MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112. 651–636–7466/800–832–3244.
MetroLab-Legacy Laboratory Services, 1225 NE. 2nd Ave., Portland, OR 97232. 503–413–5295/800–950–5295.
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417. 612–725–2088.
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304. 661–322–4250/800–350–3515.
One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504. 888–747–3774. (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory.)
Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311. 800–328–6942. (Formerly: Centinela Hospital Airport Toxicology Laboratory.)
Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204. 509–755–8991/800–541–7891x7.
Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121. 858–643–5555.
Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084. 800–729–6432. (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories.)
Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403. 610–631–4600/877–642–2216. (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories.)
Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304. 800–877–2520. (Formerly: SmithKline Beecham Clinical Laboratories.)
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109. 505–727–6300/800–999–5227.
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601. 574–234–4176 x1276.
Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040. 602–438–8507/800–279–0027.
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101. 405–272–7052.
STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421. 800–442–0438.
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203. 573–882–1273.
Toxicology Testing Service, Inc., 5426 NW. 79th Ave., Miami, FL 33166. 305–593–2260.
U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235. 301–677–7085.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Dated: June 3, 2010.

Elaine Parry,

Director, Office of Program Services, SAMHSA.

[FR Doc. 2010–13946 Filed 6–9–10; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–E–0214]

Determination of Regulatory Review Period for Purposes of Patent Extension; PROMACTA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for

PROMACTA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions 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*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product PROMACTA (eltrombopag olamine). PROMACTA is indicated the treatment of thrombocytopenia in patients with chronic immune (idiopathic) thrombocytopenic purpura who have had an insufficient response to corticosteroids, immunoglobulins, or splenectomy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for PROMACTA (U.S. Patent No. 7,160,870) from SmithKline Beecham Corp. (DBA GlaxoSmithKline), and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 29, 2009, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of PROMACTA represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for PROMACTA is 1,485 days. Of this time, 1,147 days occurred during the testing phase of the regulatory review period, while 338 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: October 29, 2004. The applicant claims October 28, 2004, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 29, 2004, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: December 19, 2007. FDA has verified the applicant's claim that the new drug application (NDA) 22–291 was submitted on December 19, 2007.

3. *The date the application was approved*: November 20, 2008. FDA has verified the applicant's claim that NDA 22–291 was approved on November 20, 2008.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 347 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by August 9, 2010. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 7, 2010. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 23, 2010.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2010–13905 Filed 6ndash;9–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0281]

Draft Guidance for Industry and Food and Drug Administration Staff; "'Harmful and Potentially Harmful Constituents' in Tobacco Products as Used in Section 904(e) of the Federal Food, Drug, and Cosmetic Act"; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry and FDA staff entitled "'Harmful and Potentially Harmful Constituents' in Tobacco Products as Used in Section 904(e) of the Federal Food, Drug, and Cosmetic Act." This draft guidance provides written guidance to industry and FDA staff on certain provisions of the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act).

DATES: Although you can comment on any guidance at any time (see 21 CFR

10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by September 8, 2010.

ADDRESSES: Submit written requests for single copies of the draft guidance 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 requests or include a fax number to which the draft guidance document may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments to *http://www.regulations.gov*. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Carol Drew, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229, 877–287–1373.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry and FDA staff entitled "'Harmful and Potentially Harmful Constituents' in Tobacco Products as Used in Section 904(e) of the Federal Food, Drug, and Cosmetic Act." This draft guidance, when finalized, will discuss the meaning of the term "harmful and potentially harmful constituent" for use in implementing section 904(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 387d(e)) as amended by the Tobacco Control Act.

On June 22, 2009, the President signed the Tobacco Control Act (Public Law 111–310) into law. The Tobacco Control Act amended the act (21 U.S.C. 301 *et seq.*) by, among other things, adding a new chapter granting FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors. Section 904(e) of the act, as added by the Tobacco Control Act, requires FDA to establish, and periodically revise as appropriate, "a list of harmful and potentially harmful constituents, including smoke constituents, to health in each tobacco product by brand and by quantity in each brand and subbrand." The draft guidance discusses the meaning of the term "harmful and potentially harmful constituent" in the context of implementing the listing requirements of section 904(e) of the act.

II. Significance of Guidance

This draft guidance is being issued as a level 1 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on certain provisions of the Tobacco Control Act. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

III. 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.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.regulations.gov* or *http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/default.htm*.

Dated: June 7, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–14046 Filed 6–8–10; 4:15 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0282]

Guidance for Industry and Food and Drug Administration Staff; Use of "Light," "Mild," "Low," or Similar Descriptors in the Label, Labeling, or Advertising of Tobacco Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Use of 'Light,' 'Mild,' 'Low,' or Similar Descriptors in the Label, Labeling, or Advertising of Tobacco Products." This guidance provides information on the Family Smoking Prevention and Tobacco Control Act's (Tobacco Control Act) requirements related to the use of "light," "mild," "low," or similar descriptors in the label, labeling, or advertising of tobacco products. This guidance document will be implemented immediately, but it remains subject to comment in accordance with the agency's good guidance practices.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled "Use of 'Light,' 'Mild,' 'Low,' or Similar Descriptors in the Label, Labeling, or Advertising of Tobacco Products" 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 guidance document may be sent. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments to *http://www.regulations.gov*. Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Beth Buckler, Center for Tobacco Products,Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 1–877–287–1373, e-mail: *beth.buckler@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 2009, the President signed the Tobacco Control Act (Public Law 111–31) into law. The Tobacco Control Act grants FDA authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors.

Section 911(b)(2)(A)(ii) of the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Tobacco Control Act, prohibits the use of the descriptors "light," "mild," or "low," or similar descriptors on tobacco product labels, labeling, or advertising unless an FDA order is in effect for the product under section 911(g) of the act. Section 911(b)(3) of the act, as amended by the Tobacco Control Act, provides that section 911(b)(2)(A)(ii) shall take effect on June 22, 2010, and the effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with section 911(b)(2)(A)(ii). The guidance provides information in response to specific questions related to this provision. In accordance with FDA's good guidance practices regulation (§ 10.115 (21 CFR 10.115), you may comment on this guidance at any time. The agency will consider your comments and determine whether to revise the guidance at a later date.

II. Significance of Guidance

FDA is issuing this guidance document as a level 1 guidance consistent with FDA's good guidance practices regulation (§ 10.115). This guidance document is being implemented immediately without prior public comment, under § 10.115(g)(2), because the agency has determined that prior public participation is not feasible or appropriate. This guidance document provides information on statutory requirements that take effect on June 22, 2010 (section 911(b)(3) of the act). It is important that FDA provide this information before that date.

III. 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.

IV. Electronic Access

An electronic version of the guidance document is available on the Internet at *http://www.regulations.gov* and *http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/default.htm*.

Dated: June 7, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–13986 Filed 6–7–10; 4:15 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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: National Institute on Aging Special Emphasis Panel; Work Levels, Disease, and Death.

Date: June 23–24, 2010.

Time: 3 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

Contact Person: Jeannette L. Johnson, PhD, Scientific Review Officer, National Institutes on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7705, *johnsonj9@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Health and Survival.

Date: June 23–24, 2010.

Time: 3 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications

Place: Doubletree Guest Suites Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

Contact Person: Jeannette L. Johnson, PhD, Scientific Review Officer, National Institutes on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7705, *johnsonj9@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Exercise, Motor Deficits, and Aging.

Date: July 1, 2010.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rebecca J. Ferrell, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building Rm. 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7703, *ferrellrj@mail.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Nutrition effects on Aging Brain.

Date: July 23, 2010.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William Cruce, PhD, Scientific Review Officer, National Institute on Aging, Scientific Review Branch, Gateway Building 2C–212, 7201 Wisconsin Ave., Bethesda, MD 20814, 301–402–7704, *crucew@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Antecedent Markers for Alzheimer's Disease.

Date: July 26, 2010.

Time: 2 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William Cruce, PhD, Scientific Review Officer, National Institute on Aging, Scientific Review Branch, Gateway Building 2C–212, 7201 Wisconsin Ave., Bethesda, MD 20814, 301–402–7704, *crucew@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Frontotemporal Dementias.

Date: July 29, 2010.

Time: 2 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, 7201 Wisconsin Avenue, RM 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William Cruce, PhD, Scientific Review Officer, National Institute on Aging, Scientific Review Branch, Gateway Building 2C–212, 7201 Wisconsin Ave., Bethesda, MD 20814, 301–402–7704, *crucew@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 4, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–13948 Filed 6–9–10; 8:45 am]

BILLING CODE 4140–01–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: Center for Scientific Review Special Emphasis Panel; Microbiome Computational Tools.

Date: July 1–2, 2010.

Time: 8 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: Diane L. Stassi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2200, MSC 7890, Bethesda, MD 20892, 301–435–2514, *stassid@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Membrane Protein Production for Structure Determination.

Date: July 1, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Nitsa Rosenzweig, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7760, Bethesda, MD 20892, (301) 435–1747, *rosenzweign@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Risk Prevention and Intervention for Addictions Overflow.

Date: July 1–2, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gabriel B. Fosu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108 MSC 7808, Bethesda, MD 20892, (301) 435–3562, *fosug@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biobehavioral and Behavioral Processes across the Lifespan.

Date: July 6–7, 2010.

Time: 8 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Biao Tian, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, (301) 402–4411, *tianbi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: AIDS/HIV Innovative Research Applications.

Date: July 6, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Kenneth A. Roebuck, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Drug Discovery and Development.

Date: July 6, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

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: AIDS and Related Research Integrated Review Group; AIDS Clinical Studies and Epidemiology Study Section.

Date: July 6, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Hilary D. Sigmon, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 594–6377, *sigmonh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation: Flow Cytometry.

Date: July 7–8, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Amalfi Hotel, 20 West Kinzie Street, Chicago, IL 60654

Contact Person: Jonathan Arias, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, *ariasj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Technology Development.

Date: July 7–8, 2010.

Time: 8 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: Alessandra M. Bini, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301–435–1024, *binia@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Physiology and Pathobiology of Musculoskeletal, Oral, and Skin Systems.

Date: July 7, 2010.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1150 22nd Street, NW., Boardroom, Washington, DC 20037.

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.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Oral, Craniofacial and Dental Sciences.

Date: July 7–8, 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: Yi-Hsin Liu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–435–1781, *liuyh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; ARRA: Biobehavioral and Behavioral Processes Across the Lifespan Competitive Revisions.

Date: July 7, 2010.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Biao Tian, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, (301) 402–4411, *tianbi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Epidemiology Member Conflict Review.

Date: July 7, 2010.

Time: 2 p.m. to 4 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: J Scott Osborne, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782, *osbornes@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Pacemaking, Arrhythmia and Biophotonic Imaging.

Date: July 7, 2010.

Time: 2 p.m. to 4 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: Olga A. Tjurmina, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301) 451–1375, *ot3d@nih.gov.*

Name of Committee: AIDS and Related Integrated Review Group; Behavioral and Social Science Approaches to Preventing HIV/AIDS Study Section.

Date: July 8–9, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Jose H Guerrier, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Genes, Genomes, and Genetics.

Date: July 8–9, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Michael A. Marino, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2216, MSC 7890, Bethesda, MD 20892, (301) 435–0601, *marinomi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Diabetes, Obesity and Nutrition.

Date: July 8, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue Bethesda, MD 20814.

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; Gastrointestinal and Mucosal Pathobiology.

Date: July 8, 2010.

Time: 2 p.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: Najma Begum, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2186, MSC 7818, Bethesda, MD 20892, 301–435–1243, *begumn@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: June 4, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–13950 Filed 6–9–10; 8:45 am]

BILLING CODE 4140–01–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: Center for Scientific Review Special Emphasis Panel, OD–10–005 Director's Opportunity 5 Themes Infectious Diseases B.

Date: June 28, 2010.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Joanna M. Pyper, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892. (301) 435–1151. *pyperj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Therapeutics for Rheumatoid Arthritis.

Date: June 29, 2010.

Time: 8 a.m. to 12 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: Yi-Hsin Liu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892. 301–435–1781. *liuyh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, RFA–DA–10–017: Seek, Test, and Treat: Addressing HIV in the Criminal Justice System.

Date: June 30–July 1, 2010.

Time: 8 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: Mark P. Rubert, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892. 301–435–1775. *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Cell Biology and Molecular Imaging.

Date: June 30, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Maria DeBernardi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892. 301–435–1355. *debernardima@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowship: Oncological Sciences.

Date: June 30–July 1, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Michael A. Marino, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7892, Bethesda, MD 20892. (301) 435–0601. *marinomi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Bone and Cartilage Biology.

Date: June 30–July 1, 2010.

Time: 8:30 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: Rajiv Kumar, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892. 301–435–1212. *kumarra@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Reproductive Sciences and Development.

Date: June 30–July 1, 2010.

Time: 10 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, Member Conflict: Fetal Injury and Exercise.

Date: June 30, 2010.

Time: 1:30 p.m. to 4 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: Reed A. Graves, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892. (301) 402–6297. *gravesr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Heart Development and Differentiation.

Date: June 30, 2010.

Time: 2 p.m. to 5 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: Joseph Thomas Peterson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892. 301–443–8130.

(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: June 4, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–13953 Filed 6–9–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Board of Scientific Advisors, June 28, 2010, 8 a.m. to June 29, 2010, 12 p.m., National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892 which was published in the **Federal Register** on May 12, 2010, 75 FR 26761–26762.

This meeting is amended to change it to a one-day meeting to be held on June 28, 2010, from 8 a.m. to 6 p.m. The meeting is open to the public.

Dated: June 4, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–13954 Filed 6–9–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

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 meeting.

The meeting 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: National Human Genome Research Institute Special Emphasis Panel, Protein Resource RFA.

Date: June 22, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Keith McKenney, PhD, Scientific Review Officer, NHGRI, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20814, 301–594–4280, *mckenneyk@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: June 4, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–13957 Filed 6–9–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

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 meeting.

The meeting 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: National Institute of Child Health and Human Development Special Emphasis Panel, "MEXICAN CHILDREN OF IMMIGRANTS PROGRAM."

Date: June 29, 2010.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call.)

Contact Person: Carla T. Walls, Ph.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892. (301) 435–6898. *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 4, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–13944 Filed 6–9–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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: National Institute on Aging Special Emphasis Panel; Drug Effects on Illnesses in the Aging Population.

Date: June 29, 2010.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Bita Nakhai, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel; Study of Aging.

Date: July 21, 2010.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jeannette L. Johnson, PhD, Scientific Review Officer, National Institutes on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7705, *johnsonj9@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 4, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–13945 Filed 6–9–10; 8:45 am]

BILLING CODE 4140–01–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: Center for Scientific Review Special Emphasis Panel; OD–10–005: Director's Opportunity 5 Themes General Basic Science.

Date: June 29, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: Alexandra M Ainsztein, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, 301–451–3848, *ainsztea@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA OD–10–005: Director's Opportunity 5 Themes: Neuroscience, Mental Diseases and Aging.

Date: June 29, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.

Contact Person: Boris P Sokolov, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–408–9115, *bsokolov@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; OD–10–005: Director's Opportunity 5 Themes Basic Translational Endocrinology, Metabolism and Digestive and Urological Systems.

Date: June 29, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications,

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sooja K Kim, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892, (301) 435–1780, *kims@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD–10–005 Director's Opportunity 5 Themes Basic Translational Oncology.

Date: June 29, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Lombardy, 2019 Pennsylvania Avenue, NW., Washington, DC 20006.

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, 301–443–4512, *cooperc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; OD–10–005 Director's Opportunity 5 Themes Healthcare Deliveries and Methodologies.

Date: June 29, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Delia Olufokunbi Sam, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0684, *olufokunbisamd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Diagnostic and Treatment.

Date: June 29–30, 2010.

Time: 8 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: Malaya Chatterjee, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20817, (301) 806–2515, *chatterm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Topics in Infectious Diseases and Microbiology.

Date: June 29–30, 2010.

Time: 8 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; Small Business: Radiation Therapy and Biology.

Date: June 29–30, 2010.

Time: 8 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: Bo Hong, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–435–5879, *hongb@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; OD–10–005 Director's Opportunity 5 Themes Population Sciences and Epidemiology.

Date: June 29, 2010.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Denise Wiesch, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0684, *wieschd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Immunology.

Date: June 29, 2010.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Jin Huang, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4199, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377p@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Pilot and Feasibility Clinical Studies in Digestive Diseases and Nutrition.

Date: June 29, 2010.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Peter J. Perrin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ARRA: Health Literacy Competitive Revision.

Date: June 29, 2010

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Michael Micklin, PhD, Scientific Review Officer, Center for Scientific Review National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@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: June 4, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–13958 Filed 6–9–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

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 meeting.

The meeting 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Repository for Mouse Models for Cytogenetic Disorders.

Date: June 28, 2010.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 4, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–13955 Filed 6–9–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

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 meeting.

The meeting 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 materials, 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: National Institute of Mental Health Special Emphasis Panel, Mental Health Services—Member Conflicts.

Date: June 29, 2010.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health,

Contact Person: Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call) Aileen Schulte, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 3, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–13951 Filed 6–9–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: United States-Caribbean Basin Trade Partnership Act

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: 1651–0083.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: United States-Caribbean Basin Trade Partnership Act (CBTPA). 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 15446) on March 29, 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 July 12, 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 agency's/component's 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: United States-Caribbean Basin Trade Partnership Act (CBTPA).

OMB Number: 1651–0083.

Form Number: 450.

Abstract: This collection of information is required to implement the duty preference provisions of the United States-Caribbean Basin Trade Partnership Act (CBTPA). The provisions of CBTPA were adopted by the U.S. with the enactment of the Trade and Development Act of 2000 (Pub. L. 106–200). The objective of the CBTPA is to expand trade benefits to countries in the Caribbean Basin. For preferential treatment under CBTPA, importers are required to have CBTPA Certification of Origin (Form 450) in their possession at the time of the claim, and to provide it to CBP upon request. CBP uses the information provided on Form 450 to determine if an importer is entitled to preferential duty treatment under the provisions of the CBTPA. The CBTPA is provided for in 19 CFR 10.224 and the Form 450 can be found at *http://www.cbp.gov.*

Current Actions: This submission is being made to extend the expiration date with a change to the burden hours. CBP proposes to reduce the burden hours by revising our estimate of the number of claims made under CBTPA on a yearly basis. These revised estimates are based on the number of CBTPA claims that CBP received in 2009.

Type of Review: Extension (with change).

Affected Public: Businesses.

Estimated Number of Respondents: 84.

Estimated Number of Responses per Respondent: 57.2.

Estimated Number of Total Annual Responses: 4,804.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 1,201.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: June 7, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–13935 Filed 6–9–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2010–0037]

Hazardous Fire Risk Reduction, East Bay Hills, CA

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Federal Emergency Management Agency (FEMA) intends to prepare an environmental impact statement evaluating the environmental impacts of funding a combination of hazardous fuel reduction projects within the East Bay Hills area in Alameda and Contra Costa Counties, California. The projects may be funded through Federal assistance grants under the Pre-Disaster Mitigation (PDM) and Hazard Mitigation Grant Program (HMGP).

DATES: Comments must be submitted by July 12, 2010.

ADDRESSES: You may submit comments, identified by Docket ID FEMA–2010–0037, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Search for Docket ID FEMA–2010–0037 and follow the instructions for submitting comments.

Fax: 703–483–2999.

Mail/Hand Delivery/Courier: Office of Chief Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

Instructions: All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, 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. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via a link in the footer of *http://www.regulations.gov.*

Docket: For access to the docket for this notice or comments submitted by the public on this notice, go to the Federal eRulemaking Portal at *http://www.regulations.gov* and search for docket ID FEMA–2010–0037. These documents may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street, SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: Alessandro Amaglio, Regional

Environmental Officer, Region IX, FEMA, 1111 Broadway, Suite 1200, Oakland, CA 94607–4052 and phone number at (510) 627–7027.

SUPPLEMENTARY INFORMATION: Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality (CEQ) regulations implementing NEPA, and FEMA's Environmental Considerations regulations require the preparation of an environmental impact statement (EIS) for major Federal actions that would have significant impacts on the quality of the human environment. The CEQ regulations at 40 CFR 1501.7 require the issuance of a notice of intent to prepare an EIS to initiate the scoping process. Scoping is an early and open process that assists the Federal action agency in determining the scope of issues to be addressed and for identifying significant issues related to a proposed action.

FEMA has received four hazard mitigation applications for fuel reduction projects in the East Bay Hills area in California. The proposed action is to fund these four projects under section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Public Law 93–288, as amended, establishing the Hazard Mitigation Grant Program (HMGP) and Section 203 of the Stafford Act, establishing the Pre-Disaster Mitigation (PDM) grant program. The Strawberry Canyon Vegetation Management Project involves the removal of eucalyptus and other exotic-non native trees in a 60-acre area, chipping the downed trees and scattering the chips in portions of the cleared area, and the semiannual application of herbicides, as needed, to eradicate eucalyptus tree sprouts from the area. The Claremont Canyon Vegetation Management Project involves the removal of eucalyptus, Monterey pine, and acacia trees in a 45-acre area, chipping the downed trees and scattering the chips in portions of the cleared area, and the semiannual application of herbicides, as needed, to eradicate eucalyptus tree sprouts from the area. The City of Oakland's project involves thinning and eradication techniques within 325 acres. The East Bay Regional Park District project involves the treatment of 590 acres to reduce fuel load through brush removal (mechanical and hand), chemical treatment, limbing and mowing, thinning, and grazing techniques as appropriate to reduce the risk of fire hazard. These projects would affect approximately 980 acres of the Wildland-Urban Interface in the East Bay Hills running from Lake Chabot to Wildcat Canyon and Sobrante Ridge, encompassing both Alameda and Contra Costa Counties.

In January 2008, FEMA published a notice of availability of a draft environmental assessment for the Strawberry Canyon Vegetation Management Project for public comment. The draft environmental assessment can be found at FEMA's Web page *http://www.fema.gov/library/viewRecord.do?id=3111*. The public involvement process revealed concerns regarding the effectiveness and scope of the vegetation removal methodologies and application of wood chips in portions of the area, impacts to plant and animal species in the area, and concerns regarding cumulative impacts of all projects in the area. FEMA has determined that an EIS should be conducted to address cumulatively the Vegetation Management Projects for the Strawberry Canyon as well as the Claremont Canyon, and the ones proposed by the City of Oakland and the East Bay Regional Park District.

In addition to the proposed action, FEMA is considering the following alternatives:

(1) No action, which involves denying the grant applications;

(2) Funding the grant applications with conditions to address their environmental impacts;

(3) Funding the grant applications with fuel reduction methodologies that are different than as proposed by the applicants; and

(4) Partially funding the grant applications, including funding some grant projects and denying others.

FEMA plans to conduct public scoping meetings during July 2010. FEMA will provide notices of the time and place of the meetings through local news media.

Authority: 42 U.S.C. 4331 *et seq.;* 40 CFR part 1500; 44 CFR part 10.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–13926 Filed 6–9–10; 8:45 am]

BILLING CODE 9119–19–P

DEPARTMENT OF THE INTERIOR

National Park Service

30-Day Federal Register Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: National Park Service, Interior.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C., Chapter 3507) and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service (NPS) invites public comments on an extension of a currently approved information collection Office of Management and Budget (OMB) Control # 1024–0231.

The OMB has up to 60 days to approve or disapprove the requested information collection, but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments within 30 days of the date on which this notice is published in the **Federal Register**.

The National Park Service published the 60-day **Federal Register** notice to solicit comments on this proposed information collection on April 5, 2010 (75 FR 17152–17153). No comments were received on this notice.

DATES: Public comments on the proposed Information Collection Request (ICR) must be received by July 12, 2010.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1024–0231), Office of Information and Regulatory Affairs, OMB by fax at 202/395–5806, or by electronic mail at *OIRA_DOCKET@omb.eop.gov.* Please also send a copy of your comments to Ms. Jo A. Pendry, Chief, Commercial Services Program, National Park Service, 1849 C Street, NW. (2410), Washington, DC 20240, or electronically to *jo_pendry@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, phone: 202–513–7156, fax: 202–371–2090, or at the address above. You are entitled to a copy of the entire ICR package free-of-charge.

SUPPLEMENTARY INFORMATION:

Title: Concession Contracts—36 CFR Part 51.

OMB Control Number: 1024–0231.

Expiration Date of Approval: July 31, 2010.

Type of Request: Revision of a currently approved information collection.

Description of Need: The information is being collected to meet the requirements of Sections 403(7) and (8) of the NPS Concessions Management Improvement Act of 1998 (the Act), concerning the granting of a preferential right to renew a concession contract and Section 405 of the Act regarding the construction of capital improvements by concessioners. The information will be used by the agency in considering appeals concerning preferred offeror determinations and agency review and

approval of construction projects and determinations with regard to the leasehold surrender interest value of such projects. The request to OMB is to renew approval of the collection of information in 36 CFR Part 51, Section 51.47, regarding the appeal of a preferred offeror determination, and Sections 51.54 and 51.55 regarding NPS approval of the construction of capital improvements by concessioners. NPS is requesting a 3-year term of approval for this collection activity. The following chart provides the number of respondents annually, average completion time, and total annual burden hours by section.

Section	Number of respondents per year	Average completion time (hours)	Total hours annually
36 CFR 51.47	1	1	1
36 CFR 51.54 (Large projects)	31	16	496
36 CFR 51.54 (Small projects)	89	8	712
36 CFR 51.55 (Lage projects)	31	56	1,736
36 CFR 51.55 (Small projects)	89	24	2,136

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. 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. 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 OMB control number. The OMB control number for this collection of information is 1024–0231.

Dated: June 3, 2010.

Cartina A. Miller,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2010–13906 Filed 6–9–10; 8:45 am]

BILLING CODE 4312–53–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMP02000 16100000.DN0000]

Notice of Intent To Prepare a Resource Management Plan for the Carlsbad Field Office, New Mexico and Associated Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended, (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, (FLPMA), the Bureau of Land Management (BLM) Carlsbad Field Office, Carlsbad, New Mexico, intends to prepare a Resource Management Plan (RMP) with an associated Environmental Impact Statement (EIS) for the Carlsbad Field Office and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues. The RMP will replace the existing 1988 Carlsbad RMP.

DATES: This notice initiates the public scoping process for the RMP and the associated EIS. In order to be included in the Draft EIS, comments on issues and planning criteria may be submitted in writing by any of the methods described in the **ADDRESSES** section below, until July 12, 2010 (the 30-day scoping period). Alternatively you may submit comments at any public scoping meeting or 30 days after the last public meeting, whichever is later. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers, and at the following BLM Web site: *http://www.blm.gov/nm/st/en/fo/Carlsbad_Field_Office.html.* We will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit comments on issues and planning criteria by any of the following methods:

- *Web site: http://www.blm.gov/nm/st/en/fo/Carlsbad_Field_Office.html.*
- *E-mail: nm_cfo_rmp@blm.gov.*
- *Fax:* 575–885–9264.
- *Mail:* BLM, Carlsbad Field Office, RMP Project Manager, 620 E. Greene St., Carlsbad, New Mexico 88220.

Documents pertinent to this proposal may be examined at the Carlsbad Field Office.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact James B. Smith, Planning and Environmental Coordinator, telephone 575–234–5986; address BLM, Carlsbad Field Office, Attention: James B. Smith, 620 E. Greene St., Carlsbad, New Mexico 88220; e-mail *James_B_Smith@blm.gov.*

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM Carlsbad Field Office, New Mexico, intends to prepare an RMP with an associated EIS for the Carlsbad Field Office, announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The planning area is located in Eddy, Lea, and Chaves counties, New Mexico, and encompasses approximately 2.2 million surface acres of public land and 4.1 million acres of mineral estate (1.9 million acres is split estate). The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. Preliminary issues for the planning area have been identified by BLM personnel, Federal, state, and local agencies, and other stakeholders. The issues include:

1. What management actions, best management practices (BMP), and mitigation measures are necessary to protect or enhance resources, such as: visual resources, air quality, groundwater and karst aquifers, watersheds and riparian areas, recreational areas, wilderness areas, vegetation, soils, cultural sites, cave/karst, specially designated areas, wildlife habitat, and rangeland health?

2. What areas should be identified as open, limited, or closed to travel to meet resource and recreational demands? What major roads and ways should be identified in the transportation

management plan for closure and reclamation?

3. How should the BLM facilitate energy development, both renewable and non-renewable, while allowing for multiple uses and appropriate protection of public lands and resources?

4. How should the RMP facilitate rights-of-ways within the planning area through designation of exclusion and avoidance areas, stipulations, BMPs, and mitigation measures while balancing the need to protect sensitive resources?

5. How should the RMP address new technologies such as potash solution mining?

6. What public lands should be identified for retention, withdrawal, disposal (*e.g.,* parcels, historic landfill sites) or acquisition?

7. What management actions, BMPs, and mitigation measures will be necessary to reduce impacts to reclaimed and restored lands?

Preliminary Planning Criteria Include:

1. The RMP will be in compliance with FLPMA, NEPA, and all other applicable laws and regulations;

2. Land use decisions in the RMP will apply to the surface and subsurface estate managed by the BLM;

3. The RMP process will follow BLM policies in the Land Use Planning Handbook, H–1601–1;

4. Public participation and collaboration will be an integral part of the planning process;

5. The BLM will strive to make decisions in the plan compatible with the existing plans and policies of adjacent local, state, and Federal agencies and local American Indian tribes, as long as the decisions are consistent with the purposes of the Federal laws, policies, and programs applicable to public lands;

6. The RMP will recognize valid existing rights;

7. The RMP will incorporate, where applicable, management decisions brought forward from existing planning documents;

8. The BLM will work cooperatively and collaboratively with cooperating agencies and all other interested groups, agencies, and individuals;

9. The planning process will provide for ongoing consultation with American Indian tribes and strategies for protecting recognized traditional uses;

10. Where practicable and timely for the planning effort, the best available scientific information, research, and new technologies will be used; and

11. Planning decisions must comply with all applicable regulations and must be reasonably achievable, and allow for flexibility while supporting adaptive management principles.

The Preparation Plan developed for the RMP Revision is available on the Carlsbad Field Office Web site. This document contains pertinent and descriptive information regarding planning issues, management concerns, planning criteria and scheduling. Please refer to this document for the detailed list of planning issues and criteria.

You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments by the close of the 30-day scoping period or within 30 days after the last public meeting, whichever is later. Before including your address, phone number, email 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. The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed. The BLM will evaluate identified issues to be addressed in the plan, and will place them into one of three categories:

1. Issues to be resolved in the plan;

2. Issues to be resolved through policy or administrative action; or

3. Issues beyond the scope of this plan.

The BLM will provide an explanation in the Draft RMP/EIS as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use an interdisciplinary approach to develop the plan in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Wildlife and fisheries, threatened and endangered species, vegetation and native plants, riparian and wetlands, invasive and noxious weeds, rangeland management, fire and fuels management, cultural resources and Native American concerns, paleontology, geology and fluid minerals, lands and realty, outdoor recreation, hydrology, soils, visual resource management, wilderness, wild and scenic rivers, sociology and economics, and forest management.

Authority: 40 CFR 1501.7; 43 CFR 1610.2

Linda S.C. Rundell,

State Director.

[FR Doc. 2010–13949 Filed 6–9–10; 8:45 am]

BILLING CODE 4310–OX–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMF02000 L16100000.DP0000 LXSS026G0000]

Notice of Availability of the Draft Resource Management Plan and Draft Environmental Impact Statement for the Taos Field Office, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (RMP) and Draft Environmental Impact Statement (EIS) for the Taos Field Office and by this notice is announcing the opening of the comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft RMP/EIS within 90 days following the date the Environmental Protection Agency publishes this Notice of Availability in the **Federal Register.** The BLM will announce future meetings or hearings and any other public participation activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the Taos Draft RMP/EIS by any of the following methods:

- Web site: *http://www.blm.gov/nm/st/en/fo/Taos_Field_Office/taos_rmpr.html.*
- E-mail: *NM_TAFO_Comment@blm.gov.*
- Mail: Bureau of Land Management, Attention: Brad Higdon, 226 Cruz Alta, Taos, New Mexico 87571.

Copies of the Taos Draft RMP and EIS are available at the Taos Field Office at the above address and at the New Mexico State Office at 301 Dinosaur Trail, Santa Fe, New Mexico 87508.

FOR FURTHER INFORMATION CONTACT: For further information contact Brad Higdon, Planning and Environmental Coordinator, Taos Field Office, telephone (575) 751–4725; address 226 Cruz Alta, Taos, New Mexico 87571; e-mail *NM_TAFO_Comment@blm.gov.*

SUPPLEMENTARY INFORMATION: The Taos Draft RMP/EIS analyzes the environmental consequences of four alternative land use plans under consideration by the BLM for managing approximately 595,100 acres of surface estate and 1.5 million acres of mineral estate administered by the Taos Field Office within Colfax, Harding, Los Alamos, Mora, Rio Arriba, Santa Fe, Taos, and Union counties in northern New Mexico. This land use plan would replace the current Taos RMP approved in 1988 and is needed to provide updated management decisions including, but not limited to, land tenure adjustments, land use authorizations, mineral resources, recreation, renewable energy, special designations, transportation and access, and visiual resources. Upon approval, the Taos RMP will apply only to BLM-administered public lands and Federal mineral estate.

The four alternatives analyzed in detail in the Draft RMP/EIS include the No Action Alternative, or a continuation of the existing management decisions; Alternative A, the BLM's preferred alternative, which provides for a balance of resource uses with protections; Alternative B, which emphasizes resource conservation and protection; and Alternative C, which allows for a greater opportunity for resource use and development. Among the special designations under consideration within the range of alternatives, Areas of Critical Environmental Concern (ACECs) are proposed to protect certain natural resource values. Pertinent information regarding these ACECs, including proposed designation acreages and resource use limitations per alternative, are sumarized in the table below.

PROPOSED ACEC DESIGNATION SUMMARY

ACEC & values	Summary of proposed resource use limitations	Variance by alternative
Black Mesa Cultural Vegetation	• Rights-of-way would be excluded. • Livestock grazing would be excluded from pueblo sites and areas where other conflicts with cultural resources are apparent, as well as the 325-acre Ojo Caliente Demonstration Area. • Closed to fluid mineral leasing. • Withdrawn from locatable mineral entry. • Closed to mineral material sales. • Closed to wind and solar energy. • Portions would be closed to motorized travel, while the remaining area would be limited to designated roads. • A portion would be managed to protect its wilderness characteristics.	No Action: 1,430 acres. Alternative A: ACEC rescinded; area would be incorporated into Ojo Caliente ACEC with the identified resource use limitations. Alternative B: Same as Alternative A. Alternative C: ACEC would be rescinded.
Chama Canyons Riparian Scenic Water quality Wildlife	• Rights-of-way would be excluded. • Livestock grazing would not be available along the Rio Cebolla. The availability of grazing within the wilderness study area would be subject to the Interim Management Policy for Lands Under Wilderness Review (H–8550–1). Lands within the Chama Wild and Scenic River corridor and acquired lands would not be unavailable under the no action alternative. • Closed to fluid mineral leasing. • Withdrawn from locatable mineral entry. • Closed to mineral material sales. • Closed to wind and solar energy. • Closed to motorized travel. • Visual Resource Management (VRM) Class I would apply. • A portion outside of the wilderness study area would be managed to protect its wilderness characteristics (Alternatives A and B only). • No surface disturbing activities would be permitted.	No Action: 6,140 acres would continue to be managed as a Special Management Area (SMA). Alternative A: 7,680 acres. Alternative B: Same as Alternative A. Alternative C: ACEC would not be designated and SMA would be rescinded.
La Cienega Cultural Riparian Scenic Wildlife habitat	• Livestock grazing would be excluded from pueblo ruins and other areas where substantial conflicts with cultural resources are apparent to protect these resources, as well as from Santa Fe River canyon (Alternatives A and B only) to protect riparian vegetation. • A no surface occupancy stipulation would be applied to fluid mineral leasing under the no action alternative and Alternative C. Most of the area would be subject no surface occupancy under Alternatives A and B, while control surface use would be applied within the remainder of the area. • Withdrawn from locatable mineral entry. • Closed to mineral material sales. • Closed to wind energy development (Alternatives A and B only). • VRM Class I would apply to a portion of the area (Alternatives A and B only).	No Action: 3,730 acres. Alternative A: 13,390 acres. Alternative B: Same as Alternative A. Alternative C: Same as the no action alternative.

PROPOSED ACEC DESIGNATION SUMMARY—Continued

ACEC & values	Summary of proposed resource use limitations	Variance by alternative
	• Portions would be closed to motorized travel, while the remaining area would be limited to designated roads (Alternatives A and B only). • No tree removal in a portion of the area. • Santa Fe River canyon would be closed to target shooting (Alternatives A, B, and C only). • No tree removal in T. 16 N., R. & E., Sec. 7 to protect Gray Vireo habitat.	
Copper Hill Cultural Fish habitat Riparian Scenic Watershed Wildlife habitat	• Livestock grazing would be excluded from lands within allotments 518, 519, and 520, while grazing would become excluded on allotment 521 when the permit is no longer used. • Rights-of-way would be excluded from Agua Caliente, Rio Embudo, and Lower Embudo zones. • Closed to fluid mineral leasing under Alternative B, while only certain zones would be closed and/or subject to no surface occupancy under the other alternatives. • Withdrawn from locatable mineral entry. • Closed to mineral material sales except at Piedra Lumbre and Hilltop. • Closed to wind and solar energy. • Visual Resource Management Class I would apply to a portion of the area under the no action alternative and Alternatives A and B. • Fire suppression methods causing surface disturbance would not be allowed in the Lower Embudo zone. • Soil and vegetation disturbing activities would be prohibited within 100-year floodplains. • Vehicle access to pueblo ruins in Lower Embudo zone by permit only.	All alternatives: 177,200 acres.
Galisteo Basin Cultural	• 450 acres of public lands would be managed according to the provisions of the Galisteo Basin Archaeological Sites Protection Act of 2004 under all alternatives. • Livestock grazing would be excluded from cultural sites (i.e., pueblo ruins). • Rights-of-way would be excluded. • Closed to fluid mineral leasing. • Withdrawn from locatable mineral entry. • Closed to mineral material sales. • Closed to wind and solar energy. • Closed to target shooting.	No Action: 80 acres would continue to be managed as an SMA. Alternative A: 450 acres. Alternative B: 450 acres. Alternative C: ACEC would not be designated.
Lower Gorge Cultural Riparian Special Status Species Wildlife habitat	• Withdrawn from public land laws. • Rights-of-way would be excluded except for road upgrades to improve safety or to provide access or utility service to non-federal lands where no practicable alternative exists. • Livestock grazing would be excluded from riparian and wetland areas. • Closed to fluid mineral leasing. • Withdrawn from locatable mineral entry. • Closed to mineral material sales. • Closed to wind and solar energy. • A portion of the area would be managed as VRM Class I (Alternatives A and B only). • Soil- and vegetation-disturbing activities would be prohibited within 100-year floodplains to prevent the degradation of aquatic habitat. • Southwestern willow flycatcher habitat would be protected.	No Action: 16,510 acres (includes designated Wild and Scenic River corridor). Alternative A: 21,150 acres. Alternative B: Same as Alternative A. Alternative C: 14,490 acres (does not include designated Wild and Scenic River corridor).
Ojo Caliente Cultural Ecological Processes Riparian Scenic Special Status Species Wildlife habitat	• Rights-of-way would be excluded from the Rincon del Cuervo area under Alternatives A and B, as well as the Cerro Colorado area under Alternative B. • Livestock grazing would be excluded from pueblo ruins and other areas where substantial conflicts with cultural resources are apparent, as well as from the 325-acre Ojo Caliente Demonstration Area. • Closed to fluid mineral leasing under Alternatives A and B, while nearly a third of the area would be closed under the no action alternative and Alternative C. • Withdrawn from locatable mineral entry (Alternatives A and B only).	No Action: 13,370 acres. Alternative A: 66,150 acres. Alternative B: 66,150 acres. Alternative C: 13,370 acres.

PROPOSED ACEC DESIGNATION SUMMARY—Continued

ACEC & values	Summary of proposed resource use limitations	Variance by alternative
	• Mostly closed to mineral material sales (Alternative A and B only). • Closed to wind and solar energy. • A portion would be closed to motorized travel, while the remaining area would be limited to designated roads (Alternatives A, B, and C only). • VRM Class I would apply to the Rincon del Cuervo under Alternatives A and B, as well as Cerro Colorado under Alternative B. • Rincon del Cuervo would be managed to protect its wilderness characteristics under Alternatives A and B, as well as the Cerro Colorado area under Alternative B. • Soil- and vegetation-disturbing activities would be prohibited within 100-year floodplains to prevent the degradation of aquatic habitat.	
Pueblos Cultural	• Rights-of-way would be excluded. • Livestock grazing would be excluded from pueblo ruin sites. • Closed to fluid mineral leasing. • Withdrawn from locatable mineral entry. • Mostly closed to mineral material sales. • Closed to wind and solar energy (Alternatives A and B). • Other resource uses, except for site recordation or research, would not be allowed at the pueblo ruin sites.	No Action: Six pueblos on 315 acres would continue to be managed as an SMA. Alternative A: 240 aces (two sites included in the SMA under the no action alternative are incorporated into other ACECs). Alternative B: Same as Alternative A. Alternative C: 335 acres (includes six sites included in the SMA under the no action alternative plus two additional sites).
Riparian/Aquatic Riparian Aquatic	• Rights-of-way would be excluded unless impacts can be mitigated, based on site-specific analysis. • Livestock grazing would be excluded from select riparian areas or where livestock grazing is determined to degrade the resource and cannot be mitigated otherwise. • Portions would be closed to fluid mineral leasing, while others would have no surface occupancy or controlled surface use stipulations attached to leases. • Withdrawn from locatable mineral entry. • Mostly closed to mineral material sales. • Closed to wind and solar energy under Alternative B. • Much of the area would be closed to motorized travel under the no action alternative.	No Action: 2,250 acres. Alternative A: ACEC would be rescinded. Alternative B: 1,275 acres (limited to riparian areas not within other ACECs or along designated Wild and Scenic Rivers). Alternative C: ACEC would be rescinded.
Sabinoso Riparian Scenic Wildlife habitat	• Rights-of-way would be excluded. • Livestock grazing would be excluded in riparian areas. • Closed to fluid mineral leasing (within designated wilderness only under the no action alternative). • Withdrawn from locatable mineral entry (within designated wilderness only under the no action alternative). • Closed to mineral material sales (within designated wilderness only under the no action alternative). • Closed to wind and solar energy (within designated wilderness only under the no action alternative). • The designated wilderness would be closed to motorized travel. • VRM Class I would apply. • A portion of the area adjacent to Sabinoso Wilderness would be managed to protect its wilderness characteristics (Alternatives A and B only). • Soil- and vegetation-disturbing activities would be restricted in order to reduce soil loss and degradation to water quality.	No Action: 19,570 acres would continue to be managed as an SMA. Alternative A: 19,780 acres. Alternative B: Same as Alternative A. Alternative C: ACEC would be rescinded.

PROPOSED ACEC DESIGNATION SUMMARY—Continued

ACEC & values	Summary of proposed resource use limitations	Variance by alternative
San Antonio (includes the San Antonio Gorge and Winter Range ACEC units) Ecological Processes Riparian Scenic Wildlife habitat	• Livestock grazing would be unavailable within the Rio San Antonio corridor. • The San Antonio Wilderness Study Area (WSA), Rio San Antonio corridor, and Warm Springs area would be closed to fluid mineral leasing, while the remaining area would be subject to controlled surface use, including timing limitations. • Withdraw the San Antonio Gorge and Los Cerritos de la Cruz areas from locatable mineral entry. • Close the San Antonio WSA, San Antonio Gorge, and Los Cerritos de Taos to mineral material sales. • The San Antonio WSA and Rio San Antonio corridor would be closed to motorized travel (Alternative C only). • Visual Resource Management Class I would apply to San Antonio WSA and the Rio San Antonio corridor (Alternative C only). • Soil- and vegetation-disturbing activities would be prohibited within 100-year floodplains to prevent the degradation of aquatic habitat.	No Action: 57,750 acres would continue to be managed as an SMA and include smaller ACEC units. Alternative A: ACEC rescinded, but area would be incorporate into Taos Plateau ACEC. Alternative B: ACEC rescinded, but area would be incorporate into Taos Plateau ACEC. Alternative C: The SMA and its ACEC units would be rescinded, but the whole area would be designated a single ACEC.
Santa Fe Ranch Cultural Geological Scenic Special Status Species Wildlife habitat	• Rights-of-way would be excluded with certain exceptions. • A portion would be closed to fluid mineral leasing while the majority would have controlled surface use stipulations attached to leases. • The Buckman-Diablo Canyon area would be withdrawn from locatable mineral entry. • Closed to mineral material sales. • Closed to wind energy. • A portion would be closed to motorized travel. Vehicular use of the arroyo in Diablo Canyon would be allowed by permit only. • Visual Resource Management Class I would apply to a portion on the area, but to a larger portion under Alternative B. • Ephemeral stream channels would be protected to maintain stable hydrological processes and appropriate vegetative communities as measured by diversity and cover density.	No Action: No existing ACEC. Alternative A: 21,032 acres. Alternative B: 21,032 acres. Alternative C: ACEC would not be designated.
Sombrillo Cultural Paleontological Scenic	• A 115-acre Off-Highway Vehicle staging area would be unavailable to livestock grazing (Alternative A only). • Controlled surface use stipulations would be applied to fluid mineral leases under the no action alternative and Alternative C, while no surface occupancy would be applied under Alternatives A and B. • The 60-acre traditional cultural property would be withdrawn from locatable mineral entry (Alternatives A and B only). • Closed to mineral material sales (Alternatives A and B only). • Ephemeral stream channels would be protected to maintain stable hydrological processes and appropriate vegetative communities as measured by diversity and cover density. • Soil- and vegetation-disturbing activities would be restricted in order to reduce soil loss and degradation to water quality.	No Action: 8,600 acres. Alternative A: 17,440 acres. Alternative B: 17,440 acres. Alternative C: 8,600 acres.
Taos Plateau Scenic Special Status Species Water quality and quantity Wetlands Wildlife habitat	• Rights-of-way would be excluded from the Wild Rivers, Ute Mountain, and San Antonio areas. • Livestock grazing would be limited and managed to ensure enhancement of critical elk and pronghorn winter range. No increase in grazing preference would be permitted. • The Ute Mountain, San Antonio, and Wild Rivers areas would be closed to fluid mineral leasing under Alternative A, while the entire ACEC would be closed under Alternative B. • The North Unit, Ute Mountain, and Wild Rivers areas would be withdrawn from locatable mineral entry under Alternatives A and B, while the San Antonio area would also be withdrawn under Alternative B. • Closed to mineral material sales. • Closed to wind and solar energy. • Cerro de la Olla, the San Antonio area, and Ute Mountain would be closed to motorized travel. • Visual Resource Management Class I would apply to the Ute Mountain and San Antonio areas. • Cerro de la Olla, the San Antonio area, and Ute Mountain would be managed to protect their wilderness characteristics.	No Action: No existing ACEC. Alternative A: 222,500 acres. Alternative B: 222,500 acres. Alternative C: ACEC not designated.

PROPOSED ACEC DESIGNATION SUMMARY—Continued

ACEC & values	Summary of proposed resource use limitations	Variance by alternative
	• Modification of playa surface and adjacent uplands would be prohibited. • Coordinate with U.S. Forest Service to close Forest Road 1016 on a seasonal basis.	

The land use planning process was initiated on May 26, 2006, through a Notice of Intent published in the **Federal Register** (Volume 71, Number 102, Page 30446), notifying the public of a formal scoping period and soliciting public participation in the planning process. Four scoping meetings were held in June 2006 in Taos, Las Vegas, Espanola, and Santa Fe. A scoping presentation was also made at an Eight Northern Pueblos Council meeting to engage the Governors of the eight Northern Pueblos. In addition, two Economic Profile System workshops were held in July 2006 to work with local citizens and community leaders to develop a common understanding of the local economies and the ways in which land use planning decisions might affect them. During the scoping period, which ended August 31, 2006, the public provided the Taos Field Office with input on relevant issues to consider in the planning process. Based on this public input and the BLM's goals and objectives, the Taos Field Office was able to formulate the four alternatives for consideration and analysis in the Draft RMP/EIS. Following the close of the public review and comment period, public comments will be used to revise the Draft RMP/EIS in preparation for its release to the public as the Taos Proposed Resource Management Plan and Final Environmental Impact Statement. The BLM will respond to each substantive comment by making appropriate revisions to the document or by explaining why a comment did not warrant a change. Notice of the availability of the Proposed RMP and Final EIS will be posted in the **Federal Register**.

Please note that public comments and information submitted, including names, street addresses, and email addresses of respondents, will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except holidays.

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.

Jesse Juen,

Acting State Director.

Authority: 40 CFR 1506.6; 40 CFR 1506.10; 43 CFR 1610.2.

[FR Doc. 2010–13959 Filed 6–9–10; 8:45 am]

BILLING CODE 4310–OW–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO910000, L71220000.PN0000, LVTFC002CO00]

Final Supplementary Rules for Public Land Administered by the Bureau of Land Management in Colorado Relating to Camping and Occupancy of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Final supplementary rules for public lands in Colorado.

SUMMARY: The Bureau of Land Management (BLM) is amending supplementary rules relating to camping on public lands in Colorado. These rules extend the time the public must remain absent from a site once the current 14-day camping stay limit is reached. They also require that once campers have camped for 14 days, they must move away from that particular location for 30 days, rather than seven days, before returning. These rules are needed to further protect natural resources and provide for public health and safety. These supplementary rules will be more consistent with camping and occupancy regulations on public lands in other western states.

DATES: *Effective Date:* These rules are effective July 12, 2010.

ADDRESSES: You may send inquiries by mail to the Office of Law Enforcement, BLM, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, or by e-mail to *John_Bierk@blm.gov.*

FOR FURTHER INFORMATION CONTACT: John Bierk, Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215, telephone (303) 239–3893. Persons who use a telecommunications device for the deaf (TDD) may contact this individual by calling the Federal Information Relay Service (FIRS) at (800) 877–8339, 24 hours a day, seven days a week.

SUPPLEMENTARY INFORMATION:

I. Authority: 43 U.S.C. 1740, 43 U.S.C. 315a, and 43 CFR 8365.1–6

II. Background

The BLM proposed these supplementary rules in the **Federal Register** (73 FR 6999) on Feb. 6, 2008, to update supplementary rules published in 1990 that were no longer effective in managing camping and occupancy on public land. In addition, the 1990 supplementary regulations were inconsistent with the camping and occupancy regulations on public land in other western states.

III. Discussion of Public Comments

The BLM received no comments on the proposed rules.

IV. Discussion of Final Rule

The BLM revised the final rule to clarify the description of locations to include campgrounds, clarify the 14-day stay limit, and clarify penalties under the Taylor Grazing Act of 1934. The BLM revised the final rule to change the amount of time unattended property could be left on public land from 24 hours to 48 hours. This change was made so that legitimate and authorized recreational use was not adversely affected. In the final rule, unattended property in day use areas was excluded so the final rule would remain consistent with time limits found in 43 CFR 8365.2–3(c). Prohibited acts 6, 7, and 9 in the proposed supplemental rules were removed because similar regulations already exist in Title 43 CFR. The BLM also revised the final rule to change the time when fees need to be paid upon entering a fee site from 30 minutes after occupying any camp

site to within 30 minutes of entering the fee area. Otherwise, with the exception of minor non-substantive grammatical and formatting changes, the final rules remain as proposed.

The current camping stay limit was published in the **Federal Register** (55 FR 13672) on April 11, 1990, and, while it limited occupancy of any site to 14 days, it only required departure for seven days, or removal to a new site no less than three miles away before returning to the site. As a result, certain users have taken advantage of the existing rules and established long-term residency under the pretext of camping. Residential occupancy, which frequently includes illegal campfire use, vegetation trampling, unauthorized vehicle use, and trash dumping, often interferes with legitimate recreational use of public lands, creates sanitation and other potential health concerns, causes damage to resources, and occasionally poses dangers to other visitors. These new rules differ from the notice published in 1990 by increasing the distance campers must move after reaching the 14-day limit from three miles to 30 miles, consistent with camping regulations on public lands in other western states. The 1990 notice stated that following the 14-day period, people may not relocate within that area for a minimum of seven days; these rules extend that time period to 30 days, also consistent with camping regulations on public lands in other western states. Additional provisions limit the occurrence of unattended campsites that are being established for the purpose of securing campsite locations for later use.

These supplementary rules apply to all public lands in Colorado. These rules are necessary to enhance the protection of natural resources, provide for safe public recreation and public health, reduce the potential for damage to the environment, encourage greater fee compliance, and improve the safety of public land users. Individual field offices may issue separate regulations relating to camping and occupancy that are more, but not less, restrictive. This notice does not affect more restrictive camping limits that may already be in place for certain areas.

V. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These supplementary rules would not comprise a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. The supplementary rules would not have an effect of $100 million or more on the economy. They would not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. These supplementary rules would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These supplementary rules would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients, nor do they raise novel legal or policy issues.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make these supplementary rules easier to understand, including answers to questions such as the following:

1. Are the requirements in the supplementary rules clearly stated?
2. Do the supplementary rules contain technical language or jargon that interferes with their clarity?
3. Does the format of the supplementary rules (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce clarity?
4. Is the description of the supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the supplementary rules? How could this description be more helpful in making the supplementary rules easier to understand?

Please send any comments you have on the clarity of the rule to the addresses specified in the **ADDRESSES** section.

National Environmental Policy Act

The BLM prepared an environmental assessment (EA) and found that the supplementary rules do not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The BLM placed the EA and the Finding of No Significant Impact on file in the BLM Administrative Record, and invites the public to review these documents at the address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended (5 U.S.C. 601–612) to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These supplementary rules merely establish rules of conduct for camping and occupancy on public lands. Therefore, the BLM has determined under the RFA that the supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These supplementary rules do not constitute a "major rule" as defined in 5 U.S.C. 804(2). The supplementary rules pertain only to individuals who may wish to occupy public lands for residential purposes under the pretext of camping, or maintain, construct, place, occupy or use any structure in violation of state or county health, building, sanitation or fire codes. In this respect, the regulation of such use is necessary to protect public lands, the facilities, and people, including small business concessionaires and outfitters, who use them. The supplementary rules do not affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

These supplementary rules would not impose an unfunded mandate on state, local or tribal governments or the private sector of more than $100 million per year; nor would they have a significant or unique effect on small governments. The rules would have no effect on governmental or tribal entities and would impose no requirements on any of these entities. The supplementary rules merely establish rules of conduct for the use of public lands and do not affect tribal, commercial, or business activities of any kind. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

These supplementary rules would not represent a government action capable of interfering with constitutionally protected property rights. Therefore, the Department of the Interior has determined that the supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The supplementary rules 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. Therefore, in accordance with Executive Order 13132, the BLM has determined that these supplementary rules would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that these supplementary rules would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, these supplementary rules do not include policies that have tribal implications.

Paperwork Reduction Act

The supplementary rules would not directly provide for any information collection that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Any information collection that may result from Federal criminal investigations or prosecutions conducted under these supplementary rules are exempt from the provisions of 44 U.S.C. 3518(c)(1).

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Under Executive Order 13211, the BLM has determined that the supplementary rules would not comprise a significant energy action, and that they would not have an adverse effect on energy supplies, production, or consumption.

Author

The principal author of these supplementary rules is John Bierk, State Staff Ranger, Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215.

Final Supplementary Rules for Public Land Administered by the Bureau of Land Management in Colorado Relating to Camping and Occupancy of Public Land

For the reasons stated in the preamble, and under the authorities for supplemental rules found at 43 U.S.C. 1740, 43 U.S.C. 315a, and 43 CFR 8365.1–6, the Colorado State Director, Bureau of Land Management (BLM) issues these supplementary rules for public lands managed by the BLM in Colorado, to read as follows:

Definitions

Camping means the erecting of a tent or shelter of natural or synthetic material; preparing a sleeping bag or other bedding material for use; parking of a motor vehicle, motor home or trailer; or mooring of a vessel for the apparent purpose of overnight occupancy while engaged in recreational activities such as hiking, hunting, fishing, bicycling, sightseeing, off-road vehicle activities, or other generally recognized forms of recreation.

Campground means any area specifically designated for overnight camping.

Developed Campground means any campground that has been improved specifically for camping purposes and may include designated campsites, delineated spaces, structures, or improvements typically provided for camping purposes. Structures and improvements may include, but are not limited to, picnic tables, grills or fire rings, sanitary facilities, trash receptacles, potable water, locks, and information kiosks. User fees may be charged for the use of developed campgrounds and improvements.

Day Use Area means any area open for public access only during daylight hours, typically between sunrise and sunset, or where specific hours of operation have been identified. Overnight use in these areas is specifically prohibited.

Designated Recreation Area means an area officially designated by official order or notice, or identified in planning documents in which the BLM has determined the resources require special management and control measures for resource protection.

Fee Area means any area open for public access where fees for use of the area are charged.

Occupancy means full or part-time residence on public lands for non-recreational purposes, such as temporary residence in connection with, or while seeking, employment in the vicinity, or because another permanent residence is not available. It also means activities that involve residence, such as the construction, presence, or maintenance of temporary or permanent structures that may be used for such purposes, or the use of a watchman or caretaker for the purpose of monitoring activities. Residence or structures include, but are not limited to, barriers to access, fences, tents, motor homes, trailers, cabins, houses, buildings, and storage of equipment or supplies.

Prohibited Acts

Unless otherwise authorized, the following acts are prohibited on public lands within Colorado:

1. You must not camp longer than 14 days in any 30-day period, at any one location, including any campground on public land.

2. After the 14 days have been reached, you must move at least 30 air miles away from the previously occupied location.

3. You must not leave any personal property or refuse after vacating the campsite. This includes any property left for the purposes of use by another camper or occupant.

4. You must not leave personal property unattended in a campground, designated recreation area, or on any other public lands for more than 48 hours. Vehicles left parked for the purpose of overnight camping, hiking, river rafting or other authorized recreation activities are exempt.

5. You must not establish occupancy, take possession of, or otherwise use public lands for residential purposes except as allowed under 43 CFR 3715.2, 3715.2–1, 3715.5, 3715.6, or with prior written authorization from the BLM.

6. If an area charges fees, you must register if required, and pay fees within 30 minutes of entering the fee area.

7. You must not violate any State of Colorado or county laws or regulations relating to public health, safety, sanitation, building or fire codes while camping, occupying, or using public land.

Exemptions

The following persons are exempt from these rules: Any Federal, state, or local officer or employee acting within the scope of their duties; members of any organized rescue or fire-fighting force in performance of an official duty; and any person authorized, in writing, by the BLM.

Penalties

Under the Taylor Grazing Act of 1934, 43 U.S.C. 315a, any willful violation of these supplementary rules on public

lands within a grazing district shall be punishable by a fine of not more than $500.

Under section 303(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, any person who violates any of these supplementary rules on public lands within Colorado may be tried before a United States Magistrate and fined no more than $1,000, imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Lynn E. Rust,

Acting State Director.

[FR Doc. 2010–13960 Filed 6–9–10; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–691]

In the Matter of Certain Inkjet Ink Supplies and Components Thereof; Notice of Commission Determination Not To Review an Initial Determination Granting Motion To Amend the Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No.15) granting a motion to amend the notice of investigation.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on October 29, 2009, based upon a complaint filed on behalf of Hewlett-Packard Company of Palo Alto, California ("HP") on September 23, 2009, and supplemented on October 7, 2009. 74 FR 55856 (Oct. 29, 2009). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain inkjet ink supplies and components thereof that infringe certain claims of U.S. Patent Nos. 6,959,985; 7,104,630 ("the '630 patent"); 6,089,687; and 6,264,301. The complaint named as respondents Zhuhai Gree Magneto-Electric Co. Ltd. of Guangdong, China; InkPlusToner.com of Canoga Park, California; Mipo International Ltd. of Kowloon, Hong Kong; Mextec Group, Inc. d/b/a Mipo America Ltd. of Miami, Florida; Shanghai Angel Printer Supplies Co. Ltd. of Shanghai, China; SmartOne Services LLC d/b/a InkForSale.net of Hayward, California; Shenzhen Print Media Co., Ltd. of Shenzhen, China; Comptree of City of Industry, California; Zhuhai National Resources & Jingjie Imaging Products Co., Ltd. of Guangdong, China; Tatrix International of Guangdong, China; and Ourway Image Co., of Guangdong China.

On May 12, 2010, the Commission investigative attorney filed a motion pursuant to Commission Rule 210.14(b)(1) to amend the notice of investigation because, due to an inadvertent error, the notice of investigation does not reflect that HP asserted claims 11 and 27 of the '630 patent in its complaint. All of the respondents have either been terminated from the investigation on the basis of a settlement agreement or consent order or have been found in default. On May 14, 2010, the ALJ issued Order No. 15 granting the motion, finding good cause to amend the notice of investigation. No petitions for review were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: June 7, 2010.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2010–13939 Filed 6–9–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Comment Request for Agency Information Collection Activities: Extension of a Currently Approved Information Collection Without Revisions

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: 60-day notice of information collection under review: Form ETA–9033, Attestation by Employers using Alien Crewmembers for Longshore Activities at U.S. Ports; OMB Control No. 1205–0309.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning Form ETA 9033 *Attestation by Employers Using Alien Crewmembers for Longshore Activities.* A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 9, 2010.

ADDRESSES: William L. Carlson, Administrator, Office of Foreign Labor Certification, U.S. Department of Labor, Room C4312, 200 Constitution Ave., NW., Washington, DC 20210; telephone: (202) 693–3010 (this is not a toll-free number); fax: (202) 693–2768; or e-mail: *ETA.OFLC.Forms@dol.gov* subject line: Form 9033.

SUPPLEMENTARY INFORMATION:

I. Background

The information collection is required by section 258 of the Immigration and Nationality Act (INA) (8 U.S.C. 1288). The INA has a prevailing practice exception to the general prohibition on the performance of longshore work by alien crewmembers in U.S. ports. Under the prevailing practice exception, before

any employer may use alien crewmembers to perform longshore activities in U.S. ports, it must submit an attestation to the Secretary of Labor containing the elements prescribed by the INA. The INA further requires that the Secretary of Labor make available for public examination in Washington, DC a list of employers that have filed attestations and, for each of these employers, a copy of the employer's attestation and accompanying documentation received by the Secretary.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- 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;
- Evaluate 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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 submissions of responses.

III. Current Actions

In order to meet its statutory responsibilities under the INA, the Department needs to extend an existing collection of information pertaining to employers seeking to use alien crewmembers to perform longshore activities in U.S. ports. ETA has not received any attestations under the prevailing practice exception within the last three years. An information collection request will be submitted to increase the burden should activities recommence.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports.

OMB Number: 1205–0309.

Agency Number(s): Form ETA 9033.

Recordkeeping: On occasion.

Affected Public: Businesses or other for-profits.

Total Respondents: 0.

Estimated Total Burden Hours: 4.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 4, 2010.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2010–13942 Filed 6–9–10; 8:45 am]

BILLING CODE 4510–FP–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0044]

Office of New Reactors: Notice of Availability of the Final Staff Guidance; Section 14.3.12 on Physical Security Hardware Inspections, Tests, Analyses, and Acceptance Criteria

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The NRC is issuing its Final Revision 1 to NUREG–0800, "Standard Review Plan (SRP) for the Review of Safety Analysis Reports for Nuclear Power Plants," Section 14.3.12 on "Physical Security Hardware—Inspections, Tests, Analyses, and Acceptance Criteria," (Agencywide Documents Access and Management System (ADAMS) Accession No. ML100970568).

The NRC staff issues revisions to SRP sections to facilitate timely implementation of the current staff guidance and to facilitate reviews to amendments to licenses for operating reactors or for activities associated with review of applications for early site permits and combined licenses for the Office of New Reactors. The NRC staff will also incorporate Revision 1 of SRP Section 14.3.12 into the next revisions of the Regulatory Guide 1.206, "Combined License Applications for Nuclear Power Plants," and related guidance documents.

Disposition: On January 28, 2010, the NRC staff issued the proposed Revision 1 on Section 14.3.12 on "Physical Security Hardware—Inspections, Tests, Analyses, and Acceptance Criteria," ADAMS Accession No. ML100040148. There were no comments received on the proposed revision. Therefore, the guidance is issued as final without changes to the proposed notification as above.

ADDRESSES: The NRC maintains an ADAMS system, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. William F. Burton, Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone at 301–415–6332 or e-mail at *william.burton@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC posts its issued staff guidance on the NRC external Web page (*http://www.nrc.gov/reading-rm/doc-collections/isg/*).

Dated at Rockville, Maryland, this 19th day of May 2010.

For the Nuclear Regulatory Commission.

William F. Burton,

Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2010–13937 Filed 6–9–10; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Health Benefits Program; Medically Underserved Areas for 2011

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The U.S. Office of Personnel Management (OPM) has completed its annual determination of the States that qualify as Medically Underserved Areas under the Federal Employees Health Benefits (FEHB) Program for calendar year 2011. This is necessary to comply with a provision of the FEHB law that mandates special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. Accordingly, for calendar year 2011, the following states are Medically Underserved Areas under the FEHB Program: Alabama, Arizona,

Idaho, Illinois, Kentucky, Louisiana, Mississippi, Missouri, Montana, New Mexico, North Dakota, Oklahoma, South Carolina, South Dakota, and Wyoming. Oklahoma has been added for the 2011 calendar year.

DATES: *Effective Date:* January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Lynelle T. Frye, 202–606–0004.

SUPPLEMENTARY INFORMATION: FEHB law (5 U.S.C. 8902(m)(2)) requires special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. This section of the law requires that a State be designated as a Medically Underserved Area if 25 percent or more of the population lives in an area designated by the Department of Health and Human Services (HHS) as a primary medical care manpower shortage area. Such States are designated as Medically Underserved Areas for purposes of the FEHB Program, and the law requires non-HMO FEHB plans to reimburse beneficiaries, subject to their contract terms, for covered services obtained from any licensed provider in these States.

FEHB regulations (5 CFR 890.701) require OPM to make an annual determination of the States that qualify as Medically Underserved Areas for the next calendar year by comparing the latest HHS State-by-State population counts on primary medical care manpower shortage areas with U.S. Census figures on State resident populations.

Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–13995 Filed 6–9–10; 8:45 am]

BILLING CODE 6325–39–P

SMALL BUSINESS ADMINISTRATION

Entrepreneurial Mentoring and Education

AGENCY: Small Business Administration.

ACTION: Request for information.

SUMMARY: President Obama presented a national innovation strategy in September 2009 with a call to action to increase innovation in order to propel sustainable economic growth and create high quality jobs. Of particular importance to this strategy is the focus on the role of high-growth small businesses. At the May 2010 Presidential Summit on Entrepreneurship, President Obama called entrepreneurship "the most powerful force the world has ever known for creating opportunity."

High-growth companies for the purpose of this request for information—those that have experienced high-growth already and those that have high-growth potential—do not have a precise definition. Some academic literature has focused on companies that double in revenue or employment over a four-year period. Others focus on companies that reach a customer base beyond the confines of geographic proximity (*e.g.,* local businesses like restaurants or dry cleaners) to a "traded" sector (*e.g.,* manufacturing, business services) because that market has more growth potential. Perhaps the simplest definition is businesses that have the potential to grow beyond a certain size—beyond 500 employees or beyond $50 million in revenue or enterprise value.

High-growth, early stage entrepreneurs face long odds; however, certain programmatic initiatives could significantly increase their chances to succeed. Mentoring relationships provide many benefits to a new entrepreneur and, ultimately, to their communities if those new companies have a greater probability of thriving and hiring employees. Similarly, entrepreneurial education geared towards the high-growth community is imperative in reaching a wider audience of potential entrepreneurs and encouraging a sustainable, innovation-based ecosystem.

This RFI is designed to collect input from the public on ideas for creating and leveraging existing entrepreneurial mentoring and education programs for early stage, high-growth companies. One objective of the RFI is to understand how the needs of high-growth companies and entrepreneurs may differ from other businesses. In order to delve into these differences, the first section of the RFI seeks public comments on the best structure for public-private partnerships that can build mentoring networks between new and seasoned entrepreneurs. The second section of the RFI seeks public comments on best practices and program development for building entrepreneurial education programs targeted at preparing new and serial entrepreneurs to lead high-growth companies.

DATES: Comments must be received on or before July 12, 2010.

ADDRESSES: You may submit written comments, identified by SBA docket number SBA–2010–0009, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Ellen E. Kim, Senior Advisor, Investment Division, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.
- *Hand Delivery/Courier:* Ellen E. Kim, Senior Advisor, Investment Division, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

SBA will post all comments on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov,* please submit the information to Ellen Kim, Senior Advisor, Investment Division, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, or send an e-mail to *RFI_Entrepreneurship@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Ellen Kim, 202–604–3394.

SUPPLEMENTARY INFORMATION:

A. Background

Small businesses are essential to our nation's economy and its recovery from the recession. Small businesses create two out of every three new jobs in this country; most of those net new jobs come from a smaller sub-segment of companies with very high growth rates. Data shows that these high-growth companies are spread all over the country and across all industries. Nevertheless, first-time and even serial entrepreneurs face many challenges to creating sustainable and high-growth companies. Seven out of ten new employer firms last at least two years, yet only half survive five years. Mentorship and educational/training programs are proven methodologies that increase the likelihood that a first-time entrepreneur will succeed.

The Obama Innovation Strategy lays out several initiatives that indicate a renewed focus on education and training for entrepreneurs. One such initiative is the active role the Federal government has taken in promoting student achievement and careers in STEM (Science, Technology, Engineering, and Math). These subject areas are critical to laying the foundation for the next generation of innovators. Training programs are also aligned with the Innovation Strategy as

highlighted by successful support of past Defense Advanced Research Projects Agency (DARPA) initiatives. The U.S. Small Business Administration (SBA) is committed to gathering information from the most knowledgeable sources in industry, academia, foundations, and non-profits in order to focus our efforts on how the government can best foster high-growth companies.

The SBA supports a wide array of entrepreneurial activity through our District Offices, resource partners such as SCORE, Small Business Development Centers, Women's Business Centers, Veteran's Business Outreach Centers, and special initiatives offered in partnership with multiple organizations. These publicly-supported services provide valuable benefits to a full spectrum of communities and industries across the United States. In many instances, SBA also works via informal relationships through speaker engagements, conferences, online resources, print material and other resources to support entrepreneurial education.

B. Request for Information

Responses to this notice are not offers and cannot be accepted by the Government to form a binding contract or issue a grant. Information obtained as a result of this RFI may be used by the government for program planning on a non-attribution basis. Do not include any information that might be considered proprietary or confidential. The SBA is interested in responses that address one or more of the following topics:

Part I: With Respect to Entrepreneurial Mentorship

Successful Mentoring Models

1. What are successful mentoring models that exist today to serve early stage, high-growth companies? (Responses may, but are not required to, touch upon any of the following points.)

(a) How is mentoring targeted to high-growth companies different from mentoring targeted to "main-street" companies?

(b) What are key factors for success?

(c) What is the current scope of mentoring services offered?

(d) Do the mentoring models vary by industry and/or by region?

(e) What is the duration of the mentoring relationship? Frequency of meetings? Long-term support structure?

(f) How are seasoned entrepreneurs recruited to be mentors and what incentives do they need (if any) to stay in a mentoring relationship?

(g) How are early-stage entrepreneurs recruited, and what factors keep them engaged in the mentoring relationship? Do entrepreneurs tend to enlist mentoring services on their own or through other channels (*e.g.,* referrals from investors, associations, *etc.*)? Are there any criteria for these companies/entrepreneurs to participate in the mentoring program?

(h) What are the characteristics of the mentors and new entrepreneurs that gain the most from participating in a mentoring relationship?

(i) What, if any, guidelines and regulations help ensure effective mentoring relationships?

(2) Describe how mentoring services can complement any comprehensive entrepreneur service strategy.

(3) What is the level of awareness surrounding successful mentoring programs?

(a) What methods of outreach do these programs use?

(4) Please describe what types of mentoring programs have been less than successful.

(a) To the best of your ability, please describe what were the possible reasons or challenges that resulted in less than successful results.

Success Metrics

(5) How do you measure success in an entrepreneurial mentoring relationship?

(a) What are the relevant inputs, outputs, and outcomes for success metrics?

(b) What is the time period needed to measure success?

(6) What is the track record of successful mentoring models that you are aware of?

Program Expansion

(7) What are the constraints to scaling an entrepreneurial mentoring program?

(8) What changes in public policy and research should the Administration consider that would promote increased mentoring of high-growth companies?

(9) Is there any other information regarding entrepreneurial mentoring that would be helpful to the SBA?

Part II: With Respect to Entrepreneurial Education

Successful Educational Models

(10) What are the successful models for teaching entrepreneurship to entrepreneurs preparing to launch high-growth companies? (Responses may, but are not required to, touch upon any of the following points.)

(a) Are existing programs targeted for high school, college, graduate, or mid-career professionals?

(b) At what stage in a company's lifecycle are educational programs most effective and/or most utilized? (*e.g.,* pre-launch, post-launch, after reaching certain revenue targets, *etc.*)

(c) What is the primary vehicle to teach entrepreneurship? (*e.g.,* one-on-one, group, online, bricks-and-mortar schools, self-paced, *etc.*)

(d) Which models have been adopted most widely?

(e) What is the track record of successful educational models that you are aware of?

(11) What kinds of entrepreneurial education programs work best at imparting entrepreneurial skills and knowledge?

(12) What is the level of awareness surrounding successful educational programs?

(a) What methods of outreach do these educational programs use?

(13) How can existing educational programs be modified or augmented to encourage increased adoption of entrepreneurial-focused curricula, training, or experiential learning programs?

(14) Please describe what types of entrepreneurial education programs have been less than successful.

(a) To the best of your ability, please describe what were the possible reasons or challenges that resulted in less than successful results.

Success Metrics

(15) What are appropriate metrics for evaluating the success or failure of initiatives to promote entrepreneurship through educational programs?

(16) What is the evidence that specific educational approaches and/or curricula are successful?

(17) What metrics of success are used by the most successful entrepreneurial education programs?

Program Expansion

(18) What are the constraints to scaling an entrepreneurial education program to high-growth entrepreneurs?

(19) How can promising entrepreneurial education programs be adopted more widely?

(20) What changes in public policy and funding should the SBA consider that would promote increased entrepreneurial education?

(21) Beyond entrepreneurial education programs, what else can be done to promote entrepreneurship?

(22) Is there any other information regarding entrepreneurial education that would be helpful to the SBA?

Harry E. Haskins,

Deputy Associate Administrator for Investment.

[FR Doc. 2010–13978 Filed 6–9–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62224; File No. SR–NYSEAmex–2010–47]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes Deleting Rules 352(e)–(g)—NYSE Amex Equities and Adopting New Rule 3240—NYSE Amex Equities To Correspond With Rule Changes Filed by the Financial Industry Regulatory Authority, Inc.

June 4, 2010.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on May 17, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule changes as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The Exchange proposes to delete Rules 352(e)–(g)—NYSE Amex Equities and adopt new Rule 3240—NYSE Amex Equities to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") and approved by the Commission.[4] The text of the proposed rule changes is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 61537 (February 18, 2010), 75 FR 8772 (February 25, 2010) (order approving SR–FINRA–2009–095).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Changes

1. Purpose

The purpose of the proposed rule changes is to delete Rules 352(e)–(g)—NYSE Amex Equities (Guarantees, Sharing in Accounts, and Loan Arrangements) and adopt new Rule 3240—NYSE Amex Equities (Borrowing From or Lending to Customers) to correspond with rule changes filed by FINRA and approved by the Commission.

Background

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. ("NASD"), and NYSE Regulation, Inc. ("NYSER") consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d–2 under the Act, the New York Stock Exchange LLC ("NYSE"), NYSER and FINRA entered into an agreement (the "Agreement") to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations ("FINRA Incorporated NYSE Rules"). The Exchange became a party to the Agreement effective December 15, 2008.[5]

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, NYSE and NYSE Amex of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.[6]

Proposed Conforming Amendments to NYSE Amex Equities Rules

FINRA adopted NASD Rule 2370 (Borrowing From or Lending to Customers), which governs lending arrangements between registered persons and their customers, as consolidated FINRA Rule 3240, subject to certain modifications.[7] Because they are substantially similar to consolidated FINRA Rule 3240, FINRA also deleted FINRA Incorporated NYSE Rules 352(e)–(g).[8]

To harmonize the NYSE Amex Equities Rules with the approved consolidated FINRA Rules, the Exchange correspondingly proposes to delete Rules 352(e)–(g)—NYSE Amex Equities and replace them with proposed Rule 3240—NYSE Amex Equities, which is substantially similar to the new FINRA Rule.[9] As proposed, Rule 3240—NYSE Amex Equities adopts the same language as FINRA Rule 3240, except for substituting for or adding to, as needed, the term "member organization" for the term "member," and making corresponding technical changes. In addition, in order to ensure that both proposed Rule 3240—NYSE Amex Equities and FINRA Rule 3240 are fully harmonized, the Exchange also proposes to add Supplementary Material .02 to Rule 3240—NYSE Amex Equities to provide that, for the purposes of the rule, the term "person associated with a member organization" shall have the same meaning as the terms "person associated with a member" or "associated person of a member" as defined in Article I (rr) of the FINRA By-Laws.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent

[5] *See* Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as "Common Rules"); *and* 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated Agreement, adding NYSE Amex LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE Amex to the substance of any of the Common Rules.

[6] FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE, while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008.

[7] *See* Securities Exchange Act Release No. 61537 (February 18, 2010), 75 FR 8772 (February 25, 2010).

[8] *Id.*

[9] The NYSE has submitted a companion rule filing amending its rules in accordance with FINRA's rule changes. *See* SR–NYSE–2010–40.

with Section 6(b) of the Act,[10] in general, and further the objectives of Section 6(b)(5) of the Act,[11] in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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.

The Exchange believes that the proposed rule changes support the objectives of the Act by providing greater harmonization between NYSE Amex Equities Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for joint members. To the extent the Exchange has proposed changes that differ from the FINRA version of the Rules, such changes are technical in nature and do not change the substance of the proposed NYSE Amex Equities Rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose 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 Changes Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The Exchange has filed the proposed rule changes pursuant to Section 19(b)(3)(A)(iii) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13] Because the proposed rule changes do not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule changes have become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that the proposed rule changes are substantially identical to rule changes proposed by FINRA and approved by the Commission after an opportunity for public comment, and do not raise any new substantive issues.[16] For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it will promote greater harmonization between NYSE Amex Equities Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for joint members and greater harmonization between NYSE Amex Equities Rules and FINRA Rules. Therefore, the Commission designates the proposed rule change effective and operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule changes, the Commission may summarily abrogate such rule changes 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 changes are 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–NYSEAmex-2010–47 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–NYSEAmex–2010–47. 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. 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–NYSEAmex–2010–47 and should be submitted on or before July 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–13930 Filed 6–9–10; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] *See supra* note 7.

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62216; File No. SR–ISE–2010–51]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit Listing Options Series That Are Restricted to Closing Transactions if Such Series Are Listed and Restricted to Closing Transactions on Another National Securities Exchange and to Permit Opening Transactions by Market Makers To Accommodate Closing Transactions of Other Market Participants in Option Series Where the Underlying Security Does Not Meet the Then Current Requirements for Continuance of Such Approval

June 3, 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 May 21, 2010, the International Securities Exchange, LLC ("Exchange" or "ISE") 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 the self-regulatory organization. The Exchange has filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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

The ISE proposes to amend Rule 503 to permit the Exchange to list series that are restricted to closing transactions if such series are listed and restricted to closing transactions on another exchange. The text of the proposed rule change is available on the Exchange's Web site *http://www.ise.com,* at the principal office of the Exchange, 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, the self-regulatory organization 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. The self-regulatory organization 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

(a) *Purpose*—The purpose of the proposed rule change is to amend ISE Rule 503 to permit the Exchange to list option series that are restricted to closing transactions if such series are listed and restricted to closing transactions on another exchange.

This filing is based on filings previously submitted by the Chicago Board Options Exchange ("CBOE"),[5] NASDAQ OMX PHLX ("PHLX")[6] and NASDAQ Options Market ("NOM").[7] The impetus for the CBOE filing, as CBOE noted, was a customer request for it to list a series of options that was previously delisted by the filing exchange but was listed on another exchange and restricted to closing transactions, a situation that may equally occur on ISE as well as other options exchanges.

Rule 502 (Criteria for Underlying Securities) sets forth the requirements or criteria that underlying securities must meet before the Exchange may initially list options on such securities. Rule 503 sets forth listing maintenance and delisting criteria in respect of securities underlying options listed on the Exchange that are used by the Exchange to determine whether such listing status should be continued. These rules do not have provisions for listing option series that are restricted to closing transactions where such series are listed on another exchange.

ISE proposes to add new Supplementary Material .01 Rule 503 to provide that if an option series is listed but restricted to closing transactions on another national securities exchange, the Exchange may list such series (even if such series would not otherwise be eligible for listing under the Exchange's rules), which shall also be restricted to closing transactions on the Exchange.[8]

Similar to series that no longer meet the Exchange's criteria for continued listing, opening transactions by market makers executed to accommodate closing transactions of other market participants will be permitted in any restricted series listed pursuant to proposed Supplementary Material .01 Rule 503. No restrictions will be in place with respect to the exercise of any restricted series. Additionally, the Exchange is making changes in Rule 503 to propose an exception for these opening transactions by market makers to accommodate closing transactions of other market participants. This proposed change is to conform Rule 503 to similar provisions in listing rules of other options exchanges.[9]

The Exchange believes that the proposed rule change should encourage competition and be beneficial to traders and market participants by providing them with a means to trade on the Exchange securities that are listed and traded on other exchanges.

(b) *Basis*—The basis under the Securities Exchange Act of 1934 ("Exchange Act") for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and in general, to protect investors and the public interest. In particular, the proposed rule change will permit the Exchange to accommodate possible customer requests and allow execution of trades on the Exchange and will encourage competition and not harm investors or the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[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)(6).

[5] *See* Securities Exchange Act Release No. 60625 (September 4, 2009), 74 FR 46825 (September 11, 2009) (SR–CBOE–2009–066).

[6] *See* Securities Exchange Act Release No. 60879 (October 26, 2009), 74 FR 56252 (October 30, 2009) (SR–PHLX–2009–90).

[7] *See* Securities Exchange Act Release No. 60880 (October 26, 2009), 74 FR 56677 (November 2, 2009) (SR–NASDAQ–2009–090).

[8] The parenthetical text in proposed Rule 503 Supplementary .01 is being proposed to eliminate ambiguity about the Exchange's ability to list a restricted series in the event other Exchange Rules would otherwise prohibit the listing of that series.

[9] *See* Securities Exchange Act Release Nos. 48142 (July 9, 2003), 68 FR 42150 (July 16, 2003) (SR–CBOE–2002–36); and 60879 (October 26, 2009), 74 FR 56252 (October 30, 2009) (SR–PHLX–2009–90).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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 [10] and Rule 19b–4(f)(6) [11] thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period.

The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest. In particular, the Exchange would be permitted to list the restricted series solely for the purpose of closing transactions as long as the restricted series is listed and restricted to closing transactions on another national securities exchange. Further, the proposal would allow an exception for opening transactions by market makers to accommodate closing transactions of other market participants. The Commission notes that the proposed rule change is substantially similar to the rules of other options exchanges.[14] The Commission therefore designates the proposal operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed 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.[16]

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:

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–ISE–2010–51 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–ISE–2010–51. 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 the Exchange. 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–ISE–2010–51 and should be submitted on or before July 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–13932 Filed 6–9–10; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] The Exchange has satisfied the five-day pre-filing notice requirement.

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *See* CBOE Rule 5.4.12; NOM Chapter IV, Section 4; and Phlx Rule 1010.

[15] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78s(b)(3)(C).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62223; File No. SR–NYSE–2010–40]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes Deleting NYSE Rules 352(e)–(g) and Adopting New Rule 3240 To Correspond With Rule Changes Filed by the Financial Industry Regulatory Authority, Inc.

June 4, 2010.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on May 17, 2010, New York Stock Exchange LLC (the "Exchange" or "NYSE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule changes as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The Exchange proposes to delete NYSE Rules 352(e)–(g) and adopt new Rule 3240 to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. ("FINRA")

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

and approved by the Commission.[4] The text of the proposed rule changes is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Changes

1. Purpose

The purpose of the proposed rule changes is to delete NYSE Rules 352(e)–(g) (Guarantees, Sharing in Accounts, and Loan Arrangements) and adopt new Rule 3240 (Borrowing From or Lending to Customers) to correspond with rule changes filed by FINRA and approved by the Commission.

Background

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. ("NASD"), and NYSE Regulation, Inc. ("NYSER") consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d–2 under the Act, NYSE, NYSER and FINRA entered into an agreement (the "Agreement") to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations ("FINRA Incorporated NYSE Rules"). NYSE Amex LLC ("NYSE Amex") became a party to the Agreement effective December 15, 2008.[5]

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, NYSE and NYSE Amex of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.[6]

Proposed Conforming Amendments to NYSE Rules

FINRA adopted NASD Rule 2370 (Borrowing From or Lending to Customers), which governs lending arrangements between registered persons and their customers, as consolidated FINRA Rule 3240, subject to certain modifications.[7] Because they are substantially similar to consolidated FINRA Rule 3240, FINRA also deleted FINRA Incorporated NYSE Rules 352(e)–(g).[8]

To harmonize the NYSE Rules with the approved consolidated FINRA Rules, the Exchange correspondingly proposes to delete NYSE Rules 352(e)–(g) and replace them with proposed NYSE Rule 3240, which is substantially similar to the new FINRA Rule.[9] As proposed, NYSE Rule 3240 adopts the same language as FINRA Rule 3240, except for substituting for or adding to, as needed, the term "member organization" for the term "member," and making corresponding technical changes. In addition, in order to ensure that both proposed NYSE Rule 3240 and FINRA Rule 3240 are fully harmonized, the Exchange also proposes to add Supplementary Material .02 to NYSE Rule 3240 to provide that, for the purposes of the rule, the term "person associated with a member organization" shall have the same meaning as the terms "person associated with a member" or "associated person of a member" as defined in Article I (rr) of the FINRA By-Laws.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,[10] in general, and further the objectives of Section 6(b)(5) of the Act,[11] in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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.

The Exchange believes that the proposed rule changes support the objectives of the Act by providing greater harmonization between NYSE Rules and FINRA Rules (including Common Rules) of similar purpose, resulting in less burdensome and more efficient regulatory compliance for Dual Members. To the extent the Exchange has proposed changes that differ from the FINRA version of the Rules, such changes are technical in nature and do not change the substance of the proposed NYSE Rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose 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 Changes Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The Exchange has filed the proposed rule changes pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] Because the proposed rule changes do not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule changes have become

[4] *See* Securities Exchange Act Release No. 61537 (February 18, 2010), 75 FR 8772. (February 25, 2010) (order approving SR–FINRA–2009–095).

[5] *See* Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as "Common Rules"); *and* 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated Agreement, adding NYSE Amex LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE Amex to the substance of any of the Common Rules.

[6] FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008.

[7] *See* Securities Exchange Act Release No. 61537 (February 18, 2010), 75 FR 8772 (February 25, 2010).

[8] *Id.*

[9] NYSE Amex has submitted a companion rule filing amending its rules in accordance with FINRA's rule changes. *See* SR–NYSEAmex–2010–47.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that the proposed rule changes are substantially identical to rule changes proposed by FINRA and approved by the Commission after an opportunity for public comment, and do not raise any new substantive issues.[16] For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it will promote greater harmonization between NYSE Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for joint members and greater harmonization between NYSE Rules and FINRA Rules. Therefore, the Commission designates the proposed rule change effective and operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule changes, the Commission may summarily abrogate such rule changes 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 changes are 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–NYSE–2010–40 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–NYSE–2010–40. 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *http://www.nyse.com.* 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–NYSE–2010–40 and should be submitted on or before July 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–13931 Filed 6–9–10; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] *See supra* note 7.

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 7043]

Culturally Significant Objects Imported for Exhibition Determinations: "Ringo Starr's Snare Drum"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibit "Ringo Starr's Snare Drum," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Metropolitan Museum of Art, New York, NY, from on or about July 1, 2010, until on or about December 31, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a description of the exhibit object, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/632–6473). The address is U.S. Department of State, SA–5, L/PD, Fifth Floor, Washington, DC 20522–0505.

Dated: June 2, 2010.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–13965 Filed 6–9–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7042]

Culturally Significant Objects Imported for Exhibition Determinations: "Olmec: Masterworks of Ancient Mexico"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C.

2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Olmec: Masterworks of Ancient Mexico," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Los Angeles County Museum of Art, Los Angeles, CA, from on or about September 26, 2010, until on or about January 1, 2011; the Fine Arts Museums of San Francisco, San Francisco, CA, from on or about February 19, 2011, until on or about May 30, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: June 2, 2010.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–13968 Filed 6–9–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7040]

Determination Under the Foreign Assistance Act and the Department of State, Foreign Operations, and Related Programs Appropriations Acts

Pursuant to Section 654(c) of the Foreign Assistance Act of 1961, as amended, notice is hereby given that the Deputy Secretary of State has made a determination pursuant to section 620H of the Foreign Assistance Act, and section 7021 of the Department of State, Foreign Operations, and Related Programs Appropriations, 2010 (Div. F, Pub. L. 111–117), and similar provisions in prior-year appropriation acts, and has concluded that publication of the determination would be harmful to the national security of the United States.

Dated: June 3, 2010.

Vann H. Van Diepen,

Acting Assistant Secretary of State for International Security and Nonproliferation, Department of State.

[FR Doc. 2010–13969 Filed 6–9–10; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0005–N–13]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than August 9, 2010.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590, or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number 2130–0526." Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via e-mail to Mr. Brogan at *robert.brogan@dot.gov,* or to Ms. Toone at *kimberly.toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-day notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce

information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Control of Alcohol and Drug Use in Railroad Operations.

OMB Control Number: 2130–0526.

Abstract: The information collection requirements contained in pre-employment and "for cause" testing regulations are intended to ensure a sense of fairness and accuracy for railroads and their employees. The principal information—evidence of unauthorized alcohol or drug use—is used to prevent accidents by screening personnel who perform safety-sensitive service. FRA uses the information to measure the level of compliance with regulations governing the use of alcohol or controlled substances. Elimination of this problem is necessary to prevent accidents, injuries, and fatalities of the nature already experienced and further reduce the risk of a truly catastrophic accident.

Form Number(s): FRA F 6180.73, 6180.74, 6180.94A, 61880.94B.

Affected Public: Businesses.

REPORTING BURDEN

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours (hours)
219.7—Waivers	100,000 employees	2 letters	2 hours	4
219.9(b)(2)—Responsibility for compliance	450 railroads	2 requests	1 hour	2
219.9(c)—Responsibility for compliance	450 railroads	10 contracts/docs.	2 hours	20
219.11(d)—Gen'l conditions for chemical tests	450 railroads	30 forms	2 minutes	1
219.11(g) Training—Alcohol and Drug—Programs: New Railroads.	5 railroads	5 programs	3 hours	15
—Training	50 railroads	50 training class	3 hours	150
219.23(d)—Notice to Employee Organizations	5 railroads	5 notices	1 hour	5
219.104/219.107—Removal from Covered Svc.	450 railroads	500 form letters	2 minutes	17
—Hearing Procedures	450 railroads	50 requests	2 minutes	2
219.201(c) Good Faith Determination	450 railroads	2 reports	30 minutes	1
219..203/207/209—Notifications by Phone to FRA	450 railroads	104 phone calls	10 minutes	17
219.205—Sample Collection and Handling	450 railroads	400 forms	15 minutes	100
—Form covering accidents/incidents	450 railroads	100 forms	10 minutes	17
219.209(a)—Reports of Tests and Refusals	450 railroads	80 phone rpts.	2 minutes	3
219.209(c)—Records—Tests Not Promptly Conducted	450 railroads	40 records	30 minutes	20
219.211(b) & (c)—Analysis and follow-up—MRO	450 railroads	8 reports	15 minutes	2
219.401/403/405—Voluntary referral and Co-worker report policies.	5 railroads	5 report policies	20 hours	100
219.405(c)(1)—Report by Co-worker	450 railroads	450 reports	5 minutes	38
219.403/405—SAP Counselor Evaluation	450 railroads	700 reports	30 minutes	350
219.601(a)—RR Random Drug Testing Programs	5 railroads	5 programs	1 hour	5
—Amendments	450 railroads	20 amendments	1 hour	20
219.601(b)(1)—Random Selection Proc.—Drug	450 railroads	5,400 documents	4 hours	21,600
219.601(b)(4); 219.601(d)—Notices to Employees	5 railroads	100 notices	30 seconds	1
New Railroads	5 railroads	5 notices	10 hours	50
Employee Notices—Tests	450 railroads	25,000 notices	1 minute	417
219.603(a)—Specimen Security—Notice By Employee Asking to be Excused from Urine Testing.	20,000 employees	20 doc. excuses	15 minutes	5
219.607(a)—RR Random Alcohol Testing Programs	5 new railroads	5 programs	8 hours	40
—Amendments to Approved Program	450 railroads	20 amendments	1 hour	20
219.901/903—Retention of Breath Alcohol Testing Records; Retention of Urine Drug Testing.	450 railroads	100,500 records	5 minutes	8,375
—Summary Report of Breath Alcohol/Drug Test	450 railroads	200 reports	2 hours	400

Respondent Universe: 450 railroads.

Frequency of Submission: On occasion.

Total Responses: 133,818.

Estimated Total Annual Burden: 31,797 hours.

Status: Extension without Change of a Currently Approved Collection.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on June 4, 2010.

Kimberly Coronel,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. 2010–13936 Filed 6–9–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Extension From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Certification of Airmen for the Operation of Light-Sport Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request

the Office of Management and Budget (OMB) to approve a current information collection. This rule generates a need for new designated pilot examiners and designated airworthiness representatives to support the certification of these new aircraft, pilots, flight instructors, and ground instructors.

DATES: Please submit comments by August 9, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 267–9895, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Certification of Airmen for the Operation of Light-Sport Aircraft.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0690.

Forms(s): FAA forms 337, 8610–2, 8110–14, 8110–28, 8710–11.

Affected Public: A total of 57,214 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 1.27 hours per response.

Estimated Annual Burden Hours: An estimated 72,582 hours annually.

Abstract: This rule generates a need for new designated pilot examiners and designated airworthiness representatives to support the certification of these new aircraft, pilots, flight instructors, and ground instructors.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Scott, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates 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.

Issued in Washington, DC, on June 3, 2010.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2010–13993 Filed 6–9–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–28480]

Commercial Driver's License (CDL) Standards: Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final dispositions.

SUMMARY: FMCSA has denied National Agricultural Aviation Association's (NAAA) application for exemption, and, in a separate action, has denied U.S. Custom Harvesters, Inc.'s (USCHI) suggestion for a pilot program. Each request asked FMCSA to permit the transportation of hazardous materials (HM) by drivers who have not obtained an HM endorsement for their commercial driver's license (CDL) as required by current regulations. FMCSA reviewed NAAA's application for exemption and the public comments received on it, and also reviewed USCHI's suggestion for a pilot program, and rendered each decision upon its merits.

DATES: The NAAA application was denied on August 7, 2009, and the USCHI suggestion for a pilot program was denied on August 11, 2009.

Dockets: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* at any time, or to Room W12–140, DOT Building, 1200 New Jersey Ave., SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations; Telephone 202–366–4325, E-mail: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from certain of its regulations 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." On July 5, 2007, FMCSA published in the **Federal Register** a notice of NAAA's application for exemption (72 FR 36748). The complete docket of the NAAA request, including public comments, can be examined at Docket No. FMCSA–2007–28480 (*see* "Dockets" above). A suggestion for a pilot program, such as that filed by USCHI, is only published for public comment if the FMCSA Administrator accepts the proposal (49 CFR 381.405(b)).

FMCSA Decision

NAAA failed to demonstrate alternatives its members would employ to ensure that their commercial motor vehicle (CMV) drivers operating under the requested exemption would achieve a level of safety equivalent to, or greater than, the level of safety that would be obtained if they had to comply with the regulations, as required by 49 CFR 381.305(c)(5). USCHI's proposed pilot program, while potentially collecting useful data for evaluating alternatives to the Federal Motor Carrier Safety Regulations (FMCSRs), failed to recommend alternative safety measures that would ensure that the safety of its CMV pilot drivers would be equivalent to, or greater than, the level of safety of CMV drivers operating without the pilot exemptions in place, as required by 49 CFR 381.410(c)(8).

NAAA

NAAA is a trade association representing those engaged in the commercial application of fertilizer and other agricultural products by airplane. It states that the requested exemption would relieve the difficulty its members experience in finding CMV drivers qualified to transport aircraft fuel, a hazardous material. The exemption would allow NAAA drivers to operate under the limited exception from the CDL rules provided for those engaged in certain "farm-related service industries" (49 CFR 383.3(f)). States may allow a driver so engaged to operate under a "restricted CDL" without successfully completing the CDL knowledge and skills tests required by 49 CFR 393.135. The operations of NAAA members appear to satisfy several of the prerequisites for this restricted CDL. However, States are required by 49 CFR 393.3(f)(3)(v) to restrict the HM operations conducted by those granted restricted CDLs to the transport of solid fertilizers and limited quantities of diesel fuel or liquid fertilizer. NAAA wants FMCSA, by exemption, to allow its drivers holding this restricted CDL to transport the HM fuels used to power aircraft engines.

FMCSA received 17 comments. Nine commenters supported NAAA, primarily because they are experiencing the same shortage of qualified CDL drivers described by NAAA in its application. Five commenters opposed NAAA's application, including Advocates for Highway and Auto Safety and safety agencies of three States. The commenters pointed out that if this exemption were in place, NAAA drivers would be transporting hazardous materials more dangerous than those permitted by Section 393.3(f)(3)(v), and would be doing so without demonstrating basic competency in CMV operations. The drivers would also avoid two requirements for the HM endorsement: Successful completion of the written HM test required by 49 CFR 383.135, and a determination of "not a security threat," by the Transportation Security Administration (TSA) pursuant to 49 CFR 383.141(b). The commenters also pointed out that NAAA failed to propose an alternative method of assessing the knowledge and skills of these CMV drivers, as required by 49 CFR 381.415(c)(6)–(c)(8). FMCSA found that NAAA failed to demonstrate how it would ensure that the operations of its members under the exemption would achieve a level of safety equivalent to, or greater than, the level of safety that would be obtained in the absence of the exemption.

USCHI

U.S. Custom Harvesters Inc. (USCHI) is a trade association whose members engage in specialized farming operations during the harvest season. Custom harvesters typically travel from farm to farm using diesel-powered farm machinery to harvest crops for clients. Due to the time-sensitive nature of harvesting operations, custom harvesters typically operate for only a day or two at a farm and move quickly on to the next farm. In some localities, diesel fuel distributors are not equipped to transport diesel fuel, a hazardous material, to the fields as frequently as these operations require, so custom-harvesters bring commercial motor vehicles (CMVs) with them to transport the diesel fuel. They hire drivers to operate the CMVs, but the FMCSRs require that those operating CMVs transporting placardable quantities of diesel fuel have an HM endorsement on their CDL. USCHI asserts that the seasonal nature of custom-harvesting operations provides a very limited timeframe for the recruitment of the number of CDL drivers, with HM endorsement, needed by the custom-harvesting industry. Many potential drivers lack only an HM endorsement on their CDL. USCHI asserts that too much time is consumed in taking the HM test, and obtaining TSA's "not-a-security-threat" clearance, to allow them to be available to drive HM CMV's when the custom-harvesting season begins.

USCHI asked FMCSA to conduct a pilot program under 49 CFR part 381 (subparts C and D) so that its members could demonstrate that their CMV drivers can transport placardable quantities of diesel fuel in support of custom-harvesting operations safely without obtaining an HM endorsement; but the USCHI pilot proposal failed to include alternative measures to ensure that safety would not deteriorate if their CMV drivers were allowed to haul HM without an HM endorsement. The design of the pilot program proposed by USCHI failed to satisfy the safety performance goals of the FMCSRs, as required by 49 CFR 381.400(c).

Conclusion

FMCSA carefully reviewed NAAA's application for exemption and the public comments received on it, and also carefully reviewed USCHI's suggestion for a pilot program. The Agency concluded that the NAAA application failed to demonstrate how it would ensure that the operations of its members under the exemption would achieve a level of safety equivalent to, or greater than, the level of safety that would be obtained in the absence of the exemption. The Agency concluded that the USCHI suggestion for a pilot program failed to satisfy the safety performance goals of the FMCSRs, as required by 49 CFR 381.400(c). Accordingly, FMCSA denied NAAA's application for exemption, and USCHI's suggestion for a pilot program.

Issued on: June 4, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–13903 Filed 6–9–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0168]

Policy on the Retention of Supporting Documents and the Use of Electronic Mobile Communication/Tracking Technology in Assessing Motor Carriers' and Commercial Motor Vehicle Drivers' Compliance With the Hours of Service Regulations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Regulatory Guidance and Policy Change.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) provides notice to the motor carrier industry and the public of regulatory guidance and policy changes regarding the retention of supporting documents and the use of electronic mobile communication/tracking technology in assessing motor carriers' and commercial motor vehicle drivers' compliance with the hours of service regulations.

DATES: *Effective Date:* This change in policy is effective July 12, 2010. Comments should be submitted on or before July 9, 2010. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments (identified by Docket Number FMCSA–2010–0168) using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

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 Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Mr. David Mancl, Team Leader, Enforcement and Compliance Division, MC–ECE, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–493–0442. Web site address: *http://www.fmcsa.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

In 1997, the Federal Highway Administration (FHWA), FMCSA's predecessor agency, issued a policy memorandum recognizing that advanced technologies, which were

emerging and being implemented within the industry, offered an opportunity to improve operational and safety performance. To promote and encourage the use of these new technologies in the industry's operations and overall safety management, the Agency limited the use of the data and records generated by advanced technologies for checking hours of service compliance during reviews and regulatory enforcement actions.

After more than a decade, the Agency's policy achieved its purpose; the once emerging technologies are today a widely accepted and essential component of the industry's logistics, operations and safety management systems. FMCSA therefore rescinded the 1997 policy on November 19, 2008, effective December 19, 2008. (73 FR 69717)

On December 24, 2008, the Associate Administrator for Enforcement and Program Delivery issued an internal Agency policy memorandum titled: "Use of Advanced Information Technology Policy." This memorandum informed FMCSA and State enforcement personnel that FMCSA would exercise its full statutory authority under 49 U.S.C. 504(c) to inspect and copy records of a motor carrier. If a motor carrier uses Global Positioning Systems (GPS) or other electronic mobile communication/tracking technology during the ordinary course of its business, FMCSA has the authority to request these records and use them during the course of an investigation. FMCSA considers electronic mobile communication/tracking records to be supporting documents, as they record the time, date, and/or location of motor vehicles and/or drivers.

Since December 2008, there has been some confusion concerning FMCSA's use of these technologies for enforcement purposes and the requirements for motor carriers to retain and produce related records upon demand. The Agency has identified the need for further guidance regarding the use of electronic mobile communication/tracking records to verify compliance with 49 CFR Part 395, Hours of Service Drivers. Today's Policy, therefore, supersedes the December 2008 Policy.

Following up its commitment as stated in the April 2010 final rule, Electronic On-Board Recorders (EOBRs) for Hours-of-Service (HOS) Compliance, 75 FR 17208, FMCSA is drafting a notice of proposed rulemaking (NPRM) to further advance motor carrier safety through improved HOS compliance. This NPRM will have three components: (1) Proposing that EOBRs be required for considerably more motor carriers and drivers, (2) proposing that motor carriers be required to develop and maintain systematic and effective HOS oversight for their drivers, and (3) proposing, pursuant to Sec. 113 of the Hazardous Materials Transportation Authorization Act of 1994, title I of Public Law 103–311, 108 Stat. 1673 (Aug. 26, 1994) (HMTAA), requirements for motor carriers to retain HOS supporting documents. The Agency anticipates publishing the NPRM by the end of 2010 and publishing a final rule within 24 months. In clarifying current enforcement practices, today's guidance moves toward the anticipated NPRM.

Policy

This Policy is intended to be used by enforcement personnel as guidance in making enforcement decisions. Nothing in this Policy is intended to alter a motor carrier's duty to ensure that its employees and agents are complying with all applicable regulations. A motor carrier is responsible for the acts and omissions of its employees and agents with respect to regulatory compliance.

Previous policy statements have used the terms "GPS" and "Advanced Information Technology" to describe electronic mobile communication/tracking technology. FMCSA recognizes that these terms are no longer adequate to describe electronic mobile communication/tracking technology. Such technologies can no longer be considered "advanced" as they are now widely accepted and used in the industry. Likewise, electronic mobile communication/tracking systems may rely on technology other than GPS to determine the time, date, and/or location of motor vehicles and/or drivers. For ease of discussion in this Policy, the use of the phrases "electronic mobile communication/tracking technology," "electronic mobile communication/tracking systems," and "electronic mobile communication/tracking records" shall be deemed to include those technologies and records that allow a motor carrier to identify the location of a motor vehicle or driver, or that allow a motor carrier to send or receive messages to or from its drivers. The application of this Policy to a technology or record does not depend on the method of communication or the technology used to obtain the time and/or position location information.

Supporting Documents Requirements for Motor Carriers Without Qualifying Electronic Mobile Communication/Tracking Technology

Supporting documents are motor carriers' records that are maintained in the ordinary course of business and may be used by the motor carrier to verify information recorded on the driver's RODS. On April 4, 1997, as part of a set of guidance and policy statements, FHWA, FMCSA's predecessor agency, published a list of more than thirty examples of supporting documents that motor carriers needed to retain pursuant to 49 CFR 395.8(k)(1) (62 FR 16370, 16425) (Guidance Question 10). Based on its enforcement experience since 1997, FMCSA recognizes that certain documents in that list are not regularly used by enforcement staff to verify the accuracy of records of duty status (RODS) and that requiring motor carriers to retain these documents is no longer necessary. FMCSA will therefore no longer consider the following to be "supporting documents" and will not require motor carriers to maintain and produce such documents pursuant to 49 CFR 395.8(k)(1):

- Driver call-in records;
- International registration plan receipts;
- International fuel tax agreement receipts;
- Trip permits;
- Cash advance receipts; and
- Driver fax reports (cover sheets).

The Agency rescinds the list of examples of supporting documents in the April 4, 1997, Guidance Question 10 and provides the following updated, shorter list: Bills of lading, carrier pros, freight bills, dispatch records, electronic mobile communication/tracking records (as explained below), gate record receipts, weigh/scale tickets, fuel receipts, fuel billing statements, toll receipts, toll billing statements, port of entry receipts, delivery receipts, lumper receipts, interchange and inspection reports, lessor settlement sheets, over/short and damage reports, agricultural inspection reports, driver and vehicle examination reports, crash reports, telephone billing statements, credit card receipts, border crossing reports, customs declarations, traffic citations and overweight/oversize permits and traffic citations.

Motor carriers without qualifying electronic mobile communication/tracking technology must continue to retain other supporting documents that may be used to verify information on the driver's RODS. If the motor carrier has multiple offices or terminals and these records are maintained at motor

carrier locations other than the motor carrier's principal place of business, see Regulatory Guidance on the Definition of "Principal Place of Business," July 29, 2009 (74 FR 37653), they must be forwarded to the principal place of business, or other location specified, upon a request by an authorized FMCSA representative or State official in accordance with 49 CFR 390.29.

Supporting Documents Requirements for Motor Carriers That Use Qualifying Electronic Mobile Communication/ Tracking Technology

If a motor carrier uses a paper RODS system and also uses electronic mobile communication/tracking technology on specific vehicles and can produce electronic mobile communication/ tracking records acceptable to the Agency under this Policy, FMCSA will permit the motor carrier to maintain and submit fewer paper supporting documents.

Whether the electronic mobile communication/tracking records are acceptable to the Agency under this Policy or not, the investigator has the authority to demand those records, and he or she may accept them in either printed or electronic form from the motor carrier. These records will be used to assess motor carrier and commercial motor vehicle driver compliance with the HOS regulations and for other evaluations into the safety performance or regulatory compliance of the motor carrier. Electronic mobile communication/tracking records may also be used by the Agency as evidence in any proceeding to enforce Federal motor carrier statutes and regulations.

For each vehicle a motor carrier uses for which the motor carrier can produce electronic mobile communication/ tracking records acceptable under this Policy, the motor carrier is no longer required to maintain or produce the following supporting documents pursuant to 49 CFR 395.8(k)(1) for the driver of that vehicle:

- Gate record receipts;
- Weigh/scale tickets;
- Port of entry receipts;
- Delivery receipts;
- Toll receipts;
- Agricultural inspection reports;
- Over/short and damage reports;
- Driver and vehicle examination reports; [1]
- Traffic citations;
- Overweight/oversize reports and citations;
- Carrier pros;
- Credit card receipts;
- Border Crossing Reports;
- Customs declarations; and
- Telephone billing statements.

Motor carriers that seek to take advantage of the less burdensome supporting documents retention requirements available under this Policy are precluded in HOS enforcement proceedings from challenging the accuracy of their own electronic mobile communication/tracking records.

Qualifying Electronic Mobile Communication/Tracking Technology

For each vehicle for which a motor carrier seeks to take advantage of the less burdensome supporting documents retention requirements available under this Policy, the motor carrier must show that the electronic mobile communication/tracking records have the characteristics below:

Positioning Frequency: The system must be set up to communicate position location at a rate of at least one time per hour, per vehicle, while the vehicle is in motion.

Vehicle Integration: The system must be integrally synchronized with the vehicle.

Report Functionality: The system must be capable of generating upon demand a document/record, either printed (paper) or electronically rendered (spreadsheet, portable document format, tagged image file format or other commonly available software format), showing the required Report Content.

Report Content: The position history report must include, at a minimum, vehicle identification information, date, time, proximity location (reference points), and latitude and longitude for each position communication.

Retention: Motor carriers must maintain position history reports for a period of six months in accordance with 49 CFR 395.8(k)(1).

If the motor carrier's electronic mobile communication/tracking records for a particular vehicle do not qualify under this Policy, the motor carrier must maintain all supporting documents that may be used to assess motor carrier and commercial motor vehicle driver compliance with the HOS regulations, pursuant to 49 CFR 395.8(k)(1). A motor carrier that uses electronic mobile communication/tracking technology in the ordinary course of business for any purpose is expected to include the use of records and information generated by that technology in its HOS oversight activities.

Related Information

A motor carrier's responsibility to ensure the accuracy of its drivers' RODS is not limited by the list of examples of supporting documents in this Policy. A motor carrier is liable for false RODS submitted by its drivers and other HOS violations if the motor carrier had or should have had the means by which to detect the violations, regardless of whether the means to detect the violations is included in the list of examples of supporting documents.

All motor carriers that use electronic mobile communications/tracking technology, whether or not such technology is qualifying technology under this Policy, must continue to retain data generated by that system in the ordinary course of business. The motor carrier is not required, for purposes of responding to investigations by FMCSA or State enforcement personnel, to convert the data from the format in which it is ordinarily retained. However, if the motor carrier receives in the ordinary course of business electronic or printed reports or other communications in which the data is converted to a more readable or usable format, the motor carrier must retain such reports or communications and provide them to investigators upon demand.

If a motor carrier denies the Agency access to its supporting documents, including, without limitation, electronic mobile communication/tracking records, the motor carrier's action shall be considered a denial of access under 49 U.S.C. 521(b)(2)(E). As with all supporting documents, a failure to maintain electronic mobile communication/tracking records may be cited under 49 CFR 395.8(k)(1).

FMCSA recognizes that motor carriers may use electronic mobile communication/tracking technologies for applications other than recording the time, date and/or location of a motor vehicle and/or driver. An electronic record of vehicle performance trends and events such as speeding or hard-braking, or vehicle performance measures such as fuel consumption (MPG) or engine speed (RPM), which may be captured through on-board sensors and transmitted via electronic mobile communication/tracking technology, is not required to be maintained as a supporting document under 49 CFR Part 395. However, if a triggering event or performance measure creates a record of the time, date, and/ or location of a motor vehicle and/or driver, then the time, date and/or location of that event or measure must be retained.

[1] This notice does not affect motor carriers' duty to maintain driver and vehicle examination reports in accordance with the retention requirements of 49 CFR part 396. See 49 CFR 396.11(c)(2) and 396.9(d)(3)(ii).

Other statutes and/or regulations may require the retention of certain listed documents. This Policy does not affect a motor carrier's responsibility to comply with these other statutes and/or regulations.

This Policy is not intended to address motor carriers that use EOBRs under the terms of a remedial directive and EOBRs or Automatic On-Board Recording Devices (AOBRDs) under the terms of a settlement agreement. Carriers subject to a remedial directive or settlement agreement must comply with the terms of that directive or agreement, including requirements to retain particular documents.

Issued on: June 4, 2010.

William A. Quade,

Associate Administrator for Enforcement and Program Delivery.

[FR Doc. 2010–13901 Filed 6–9–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Orders Limiting Scheduled Operations at John F. Kennedy International Airport and Newark Liberty International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of limited waiver of the slot usage requirement.

SUMMARY: This action announces a limited waiver of the requirements to use Operating Authorizations (slots) at John F. Kennedy International Airport (JFK) and Newark Liberty International Airport (EWR). The FAA will treat as used any Operating Authorization that was scheduled for an operation between JFK or EWR and points in Europe from April 14 through April 26, 2010. The FAA also will grant similar relief on an individual carrier basis following notification for scheduled flights between JFK or EWR and points in Europe canceled due to volcanic ash from April 27 through October 30, 2010. This policy is effective from April 14, 2010 through October 30, 2010.

DATES: *Effective Date:* Effective upon publication.

FOR FURTHER INFORMATION CONTACT: Robert Hawks, Office of the Chief Counsel, Regulations Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7143; e-mail: *rob.hawks@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On April 14, 2010, an eruption of the Eyjafjallajökull volcano in Iceland began releasing large quantities of volcanic ash into the air. The resulting volcanic ash cloud spread over a large area of Europe before dissipating. The volcanic ash cloud resulted in widespread airspace restrictions and grounding of aircraft across much of Europe due to safety concerns. Air carriers responded by canceling tens of thousands of flights during an approximately one-week period. Airspace restrictions were relaxed as the volcanic ash cloud dissipated, and most European airspace restrictions were lifted by the evening of April 20. Recovery of normal operations took several days but appeared to return normal at all airports by April 27.

Although volcanic ash did not affect aircraft operation within U.S. airspace, the flight cancellations impacted U.S. airports that serve as international gateways, including slot-controlled JFK and EWR. U.S. and foreign carriers canceled transatlantic operations due to airspace closures and had to reposition aircraft before resuming scheduled operations after airspace reopened.

After the April airspace closures, volcanic ash has caused intermittent European airspace and airport closures resulting in transatlantic flight cancellations, but these closures have been limited in scope and duration. The Eyjafjallajökull volcano is predicted to continue erupting over the next several months, and volcanic ash may disrupt aircraft operations throughout this period.

By letter dated May 17, 2010, Continental Airlines has asked the FAA to grant a limited waiver of the minimum usage requirement at EWR through the summer scheduling season ending on October 30, 2010, due to the highly unusual and unpredictable nature of airspace and airport closures.

Under the orders limiting scheduled operations at the airports, slots must be used at least 80 percent of the time. Slots not meeting the minimum usage rules will be withdrawn.[1] The FAA may grant a waiver from the minimum usage requirements in highly unusual and unpredictable conditions that are beyond the control of the carrier and affect carrier operations for a period of five or more consecutive days.

Statement of Policy

The FAA has determined these unusual circumstances meet the criteria for a limited waiver of the minimum slot usage. The FAA does not intend to routinely grant general waivers to the usage requirements. Rules allow for up to 20 percent nonuse, including planned and unplanned cancellations. These rules are expected to accommodate routine weather and other cancellations under all but the most unusual circumstances.

Accordingly, the FAA will grant relief from the use-or-lose requirements for all carriers operating scheduled flights at JFK and EWR to or from points in Europe during the period from April 14 through 26, 2010. The FAA will treat as used any Operating Authorization that was scheduled for an operation between JFK or EWR and points in Europe from April 14 through April 26, 2010. Additionally, the FAA recognizes some carriers have canceled scheduled flights between JFK or EWR and points in Europe since April 26, and further ash-related cancellations may occur over the coming months. The FAA will grant similar relief on an individual carrier basis for scheduled flights between JFK or EWR and points in Europe canceled due to volcanic ash after April 26. Carriers should advise the FAA Slot Administration Office of volcanic-ash-related cancellations by e-mail to *7-awa-slotadmin@faa.gov* to obtain relief. The FAA may revise this policy if there are widespread or long-term impacts similar to the April airspace closures.

Issued in Washington, DC, on June 5, 2010.

Rebecca B. MacPherson,

Associate Chief Counsel for Regulations.

[FR Doc. 2010–13994 Filed 6–9–10; 8:45 am]

BILLING CODE 4910–13–P

[1] 74 FR 51648 (Oct. 7, 2009) (EWR); 74 FR 51650 (Oct. 7, 2009) (JFK).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2010–28]

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 June 30, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0511 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: Mark Forseth, ANM–113, (425) 227–2796, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057–3356, or Brenda Sexton, (202) 267–3664, Office of Rulemaking (ARM–204), 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 June 6, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

[Docket No.: FAA–2010–0511]

Petitioner: Allegiant Air, LLC.

Section of 14 CFR Affected: 14 CFR 25.809(h)(1) and 121.310(k)(1).

Description of Relief Sought: Exemption to permit relief from the requirements of ventral-exit door-securing functions during flight. This exemption, if granted, would allow Allegiant Air to install a mount on the flight deck of their MD–80 fleet for a removable handle which could be temporarily attached to the airstair operating mechanism, allowing for the operation of the aft stairs from within the aircraft while on the ground.

[FR Doc. 2010–13921 Filed 6–9–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2010–0109]

Notice on Waiver of the Terms of the Order Limiting Scheduled Operations at LaGuardia Airport

ACTION: Extension of Time for Delta Airlines and US Airways to Notify the FAA of Intent to Proceed with Slot Transfer Transaction.

SUMMARY: This action extends the deadline to July 2, 2010, for Delta and US Airways to notify the FAA whether they intend to proceed with the slot transfer transaction subject to the Waiver of the Terms of the Order Limiting Scheduled Operations at LaGuardia Airport.

If you wish to review the background documents or comments received in this proceeding, you may go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the electronic docket. You may also go to the U.S. Department of Transportation's Docket Operations in Room W12–140 on the ground floor of the West Building at 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

DATES: Delta and US Airways must notify the FAA in writing by July 2, 2010, as to whether they intend to proceed with the slot transfer transaction as described in the Notice issued May 4, 2010. The waiver is effective upon Delta and US Airways satisfying the conditions required by that Notice, as amended by this extension of time.

FOR FURTHER INFORMATION CONTACT: Rebecca MacPherson, Assistant Chief Counsel for Regulations, by telephone at (202) 267–3073 or by electronic mail at *Rebecca.macpherson@faa.gov;* or Jonathan Moss, Deputy Assistant General Counsel for Operations, by telephone at (202) 366–4710 or by electronic mail at *jonathan.moss@dot.gov.*

SUPPLEMENTARY INFORMATION:

On May 4, 2010, Ray LaHood, Secretary of the Department of Transportation (DOT) and J. Randolph Babbitt, FAA Administrator, granted, subject to conditions, a joint waiver request of Delta Air Lines and US Airways from the prohibitions on purchasing operating authorizations ("slots" or "slot interests") at LaGuardia Airport (LGA). Notice on Petition for Waiver of the Terms of the Order Limiting Scheduled Operations at LaGuardia Airport, 75 **Federal Register** 26,322 (May 11, 2010) (hereinafter, the "Waiver").

The Waiver permits the carriers to consummate a transaction in which Delta would transfer 42 pairs of slot interests to US Airways at Ronald Reagan Washington National Airport (DCA), international route authorities to Sao Paulo and Tokyo; and terminal space at the Marine Air Terminal at LaGuardia Airport (LGA). US Airways would transfer 125 pairs of slot interests to Delta at LGA, and lease an additional 15 pairs of LGA slot interests with a purchase option, together with terminal space in LGA's Terminal C. The grant is subject to the conditions that the carriers dispose of 14 pairs of slot interests at DCA and 24 pairs of slot interests at LGA to eligible new entrant and limited incumbent carriers pursuant to certain procedures and achieve a mutually satisfactory agreement regarding gates and associated facilities with any such purchaser.

The Waiver also requires Delta and US Airways to notify the FAA, in writing, within 30 days, whether they intend to proceed with the slot transfer transaction. If they intend to consummate the slot transfer transaction subject to the waiver, their notice must provide the following information for the divested slots:

(1) Operating Authorization number (LGA) or slot number (DCA) and time;

(2) Frequency;

(3) Effective Date(s);

(4) Other pertinent information, if applicable; and

(5) Carrier's authorized representative.[1]

On June 3, 2010, Delta and US Airways jointly filed a letter requesting an extension of the deadline until July 2, 2010. The FAA finds that granting this extension of time would not adversely affect the public interest.

[1] 75 FR 26,322 at 26,337 (May 11, 2010).

Accordingly, the FAA grants this request for extension, and Delta and US Airways must notify, in writing, the FAA whether they intend to proceed with the slot transfer transaction by July 2, 2010.

Issued in Washington, DC, on June 4, 2010.

David Grizzle,

Acting Deputy Administrator, Federal Aviation Administration.

Susan Kurland.

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2010–13904 Filed 6–9–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8833

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).

DATES: Written comments should be received on or before August 9, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald J. Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).

OMB Number: 1545–1354.

Form Number: 8833.

Abstract: Taxpayers who are required by Internal Revenue Code section 6114 to disclose a treaty-based return position use Form 8833 to disclose that position. The form may also be used to make the treaty-based return position disclosure required by regulation § 301.770(b)–7(b) for "dual resident" taxpayers. Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 4,000.

Estimated Time per Respondent: 6 hours, 23 minutes.

Estimated Total Annual Burden Hours: 25,640.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 2010.

Gerald J. Shields,

IRS Reports Clearance Office.

[FR Doc. 2010–13884 Filed 6–9–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return.

DATES: Written comments should be received on or before August 9, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald J. Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: United States Estate (and Generation-Skipping Transfer) Tax Return.

OMB Number: 1545–0015.

Form Number: 706.

Abstract: Form 706 is used by executors to report and compute the Federal estate tax imposed by Internal Revenue Code section 2001 and the Federal generation-skipping transfer (GST) tax imposed by Code section 2601. The IRS uses the information on the form to enforce the estate and GST tax provisions of the Code and to verify that the taxes have been properly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 117,000.

Estimated Time per Respondent: 17 hours, 2 minutes.

Estimated Total Annual Burden Hours: 2,028,430.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 2010.

Gerald J. Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–13888 Filed 6–9–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1118

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1118, Foreign Tax Credit—Corporations.

DATES: Written comments should be received on or before August 9, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald J. Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Foreign Tax Credit—Corporations.

OMB Number: 1545–0122.

Form Number: 1118.

Abstract: Form 1118 and separate Schedules I, J, and K are used by domestic and foreign corporations to claim a credit for taxes paid to foreign countries. The IRS uses Form 1118 and related schedules to determine if the corporation has computed the foreign tax credit correctly.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 36,950.

Estimated Time per Respondents: 94 hours, 16 minutes.

Estimated Total Annual Burden Hours: 3,483,016.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 2010.

Gerald J. Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–13890 Filed 6–9–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8873

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8873, Extraterritorial Income Exclusion.

DATES: Written comments should be received on or before August 9, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald J. Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Extraterritorial Income Exclusion.

OMB Number: 1545–1722.

Form Number: 8873.

Abstract: The FSC and Extraterritorial Income Exclusion Act of 2000 added section 114 to the Internal Revenue Code. Section 114 provides for an exclusion from gross income for certain transactions occurring after September 30, 2000, with respect to foreign trading gross receipts. Form 8873 is used to compute the amount of extraterritorial income excluded from gross income for the tax year.

Current Actions: There are no changes being made to the form at this time. However, we are requesting a change to the estimates currently on file with OMB to coincide with the estimates on file with the IRS. This will result in a burden decrease of 1,005,000 total burden hours.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 750,000.

Estimated Time per Respondent: 24 hours, 7 minutes.

Estimated Total Annual Burden Hours: 18,082,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 2010.

Gerald J. Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–13892 Filed 6–9–10; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
June 10, 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; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 660

[Docket No. 100212086–0210–01]

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: Proposed rule; request for comments.

SUMMARY: NMFS proposes measures to initiate implementation of Amendments 20 and 21 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 20 would establish a trawl rationalization program for the Pacific Coast groundfish fishery. Amendment 20's trawl rationalization program would consist of: An individual fishing quota (IFQ) program for the shore-based trawl fleet (including whiting and non-whiting sectors); and cooperative (coop) programs for the at-sea (whiting only) mothership (MS) and catcher/processor (C/P) 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 would establish fixed allocations for limited entry (LE) 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.

NMFS is reviewing Amendments 20 and 21 in their entirety. However, due to the complexity of the proposed fishery management measures, this rule proposes only certain key components that would be necessary to have permits and endorsements issued in time for use in the 2011 fishery and in order to have the 2011 specifications reflect the new allocation scheme. Specifically, this rule would establish the allocations set forth under Amendment 21 and establish procedures for initial issuance of permits, endorsements, quota shares, and catch history assignments under the IFQ and coop programs. In addition, the proposed rule would restructure 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. NMFS plans to propose additional program details in a future proposed rule. Such additional details would include: Program components applicable to IFQ gear switching, observer programs, retention requirements, equipment requirements, catch monitors, catch weighing requirements, coop permits/agreements, first receiver site licenses, quota share accounts, vessel quota pound accounts, further tracking and monitoring components, and economic data collection requirements. In order to encourage more informed public comment, this proposed rule includes a general description of these additional program requirements. NMFS is also planning a future "Cost-Recovery" rule based on a recommended methodology yet to be developed by the Pacific Fishery Management Council (the Council).

DATES: Comments on this proposed rule must be received no later than 5 p.m., local time on July 12, 2010.

ADDRESSES: You may submit comments, identified by 0648–AY68, 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: Jamie Goen.
- *Mail:* Barry Thom, Acting Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; *Attn:* Jamie Goen.

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. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS, Northwest Region, e-mailed to *David_Rostker@omb.eop.gov;* or faxed to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Jamie Goen, 206–526–4656; (fax) 206–526–6736; *Jamie.Goen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpoaccess.gov/fr/index.html.* Background information and documents, including the Draft 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/.*

Although this proposed rule would implement only certain portions of Amendments 20 and 21, NMFS is reviewing both Amendments 20 and 21 in their entirety. On May 12, 2010, NMFS published a notice of availability of Amendments 20 and 21, and—consistent with requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA)—must make a decision to approve, disapprove, or partially approve the amendments by September 8, 2010. Comments on the approvability of the amendments must be submitted to NMFS by August 9, 2010. This preamble provides information about the full contents of each amendment for the purposes of promoting informed public comment. Detailed provisions regarding features of the proposed rule are provided where applicable. In addition, section IV of this preamble highlights what the main regulatory changes would be.

I. Background: Current Management Approach and Need for Change

The Pacific Coast Groundfish FMP covers a diverse mixture of species occurring in close association and proximity in the Pacific off the states of Washington, Oregon, and California. The trawl rationalization program would consist of: (1) An individual fishing quota (IFQ) program for the shore-based trawl fleet and (2) cooperative (coop) programs for the at-sea trawl fleet. The shore-based trawl fleet would include IFQ participants who land groundfish to shore-based processors or first receivers. The at-sea trawl fleet would include fishery participants harvesting whiting with

midwater trawl gear (i.e., whiting catcher/processor vessels, whiting motherships, and whiting catcher vessels associated with motherships). The co-op programs for the at-sea trawl fleet are further divided as follows: (1) A single whiting catcher/processor co-op; and (2) one or more whiting mothership co-ops may form, or vessels may choose to fish in a non-coop fishery which would be unaffiliated with a coop. For the coop and non-coop fishery, vessel owners pool their harvest together.

The IFQ program for the shore-based fleet would require NMFS to make an initial allocation of harvest quota share (QS) (expressed as a percentage of the total sector amount) through a new QS permit to current owners of limited entry trawl permits and shore-based whiting first receivers who meet the qualifying criteria. Depending on a person's limited entry trawl permit history in qualifying years, the permit owner will receive an initial allocation for various target species/species groups (~20 species), some with area designations. In addition, NMFS would allocate QS for overfished species based on a proxy of the amount of target species allocated to the quota share holder. Shore-based whiting first receivers will receive an initial allocation of whiting only, based on their history of being the first receiver reported on state fish tickets (with an opportunity to reassign their history). Each year, based on the optimum yield amounts for each species and the amount of QS a holder has for a particular species/area, NMFS would allocate quota pounds to the QS account. The QS owner in turn, must allocate quota pounds to vessel accounts. Vessels are required to have IFQ or quota pounds in an account to cover all IFQ landings and discards incurred while fishing under this program. In order to comply with the MSA, NMFS would track ownership interest in QS to determine if individuals are within set accumulation limits, both at the initial allocation stage and during the operation of the program. In Amendment 20, the Council has adopted limits (by species group and area) on the amount of QS an individual can control (i.e. control limits) and limits on the amount of quota pounds that may be registered to a vessel for use in a given year.

For the at-sea whiting component of the trawl rationalization program, the Council has adopted a program that provides for a C/P coop and MS coops that differ from how the coops have operated in the past. The C/P coop will not require an initial allocation of catch shares to individual vessels, provided that a coop is established. However, whiting catch shares for the MS fleet (called catch history assignments) would initially be allocated to qualifying limited entry trawl permits that were registered to catcher vessels in qualifying years and which were used in the mothership whiting fishery. Holders of qualifying permits that are allocated a whiting catch history assignment may choose to participate in the MS coop or non-coop fishery. Similar to the shore-based IFQ program, NMFS would be required to track permit ownership interests in the MS sector to determine if individuals are in compliance with accumulation limits.

The FMP features different management strategies for different species, locales, vessels and processing arrangements. These different management regimes are often referred to as "sectors." Current management divisions pertain to tribal vs. non-tribal, trawl vs. non-trawl (fixed gear); limited entry vs. open access; commercial vs. recreational; whiting vs. non-whiting; shore-based whiting vs. at-sea whiting; and at-sea whiting MS operations vs. at-sea whiting C/Ps.

A. Sector Management and Allocations

Currently, the Pacific Coast groundfish fishery consists of several different sectors, defined by fishing gear, species targeted, and regulatory context. Under current management, the annual optimum yield (OY) is first reduced to a commercial harvest guideline (commercial HG) by subtracting from the OY amounts of fish necessary for tribal fisheries, bycatch for exempted fishing permits (EFPs), and estimates of research catch, recreational catch, and bycatch in non-groundfish fisheries. Subtracting these amounts produces the commercial HG, which NMFS then divides between two main sectors: Limited entry (LE) and open access (OA). The LE sector is further subdivided into the fixed gear and trawl subsectors. Within the LE trawl subsector, there is an additional division between whiting and non-whiting trawl fisheries. The non-whiting trawl fishery consists primarily of a shore-based multi-species fishery generally conducted with bottom trawl gear. The whiting trawl fishery consists of three different fleets: Shore-based, MS, and C/P (all of which fish only with midwater trawl gear).

Within the whiting trawl fishery, whiting available to the commercial fisheries is already allocated among the shore-based, MS, and C/P sectors as follows: 42 percent, 24 percent, and 34 percent, respectively. (See existing regulations at 50 CFR 660.323.) This allocation would not change.

Trawl Target Species (Including Pacific Whiting Fisheries)

The list of current trawl target species includes flatfish, roundfish, thornyheads, and a few species of rockfish. Primary flatfish target species include Petrale sole and Dover sole. Roundfish target species include Pacific whiting, Pacific cod, and sablefish. However, seven rockfish species, which co-occur with the target stocks and can be caught with trawl gear, are currently declared overfished pursuant to the MSA. The need to rebuild these stocks to a healthy size has led to a variety of harvest constraints on groundfish fisheries, and rockfish are generally no longer a target of these fisheries.

Limited Entry Trawl, Limited Entry Fixed Gear vs. Open Access

The groundfish trawl fishery is subject to a Federal license limitation program (referred to as limited entry), implemented in 1994; currently there are 178 groundfish LE trawl permits. Groundfish fixed gear fisheries—using longline and pot gear—are also managed under the limited entry program. Some groundfish are caught and landed by vessels without an LE permit; these vessels comprise the "open access" sector, which has directed and incidental components.

Limited Entry Trawl Whiting vs. Non-Whiting

The LE trawl fishery is divided into two broad sectors: A multi-species trawl fishery, which most often uses bottom trawl gear (hereafter called the non-whiting sector), and the whiting fishery, which uses midwater trawl gear. The non-whiting trawl fishery is principally managed through two month cumulative trip limit periods along with closed areas to limit overfished species bycatch. Non-whiting trawlers target the range of species described above with the exception of Pacific whiting.

LE Trawl Whiting Components

In most years, less than 2 percent of the catch in the Pacific whiting fishery are species other than Pacific whiting, although overfished species that co-occur with Pacific whiting are also caught. The whiting fishery is further subdivided into three sectors. The shore-based fishery delivers their catch to processing facilities on land, and the vessels are similar in size and configuration (with the exception of the type of net used) to the non-whiting trawl fishery vessels. In the MS sector, catcher vessels deliver to at-sea

processors called "motherships". Most of the MS-sector catcher vessels also participate in the shore-based whiting fishery. The C/P sector comprises vessels that catch Pacific whiting and process it on board.

B. Need for Amendment 20

In its June 2004, scoping document, the Council described the problem that, despite the recent Federal buyback program that retired several trawl permits (70 FR 45695, August 8, 2005), management of the groundfish trawl fishery was still facing serious biological, social, and economic concerns. The trawl fishery is currently viewed by the Council as economically unsustainable.

Bycatch, especially bycatch of overfished species, was identified as a major problem. All direct harvest of overfished species had been prohibited and numerous closed areas were implemented; however, due to the multispecies nature of the fishery, it is generally not possible to avoid catching the overfished species. As a result, harvests of healthy species were being constrained in order to protect the overfished species. As noted in the scoping document, management relies on average estimated discard (bycatch) rates to predict bycatch. The harvest is then constrained by these bycatch predictions. The discard rate estimates are fixed for a season and change over time only as new information becomes available from the observer program. This creates a situation where there may be little incentive for fishermen to avoid bycatch on an individual vessel level.

The average estimated bycatch rate has been controversial. Also, different fishing interests have expressed different opinions about the pace of the fishery. Some prefer a year-round groundfish fishery, while others prefer a more seasonal fishery. The current system is not flexible enough to accommodate both interests or to respond to changes in markets, weather, or harvest conditions. The ability to react to changing conditions is important if the goal is an efficient fishery that is safe for participants. Accordingly, the following problems were initially identified with the current management regime:

- The bycatch rate is uncertain.
- There are limited incentives for fishermen to reduce bycatch.
- Opportunities to harvest target species are lost.
- The system cannot accommodate the variety of harvest patterns desired by fishermen.
- The system cannot respond quickly to changes in markets, weather, etc.
- Communities are challenged by uncertainty in the industry.

Through an iterative public process, the Council refined these issues into this goal for Amendment 20:

> 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.

C. Purposes of Amendment 21

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.

Under the IFQ and harvest cooperative systems proposed under the Amendment 20 trawl rationalization program, it would be critical to reduce the risk that sectors would be closed because of other sectors exceeding their allocation. Reducing this risk is important in order to prevent a race for fish that could occur if QP holders or coop fishermen thought other sectors would close them down because of overages.

To the extent that Amendment 21 supports implementation of Amendment 20, it would also contribute to the anticipated benefits of individual accountability for catch and bycatch, and improved overall total catch accounting of groundfish species by the group with the largest amounts of groundfish catch, the trawl sector. By limiting the bycatch of Pacific halibut in the LE trawl fisheries, Amendment 21 would control bycatch and could provide increased benefits to Washington, Oregon, and California fishermen targeting Pacific halibut.

Uncertainty existed regarding whether the allocations in Amendment 21 superseded the allocations to the open access fishery established when the limited entry fishery began. The Council has clarified that these allocation are to supersede the earlier open access allocation for the species allocated under Amendment 21.

II. Amendment 20 Program Description

After considering alternatives, including the status quo, the Council recommended Amendment 20, which divides the trawl fishery into three main management sectors: Shore-based (whiting and non-whiting) to be managed by IFQs; and the MS and C/P sectors (at-sea whiting), both to be managed by separate coop programs. The shore-based trawl fleet would consist of IFQ participants who land groundfish to shore-based processors, or other entities that receive but do not process the groundfish. Both are referred to as first receivers. The at-sea trawl fleet would consist of fishery participants harvesting and processing whiting (i.e., whiting C/P vessels, whiting motherships that process whiting at sea, and whiting catcher vessels that deliver to motherships). The at-sea trawl fleet would be further divided as follows: (1) The whiting C/P sector; and (2) the whiting MS sector. The MS sector program may include multiple coops where vessels pool their harvest together to form fishing cooperatives, as well as vessels not associated with a coop (i.e., the "non-coop" segment of the MS fishery).

A key feature of the trawl rationalization program would be a shift from the current catch accounting system (that uses fleetwide estimates of

discards based on an observer sampling system that has 20-percent coverage) to an 'individual accountability' system where all catch by shore-based vessels would count against individual participants' shares, including both retained and discarded catch, based on 100 percent observer coverage on vessels and 100 percent monitoring of the vessel's offload in the plants (called "catch monitoring"). Under the current management system, shore-based fishermen fish against bimonthly trip limits and annual fleetwide quotas and have no direct accountability for discards. Under the proposed system, shore-based fishermen would fish against "individual" quotas, against which their discards would count. Thus, fishermen would have a strong incentive to fish in a manner that reduces discards because excessive discards would either lead to shortening their fishing season when their quota is reached, or greater costs to them if they had to buy additional quota from other quota holders.

The management approaches set forth in the trawl rationalization program would consist of different types of limited-access approaches. These limited-access approaches grant permission to the holder of the privilege or permit to participate in the program. Such permission may be revoked, limited, or modified at any time. In other words, it is a conditional privilege.

Amendment 20 would include features such as annual renewal requirements and regular program reviews to ensure program goals are being met, provide NMFS the ability to review, track, and monitor program implementation and needs, and prevent the perception that the program confers "rights" as opposed to privileges.

Amendment 20 establishes programs that are "limited-access privilege programs," which are consistent with the MSA provisions at section 303A. Limited-access privileges, including the quota shares, quota pounds, and catch history assignments, may be revoked, limited or modified at any time in accordance with the MSA—and do not create any right of compensation to the holder of the limited-access privilege, quota share, quota pound, or catch history assignment if it is revoked, limited or modified. The limited-access privilege program does not create any right, title, or interest in or to any fish before the fish is harvested by the holder and shall be considered a grant of permission to the holder of the limited-access privilege to engage in activities permitted by the limited-access privilege program. For further statutory provisions related to limited-access privileges, see section 303A of the MSA.

Section 303A contains an "antitrust savings clause" that provides that "nothing in this Act shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of the preceding sentence, the term 'antitrust laws' has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition."

NOAA advises that any fishery participants who are uncertain about the legality of their activities under the antitrust laws of the United States should consult legal counsel prior to commencing those activities. NOAA intends to restate this advice in the regulations for the program components.

A. IFQ Program Details

IFQs offer a powerful accountability measure for maintaining catch levels within limits (as required by the MSA). The IFQ program would feature complete accounting for all catch, both landings and discards, and would facilitate accountability down to the individual vessel level.

1. Structure Overview

Amendment 20 would establish an IFQ program for the shore-based LE trawl fleet. The IFQ program would apply to a specified list of species, set forth in § 660.140(c) of the proposed rule, which includes both whiting and non-whiting species. The program would apply to shore-based harvesters with LE permits and first receivers, and would apply to all trips with IFQ species delivered shoreside. The IFQ program would provide for total catch accounting and individual vessel responsibility. This means that both landed catch and discards would count against the quota pounds in an individual vessel's vessel account.

Accountability for landings and discards are expected to increase the certainty managers have regarding fishing mortality, which in turn is expected to foster the rebuilding of overfished species and help prevent overfishing. Furthermore, the increased observation necessary to monitor landings and discard is expected to increase the information flow on the status of the fishery as the fishery occurs. Finally, responsibility for landings and discards—and the monitoring necessary for that type of management—is expected to increase accounting ability and result in changes to fishing behavior, which include a reduction in the bycatch rate of constraining stocks and a reduction in regulatory discarding.

To implement the IFQ program, NMFS would divide the trawl allocation for these species between the IFQ and at-sea whiting sectors. NMFS would then divide the IFQ allocation among individual participants as percentages of the total sector allocation. This individual apportionment of catch percentage would be called Quota Share (QS). Each year, the percentage of catch represented by the QS would be converted into poundage based on the total amount of catch available to the sector. This poundage would be known as Quota Pounds (QP). The QP would be issued to the QS permit owner, but in order to be fished, the QP would have to be transferred into a vessel account. In order to land an IFQ species, a vessel's account would be required to contain sufficient QP to cover the catch within 30 days of the landing. Special provisions for addressing overages are discussed below in section II.A.7 of this preamble.

Within the IFQ program, vessels would be allowed to use a variety of directed groundfish commercial gear (including non-trawl gear) to take the shore-based trawl sector allocation, which would thus allow for "gear switching." To prevent the OA and fixed gear allocations from being reduced due to landings by people with IFQ, catch that is made with non-trawl gear by a person with QP would count against the QP and against the IFQ allocation. In addition, QS and QP would be tied to specific species groups, areas, and sectors.

The assignment of QP would constitute a revocable privilege to harvest a certain portion of the trawl sector's allocation within a given year, which would not constitute a permanent right or privilege. NMFS and the Council would review the program at regular intervals to determine whether the program should be continued. Results of these reviews could lead to dissolution of the program, revocation of QS, or other fundamental changes to the program. The first review would occur no later than 5 years after implementation, with subsequent reviews, if applicable, at 4-year intervals after that. Holders of QS should remain cognizant of this fact when making decisions regarding their QS, including the buying, selling, and leasing of these shares.

2. IFQ species

IFQ requirements would apply for most species of groundfish under the

FMP (although some would still be managed collectively at the stock-complex level, such as remaining minor slope rockfish). Dogfish and some groundfish species rarely caught by trawl gear would be excluded from the IFQ program. T o ensure that OY for species not covered by the IFQ are not exceeded, catch of those species would be monitored.

QS would be assigned for the following species: lingcod, Pacific cod, Pacific whiting, sablefish north of 36° N. lat., sablefish south of 36° N. lat., 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 rockfish, yelloweye rockfish, minor rockfish north slope species complex, minor rockfish north shelf species complex, minor rockfish south slope species complex, minor rockfish south shelf species complex, Dover sole, English sole, petrale sole, arrowtooth flounder, starry flounder, and the "Other Flatfish" stock complex.

The purpose of covering species with quota is to provide a catch-control tool to ensure that management targets are adhered to and that other sectors are not affected by higher-than-expected catch levels in the trawl fishery, or both. In determining which species to recommend for coverage, the Council considered cases in which it would not be necessary or appropriate to cover certain species, such as species that are inaccessible to groundfish trawl gear, species that are constrained by the catch of other species, species caught predominantly within state waters, and species encountered in very small volumes. For these types of species, management through IFQ is not necessary for successful management of fishing mortality.

For species not covered by IFQ, trip limits and set-asides may still be used and would be implemented through the biennial specification process.

For Pacific halibut taken as bycatch in the IFQ fishery, Amendment 20 would require halibut individual bycatch quota (IBQ) to cover the mortality of the incidental catch of Pacific halibut in the groundfish trawl shore-based fishery. This would be a change from the current trawl fishery in which there is no cap on the amount of halibut caught, discarded, or killed. Retention of halibut caught under the IBQ would not be allowed, which is consistent with the current regulations. The purpose of establishing an IBQ would be to prevent the trawl fishery from preempting or constraining the directed halibut fishery. The level of halibut mortality would be limited by the total catch limits proposed in Amendment 21, if that amendment is approved.

3. Who can participate?

While initial issuance of QS would be limited to Limited Entry permit owners based on catch history, and whiting shoreside processors based on processing history, after the initial issuance, QP would be immediately transferable in increments of whole pounds. In addition, after the first 2 years, QS would become transferable as well. The eligibility requirements for owning QS and QP would be very broad, allowing anyone who meets the following criteria to own them: A U.S. citizen, permanent resident alien, or corporation, partnership, or other entity established under the laws of the United States or any State that is eligible to own and control a U.S. fishing vessel with a fishery endorsement.

a. Initial Issuance

The Council considered which groups should receive QS by initial issuance (vessel owners, permit owners, processors, communities, skippers and crew, or general public through auctions, etc.). In consideration of many factors—including but not limited to dependence on the fishery, economic and market factors, fairness and equity, community impacts, the ability to promote stewardship, and participation history—the Council recommended dividing the initial issuance as follows: The Council recommended that harvesters (those holding LE permits for trawl vessels) be given an initial allocation of 90 percent of the non-whiting QS and 80 percent of the whiting QS. Ten percent of the QS for non-whiting species would be set aside for an adaptive management program (AMP), and eligible shoreside processors would receive 20 percent of the whiting QS. After the first 2 years, transferability would likely affect these initial distribution ratios.

The AMP is intended to be used after the first 2 years to address the following objectives: Community stability, processor stability, conservation, and unintended or unforeseen consequences of IFQ management. During the first 2 years of the program, the AMP QP would be issued ("passed through") to all QS holders pro rata. During the first 2 years of the program, the Council intends to develop the procedures and formulas for distributing the AMP quota set aside starting in year 3 of the program; this could require a recommendation to NMFS, as well as a proposed and final rulemaking in order to approve and implement it.

The Council also considered whether the initial issuance of QS in the harvesting sector should be allocated to the vessel owner or the LE permit owner. Because the ownership of the permit better reflects the amount of investment in the fishery than the ownership of the vessel, and the permit is what authorizes the participation in the fishery, the Council recommended attaching the initial issuance to the qualifying permits. Subsequent transfers, as well as potential additional distributions, would allow for additional groups to buy into the fishery.

The Council also considered the highly controversial issue of allocation of harvest shares to processors. Several alternatives concerning the initial issuance of harvest QS to processors were considered, ranging from fifty percent of QS for all whiting and non-whiting IFQ species, to zero percent of QS for all IFQ species, to amounts within this range for whiting only. In its deliberation on this issue, the Council explored the issue of investment in the fishery, the role of ownership of QS in the conservation benefits of a catch share program, and the importance of a strong working relationship between the community, processors, and the harvesters. The Council's final recommendation was to provide to eligible shoreside processors twenty percent of the initial issuance of whiting QS only. The Council's rationale in choosing the preferred alternative focused on the need to carefully consider the balance of market power between harvesters and processors, as well as the importance to communities of maintaining processing capabilities along the coast. The Council believed that an initial allocation of twenty percent of the whiting resource to eligible shoreside processors struck an appropriate compromise among these multiple factors. In addition, the Council believed that the AMP could be used to lessen potential impacts to processors and communities.

i. Eligibility and Qualifying Criteria for Initial Issuance of QS

Both harvesters and shore-based processors could receive QS permits if they meet the initial eligibility and qualifying criteria.

(A) Eligibility and Qualifying Criteria for Harvesters

A harvester may apply for initial issuance of both whiting and non-whiting QS. To be eligible, the harvester

would need to own a LE trawl-endorsed permit. The Council considered that the significant investment in vessels and permits provide a good indicator of who should be eligible to apply among the fleet.

After considering several possible time periods to serve as the qualifying period, the Council recommended the years 1994–2003 for non-overfished species. These years represent the period of time from the beginning of the license limitation period through the announcement of the trawl rationalization control date. Dates prior to 1994 would not have permit histories because the LE system under which the permits were issued was not implemented until 1994. Other potential start dates between 1994 and 2003 were considered, including 1997 (the first year of fixed allocations among the three whiting sectors), 1998 (to exclude older histories), 1999 (the year of the first major reductions in response to overfished determinations), and 2000 (the year disaster was declared and fishing opportunities were significantly constrained and modified). The Council also considered 2004 as a later end date to the qualifying period, but determined that using 2004 would reward speculative entrants who chose to ignore the control date, create perceptions of inequity, and undermine the ability of the Council to use control dates in the future.

The recommended range of years from 1994–2003 would include fishing patterns from under a variety of circumstances, would recognize long-time users of the fishery, and is intended to mitigate disruptive effects experienced by communities as a result of geographic effort shifts. In addition, the dropping of the two worst years for whiting, or the three worst years for non-whiting, as well as the calculation of "relative history" (described below), is intended to mitigate against hardship cases and could reduce the requests regarding special circumstances and appeals.

Determination of overfished species QS would be based upon bycatch rates for different target species and areas and vessel logbook area distribution data from the years 2003–2006. This time period is used because the Council intended to accommodate more recent fishing patterns and spatial trends—and to provide the allocations of bycatch to those most in need of such allocations for the purpose of targeting healthy stocks. The Council declined to use catch history of these species as a basis for allocation because it would reward those who targeted these species in recent years.

(B) Eligibility and Qualifying Criteria for Processors

A shoreside processor may apply for initial issuance of whiting QS only. To be eligible, the processor would need to have received at least 1 metric ton of whiting from whiting trips (defined as a fishing trip where greater than or equal to 50 percent of all fish reported on the state landing receipt is whiting) in each year of at least two of the years from 1998–2004. The Council considered the greater likelihood of transient participation among processors, and therefore included the additional criteria of the minimum receipt requirement to demonstrate substantial participation.

For eligibility for initial issuance, "shoreside processor" would be defined as an operation 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 activities, which include cutting groundfish into smaller portions; freezing, cooking, smoking, or drying groundfish; packaging that groundfish for resale into 100 pound units or smaller for sale or distribution into a wholesale or retail market; and the purchase of live groundfish from a harvesting vessel and redistribution in to a wholesale or retail market. Entities that received fish that have not undergone at-sea processing or shoreside processing and sell that fish directly to consumers would not be considered a processor for purposes of QS allocations.

The best official data that can be used to identify a processor that processed whiting on shore are the state landing receipts signed by the first receiver of the whiting. In a few cases, the first receiver that signed the landing receipts is not in fact the first processor of the whiting. Because of this, the process established to issue whiting QS to processors will allow the first receiver to apply for the QS. If the first receiver is not in fact the first processor, these regulations establish a process whereby the initial issuance of the QS could be issued to the first processor through agreement by the first processor and first receiver, or by a separate request for correction submitted by the first processor.

(C) Calculation of QS

The Council developed formulas to determine initial issuance allocations of QS. The allocation formulas are based on vessel landings or processor receipt histories within the shoreside sector. Under the proposed rule, NMFS would use data from the Pacific Fisheries Information Network (PacFIN) of the Pacific States Marine Fisheries Commission to derive these histories.

In developing the allocation formulas, the Council considered whether to calculate QS based on a harvester's landings or processor's receipt history as expressed in absolute pounds or by the applicant's relative history. Relative history computes an applicant's history as a percentage of effort within the sector, rather than in absolute pounds, in order to take into account changes in fishing and processing opportunity between years. An example to illustrate the concept of relative history can be shown using a hypothetical fishery with one species, three permits, and four years. The permits' absolute catch history for each year, expressed as species weight, follows:

	Year 1	Year 2	Year 3	Year 4
Permit 1	300	100	200	200
Permit 2	500	600	300	200
Permit 3	400	1200	400	100
Sector Total	1200	1900	900	500

The relative history for each permit would express each permit's catch in terms of a percentage of the total catch. Thus, in this hypothetical example, the permit's catch history would be divided by the total catch history of all permits in the sector. The relative history of this hypothetical fishery would look like this:

	Year 1 (percent)	Year 2 (percent)	Year 3 (percent)	Year 4 (percent)
Permit 1	25	5	22	40
Permit 2	42	32	33	40
Permit 3	33	63	44	20
Sector Total	100	100	100	100

For calculating QS, some calculations drop years with the lowest relative history before summing all relative histories, with the QS determined by dividing the permit's total relative histories by the aggregate total for the sector. This can be shown in this hypothetical example by demonstrating one dropped year as follows (each permit's lowest relative history is crossed out and not counted in the total relative history for the permit or year in which it occurs):

	Year 1 (percent)	Year 2 (percent)	Year 3 (percent)	Year 4 (percent)	Total (sum of relative histories, less worst year) (percent)	QS Allocation (permit total relative history/total of sector relative histories) (percent)
Permit 1	25	~~5~~	22	40	87	25.36
Permit 2	42	~~32~~	33	40	115	33.53
Permit 3	33	63	44	~~20~~	140	40.82
Sector Total (less worst years)	100	63	100	80	343	100.00

The calculation of relative history uses all catch history associated with the sector, regardless of whether all of that catch qualifies for QS, in order to demonstrate the permit or processor's actual performance relative to other participants.

The Council recommended specific allocation formulas for determining the initial amount of QS each eligible entity would receive. For harvesters, calculation of QS under this program would differ based on the eligibility of the underlying permits. The QS associated with the history of permits retired in the buyback program for all species (except incidentally-caught overfished species other than canary) would be distributed equally among the remaining qualified permits. The QS pool associated with the buyback permits would be the buyback permit history as a percent of the total fleet history for the allocation period, based on absolute pounds with no dropped years or other adjustments (about 44 percent of the QS would be allocated in this fashion).

The remaining harvester QS after computing the equal distribution would be calculated based on the history associated with each harvester's own current limited entry trawl permit. Different allocation formulas are used for whiting trips and non-whiting trips, as well as different formulas for target species and incidentally-caught overfished species in non-whiting trips. For initial issuance, a whiting trip would be defined as a fishing trip where greater than or equal to 50 percent of all fish reported on the state landing receipt are whiting (a non-whiting trip for purposes of initial issuance would be a fishing trip where less than 50 percent of all fish reported on the state landing receipt are whiting). For calculating QS based on a permit's landing history, NMFS would combine the landings histories of permits that have been combined. If two or more permits are registered to a single vessel, then NMFS would divide the landings history evenly among the permits. Landings history associated with provisional "A" permits that did not result in an "A" permit and landings associated with "B" permits would not be used; these permits no longer exist.

Within the regulations deemed by the Council as necessary or appropriate under the Magnuson Act, there were regulations where the Council expected NMFS to undertake the following when allocating catch history: "After applying standard PacFIN species composition algorithms and where the resulting species categorizations do not match IFQ species categories, NMFS will assign species to an IFQ species category based on other information from state landings receipts or logbook information in PacFIN." As discussed in Appendix A to the Draft Environmental Impact Statement (DEIS) for Amendment 20 (*see* Tables A–57 and A–58), most of this issue concerns unspecified rockfish within the minor rockfish north and south IFQ categories. NMFS is unsure that such an analysis can be reasonably undertaken given the Council's staff estimate that about 25,000 fish tickets would have to be reviewed. As noted in Appendix A, this could be a source of appeal: "Another area in which some discretion will be exercised is the classification of fish ticket records for which species remains unspecified, even after the application of species composition information (unspecified flatfish and unspecified rockfish). Unspecified flatfish can be reasonably assigned to the "Other Flatfish" category. Unspecified rockfish is most likely remaining shelf rockfish but might also be remaining nearshore rockfish (outside the scope of the IFQ program) or remaining slope rockfish. A more accurate determination may be made by considering other species listed on the fish ticket as well as any logbook data that can be correlated with a particular trip. Judgments made in the application of this ancillary data to determine the correct attribution for unspecified rockfish may be a source of appeal. Data on the extent of this issue is provided in Section A–2.1.3. The precautionary note regarding changing fish tickets is included in response to rumors that during the license limitation program implementation state agency personnel were changing fish tickets at fishermen's requests without realizing the implications with respect to the license limitation permit issuance process."

NMFS highlights this issue to request comments specifically on whether the agency should use information other than PacFIN data to assign species to an IFQ species category when such action would be impracticable in that it would be extremely time consuming and result in information that would not necessarily be accurate.

The Council also adopted language that stated: "History for illegal landings will not count for allocation of QS. Landings made under non-whiting Experimental Fishing Permits (EFPs) that are in excess of the cumulative limits in place for the nonEFP fishery will not count toward an allocation of QS." However, the draft regulations deemed as necessary or appropriate under the Magnuson Act, by the Council stated that "Landings identified as being in excess of the cumulative landings limits in place (e.g., illegal landings, non-whiting EFP landings, etc.) will not count toward the allocation of QS." The proposed regulation at § 660.140(d)(8)(iii)(A)(*5*) differs from what the Council initially deemed in order to match the language adopted by the Council. NMFS would rely upon information reported into the state fish ticket system (as documented in the PacFIN database) to identify such landings.

Allocations of QS based on a LE trawl-endorsed permit's catch history from whiting trips would be calculated from the permit's relative history from 1994–2003, dropping the two years with the worst relative history. Allocations for incidental catch in the whiting fishery would be made pro rata based on the qualifying permit's whiting history, meaning QS of bycatch species from whiting trips would be allocated at the same percent as whiting QS. Allocations of QS based on a LE trawl-endorsed permit's catch history for certain target species from non-whiting trips (called "Group 1" species in the proposed rule) would be calculated from the permit's relative history from 1994–2003, dropping the three years with the worst relative history.

Allocations of QS based on a LE trawl-endorsed permit's catch history for incidentally-caught overfished species from non-whiting trips ("Group 2" and "Group 3" species in the proposed rule) would be calculated by a formula that takes into account average bycatch rates based on 2003–2006 data from the West Coast Groundfish Observer Program (WCGOP), specific depth and latitude distributions determined from vessel logbook data, and the permit's QS allocations of certain target species. Bycatch rates specified in the proposed rule have been calculated by the NMFS' Northwest Fishery Science Center, and may be modified in the final rule for greater precision. To determine the weighting of various target species against which bycatch rates would be applied, NMFS would calculate a permit's estimated QP based on short-term non-whiting allocations applied to 2011 harvest specifications (initial calculations would be based on projections, subject to revision pending final specifications). The goal would be to address the QS recipient's need to cover incidental catch on non-whiting trips under current fishing practices. In order to make sure each qualifying permit receives an initial allocation of canary rockfish QS ("Group 3" species in the proposed rule), as described above, the landings history of vessels bought out through the buyback program for canary rockfish would be distributed evenly among qualifying QS permits.

Allocation of QS from whiting trips and from non-whiting trips would be calculated separately and weighted according to short-term allocations between whiting and non-whiting as set forth in 660.140(d)(8). The resulting amounts would be combined into a single QS for each species. Although not specifically addressed in the Council motion, for the first year of implementation only, NMFS would round overfished species QP up to the nearest pound for qualifying QS permits that would receive greater than zero, but less than one pound of an overfished species. This is intended to help mitigate the effects of initial issuance of overfished species QS.

Halibut IBQ for harvesters would be calculated using a formula based on QS for arrowtooth flounder and petrale sole, two target species that correlate to halibut bycatch. The formula would include additional factors such as area distribution of fishing effort and bycatch rates from WCGOP data applied to projected 2011 specifications, as set forth in full at § 660.140(d)(8). As with the QS calculation for overfished species, bycatch rates specified in the proposed rule may be modified in the final rule for greater precision.

For shoreside processors, calculation of whiting QS would be based on the relative history of the eligible processing company's receipts of whiting from whiting trips. NMFS would calculate whiting QS based on the processor's relative history from 1998–2004, dropping the 2 years with the worst relative history. NMFS would rely on PacFIN records to determine the first receiver/processor. A key consideration for this formula was to minimize disruption in the processing sector. An appeals process would allow NMFS to subsequently reassign landings history to another shoreside processor, if applicable.

ii. How To Obtain an Initial QS Permit

(A) Application and Correction

The proposed rule, at § 660.140(d)(8), sets forth two ways for qualified applicants to apply for a QS permit, either by responding to NMFS' prequalification materials, or by requesting a blank application and completing and submitting it to NMFS with evidence of qualification.

NMFS would mail "prequalified applications" to the eligible LE trawl permit holders and first receivers that appear to qualify for QS. The prequalification materials would show the basis for NMFS' calculations. If an eligible applicant does not receive a prequalified application from NMFS, the applicant may request a blank application from NMFS. The applicant would be required to complete the application and submit it to NMFS, along with additional information, by the application deadline. Failure to submit a complete application package to NMFS by the application deadline date would result in forgoing the ability to qualify for initial issuance of QS.

In preparation for this process, NMFS published, on January 29, 2010 (75 FR 4684), a final rule on data collection that included providing notice to participants in the industry to review their catch data for purposes of ensuring that the QS and other calculations undertaken by NMFS would be based on the best available data. In the February 19, 2010, "Small Entity Compliance Guide" associated with this rule, NMFS provided the following instructions: "For those individuals wanting to participate in the IFQ fishery, the data source is the Pacific States Marine Fisheries Commission's PacFIN database and includes the following: 1. Landings data during 1994–2003 from state fish tickets, as provided by the states to the PacFIN database, would be used to determine initial allocation of IFQ QS for the shore-based whiting and non-whiting harvesters and for the shore-based whiting processors. 2. The first receiver listed on the state fish ticket, as recorded in PacFIN, would be used to determine to whom whiting processing history should be attributed for whiting QS. Through NMFS' initial issuance process for QS, there would be an opportunity to reassign the whiting processing history. 3. State logbook information from 2003 through 2006, as

recorded in PacFIN, would be used to determine the area fished for individual permits (depth and latitudinal strata associated with permits). This information would be used in a formula to determine a permit's initial allocation of overfished species. For those seeking to participate in the MS or C/P fisheries, the data sources are from the NMFS' Northwest Fisheries Science Center's Pacific whiting observer data in NORPAC (NORPAC data). Observer data from the NORPAC database would be used to determine initial issuance of MS permits, mothership catcher vessel (MS/CV) endorsed permits, and C/P endorsed permits and allocation of whiting catch history assignments on MS/CV endorsed permits. Information on trawl-endorsed groundfish limited entry permits or permit combinations would come from limited entry permit records at NMFS, Northwest Region, Sustainable Fisheries Division, Fisheries Permits Office."

All potential participants in the trawl rationalization program were requested to check the data that NMFS would use for initial issuance of permits and allocations of harvest privileges. This includes potential QS permit owners in the IFQ fishery, including harvesters and shore-based whiting processors. It also includes potential coop participants that may be issued a MS permit, a MS/CV endorsement with an associated whiting catch history assignment, or a C/P endorsement.

Participants were instructed that this would be the only opportunity for potential participants in the trawl rationalization program to review and, if necessary, correct their fishery data prior to initial issuance of permits and allocations. At that time, NMFS stated that it was very important that this information be reviewed prior to the publication of the proposed rule for the trawl rationalization program, so that when NMFS extracts a copy of the databases for the initial issuance of permits and allocations, the data is correct. Participants were further instructed that NMFS would not allow this data to be corrected during the initial issuance and appeals process. Only NMFS' extraction, expansion, or aggregation of the data would be subject to appeal, not whether the raw data NMFS used was correct.

Because none of the data is publicly available at the individual level, for confidentiality reasons, NMFS provided instructions and Federal and state contact information for participants to use in requesting data and correcting data. (In support of this process, the PSMFC developed scripts for the States to use in providing fishermen and processors their data.) NMFS also indicated that if existing data contains a mistake, such as a transcription error, then the participant may request a correction. However, requests to add new data to PacFIN or NORPAC would not be considered. For logbooks, only existing logbook information in PacFIN may be corrected (i.e., only transcription errors); no new logbooks dating back to 2003 through 2006 would be accepted. Any revisions to an entity's fish tickets or logbooks would have to be approved by the state in order to be accepted by NMFS.

NMFS previously announced that the agency intended to extract a copy of the databases for the purposes of initial issuance on the date of publication of the proposed rule for initial issuance (i.e., the date of publication of this proposed rule). However, upon further consideration, NMFS has chosen to specify the date of extraction as July 1, 2010, in order to give the public more time to verify their data. Potential participants have had notice of the significance of verifying their data, and this extension to July 1, 2010, gives them additional time.

NMFS is proposing in this rule that the only basis for appeal would be the same as the basis for corrections which are errors in NMFS' extraction, aggregation, or expansion of data, including: Errors in NMFS extraction of landings data from PacFIN; errors in NMFS extraction of state logbook data from PacFIN; errors in NMFS application of the QS allocation formula; errors in the identification of the permit owner, permit combinations, or vessel registration as listed in NMFS' permit database; and errors in ownership information for first receivers and shoreside processors. The proposed rule, at § 660.140(d)(8), sets forth requirements for requesting these corrections. If an applicant does not accept NMFS' calculation in the pre-qualified application, the applicant would be required to identify in writing to NMFS which parts of the application the applicant contends to be inaccurate, and provide specific, credible information to substantiate any request for correction by the application deadline date. The proposed rule also sets forth requirements for reassignment of whiting landings history for shoreside processors, which require a written request signed by both parties providing specific information. An additional basis for requesting a correction or appeal for whiting QS based on shoreside processing would also be an allegation that the first receiver to which a QS permit and QS have been assigned was not in fact the first processor of the fish included in the qualifying history.

In support of this process, the Council provided the industry a series of tables with its preliminary estimates of QS. (*See http://www.pcouncil.org/groundfish/fishery-management-plan/fmp-amendment-20/trawl-rationalization-schedule-and-quota-share-allocation-tables/#qs*). The Council provided a QS allocation table for permits that shows the estimated initial allocations of QS on a permit-by-permit basis, as developed for purposes of analysis. The last line of the tables provides the whiting allocations for the MS/CV-endorsed permit catch history assignments that would be part of the MS coop program. The permit identifiers were masked for confidentiality reasons; the unmasked number for any particular permit is available only to the owner of that permit. The Council office mailed those numbers to permit owner. (A list of the owners of LE permits is available from the NMFS Limited Entry Permit Office Web site at *https://nwr2.nmfs.noaa.gov/nwp_public_ss/HOME/index_pub_permits_ss.cfm*.)

The Council described how its QS estimates were calculated. The QS estimates are based on 1994–2003 state fish ticket information acquired in the fall of 2006 from the PacFIN database, port sampler information which records the average species mixes for species reported on fish tickets as a group (*e.g.,* "Other Rockfish"); WCGOP data from 2003 to 2006; and individual permit logbook information for 2003 through 2006. With respect to the logbook information, if a permit was not active from 2003–2006, fleet-wide averages were used in place of the permit-specific logbook information. The allocation formulas that were applied are those from Section A–2.1.3 of the Council recommended program.

A similar table was provided for initial estimates of whiting QS that may be allocated to whiting processors. Twenty percent of the total whiting QS would be allocated to processors, as determined for the purpose of analysis. For processors to qualify they would be required to first meet a recent participation criteria, which requires that—in each of at least 2 years from 1998 through 2004—a processor would be required to have processed at least one metric ton (mt) from a vessel making a whiting trip. Available data indicates there are 11 companies that meet this criterion. Two tables were provided for processors; one provided a list of the companies meeting the recent participation criteria and the other showed an estimate of the amount of QS

projected for each company. For the QS estimates, the identity of the processor expected to receive the QS was masked, as was done for the permit owners.

The Council indicated that the actual QS allocations would be determined by NMFS and may vary from these estimates for a variety of reasons, including (but not limited to):

- A change in the allocation of harvest between shore-based whiting and non-whiting sectors or a change in the QS initial allocation formula arising through a partial disapproval of the program by NMFS;
- A change in the rebuilding status for overfished species or a new finding that a particular species is overfished, since the shoreside whiting/non-whiting sector split and QS allocation formulas for overfished species differ from that of non-overfished species; and
- The correction of an error in the fish tickets or logbooks on record for a particular permit (such a change may cause adjustments to the initial allocations for all other permits).

The Council also provided a hypothetical conversion of the initial QS allocations to QP based on OYs for the 2010 fishery and the trawl sector allocations recommended by the Council in April 2009. This is hypothetical because (1) actual QP available to the fishery, if and when this program begins after 2010, would differ from the 2010 example used here, and (2) the estimated QS for a permit may vary from the final actual QS issued to that permit, for the reasons cited above.

The November 11, 2009, update of these tables included modification of the canary QS allocations pursuant to actions taken by the Council at its November 2009 meeting and modification of the catch area assignments. Modification of the catch area assignments primarily affected the allocation of southern sablefish and southern shortspine thornyheads. The Council also noted that for some species, such as bocaccio, the trawl sector allocations may be greater than those assumed in the example. On December 18, 2009, the Pacific halibut and MS whiting estimates were added. On January 25, 2010, the Processor Whiting QS Allocation Table was added. This table was revised on April 9, 2010.

Applicants would be required to submit completed, signed, notarized applications by the deadline date (60 days after date of publication of the final rule in the **Federal Register**). The proposed rule sets forth the requirements for complete applications at § 660.140(d)(8). To be complete, the application would be required to include: Certification that the applicant qualifies to own QS; indication as to whether the applicant accepts NMFS' calculation of initial issuance of QS provided in the prequalified application, or credible information that demonstrates their qualification for QS; and a complete Trawl Identification of Ownership Interest Form identifying all individuals with 2 percent or greater interest in the permit. 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. NMFS may request additional information of the applicant as necessary to make an initial administrative determination (IAD) on initial QS issuance.

(B) IAD and Appeals

NMFS would issue an IAD for all complete, certified applications received by the application deadline date. If NMFS approves an application for initial issuance of QS, the applicant would receive a QS Permit specifying the amounts of QS for which the applicant has qualified and the applicant would be registered to a QS Account. If NMFS disapproves an application or a portion of the QS applied for, the IAD would provide the reasons NMFS did not approve or only partially approved the application. If the applicant does not appeal the IAD within 30 calendar days of the date on the IAD, the IAD would become the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

An applicant who disagrees with NMFS' determination on the application would be required to appeal within 30 days or the IAD would become final. The proposed rule sets forth procedures and timelines for making appeals at § 660.25(g). Only the applicant may appeal the IAD. In this proposed rule, NMFS is proposing that there is no option to appeal a decision based on incomplete or inadequate data; the only basis for appeal would be the same as the basis for corrections which are errors in NMFS' extraction, aggregation, or expansion of data, including: Errors in NMFS extraction of landings data from PacFIN; errors in NMFS extraction of state logbook data from PacFIN; errors in NMFS application of the QS allocation formula; errors in identification of the permit owner, permit combinations, or vessel registration as listed in NMFS permit database; and errors in ownership information for first receivers and shoreside processors. An additional basis for appeal for whiting QS based on shoreside processing would also be an allegation that the first receiver to which a QS permit and QS have been assigned is not in fact the first processor for those fish. The appeal would be required to be in writing and allege credible facts to show why the criteria have been met. In addition, § 660.140(d)(8) of the proposed rule specifies that certain issues may not be appealed, including but not limited to: The accuracy of the permit landings data or shoreside first receiver landings data in the dataset extracted from PacFIN by NMFS on July 1, 2010.

(C) Permit Pending Appeal

The proposed rule would address the status of permits pending appeal as follows. For permits and endorsement qualifications and eligibility appeals (i.e., QS permit (permit eligibility, not amounts), MS permit, MS/CV endorsement, C/P endorsement), any permit or endorsement under appeal may not fish in the Pacific Coast groundfish fishery until a final decision on the appeal has been made. If the permit or endorsement is issued, the permit or endorsement would be effective upon approval, except for QS permits, which would be effective at the start of the next fishing year.

For a QS amount for specific IFQ management unit species under appeal, the QS amount for the IFQ species under appeal would remain as that previously assigned to the associated QS in the IAD. The QS permit could be used to fish in the Pacific Coast groundfish fishery with the QS amounts assigned to the QS permit in the IAD. Once a final decision on the appeal has been made—and if a revised QS amount for a specific IFQ species would be assigned to the QS permit—the QS amount associated with the QS permit would be effective at the start of the next calendar year.

b. Transfers

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. These provisions would allow for new entrants into the fishery; for example, a crew member could slowly purchase amounts of quota. They would also allow for ownership of QS by communities, non-governmental organizations, or other entities.

This transferability would be expected to facilitate bycatch reduction and efficiency. Through the transfer of QS/QP (bought and sold or "leased" through private contract), it is anticipated that those best able to avoid catching overfished species, and those who are most efficient, would increase the amount of QS/QP registered to them, while those who consistently have high bycatch rates or operate less efficiently might choose to sell their QS and leave the fishery.

c. Requirement to Transfer QP Into Vessel Account

Each year, all QP would be required to be transferred into a vessel account by September 1. This requirement is intended to encourage its availability for use by the fleet.

d. Distribution of Additional Quota Shares

In Amendment 20, the Council indicates that it would consider the use of an auction or other non-history-based method when distributing QS that may become available after initial allocation. This may include quota created when a stock transitions from overfished to non-overfished status, quota not used by the AMP, quota forfeited to "use it or lose it" provisions, and any quota that becomes available as a result of the initial or subsequent reviews of the program. The method of distribution would be designed to achieve the goals of Amendment 20, including minimizing the adverse effects from an IFQ program on fishing communities to the extent practical.

4. Ownership Limitations and Accumulation Limits

While transferability is an important component of the Amendment 20 program, there would also be accumulation limits on the amount of QS or QP that could be controlled by a person. The intent of these limits is to prevent excessive control of quota by a participant. The MSA specifically requires the establishment of a maximum share that each limited access privilege holder is permitted to hold, acquire, or use.

a. Limits

In developing limits, the Council noted the tension between allowing sufficient accumulation to improve the efficiencies of harvesting activities and preventing levels of accumulation that could result in adverse economic and social effects. In determining the appropriate levels, the Council considered a wide range of factors such as social benefits, impact on labor, impacts on processors, impacts on harvesters, impacts on the public, the number and sizes of firms, within-sector competition, market power, efficiency, geographic distribution, communities, and fairness and equity.

Amendment 20 would establish limits (by species group and area) on the amount of QS an individual can control (control limits). Control limits would apply to individual species, species groups (and area, for some species), expressed as a percentage of the shore-based IFQ program's allocation. The proposed control limits are set forth in the proposed rule in the table at § 660.140(d)(4). In addition, the proposed rule would establish a control limit for the amount of non-whiting QS a person may control in aggregate.

To determine a person's aggregate amount of non-whiting QS, the Council adopted a formula that would convert QS to poundage to reflect the weighting between individual stocks. Because individual non-whiting species' stock fluctuations would affect a QS owner's aggregate QS holdings, the Council motion states that "This conversion will always be conducted using the trawl allocations applied to the 2010 OYs, until such time as the Council recommends otherwise" and that "QS for each species will be multiplied by the shoreside trawl allocation for that species." However, because no shoreside trawl allocation existed in 2010 that could be applied to the 2010 OYs, it is not clear how NMFS would calculate the aggregate non-whiting control limit. If the Council intended to use the OYs from the initial implementation year (i.e., if it were under the mistaken impression that 2010 was to be the implementation year) and the 2011 OYs were used, there would be no problem determining the aggregate non-whiting amount, as the sector allocation could be calculated by deducting the at-sea sector set asides for each species from the limited entry trawl sector allocation for that species. In 2010, however, non-whiting target species did not have at-sea set asides that could be deducted from the limited entry trawl sector allocation to calculate a shoreside trawl allocation. NMFS specifically requests comment on this issue to address in the final rule.

NMFS would determine and track ownership interest in QS to determine if individuals are within set limits, both at the initial allocation stage and during the operation of the program. As part of the IAD on the initial application, NMFS would indicate if the QS Permit owner has QS in amounts that exceed the accumulation limits and are subject to divestiture provisions set forth in § 660.140(d)(4). NMFS would determine ownership interest based on the "Individual and Collective Rule," which means that the QS that counts toward a person's accumulation limit would include both the QS owned by that person, and a portion of the QS owned by an entity in which that person has an interest.

The proposed rule contains additional interpretation of the word "control," which is intended to address the Council's concern that a person could control QS by controlling QP. The proposed rule is intended to set the boundaries around QS control limits, including QP but excluding QP in a vessel account if subject to separate accumulation limits. If control of QP is not subject to the QS control limits, a person could use control over QP to control a percentage of the harvest from the fishery in excess of that intended under the QS control-limit percentage. In other words, if the QS control limits are not extended to QP, there is no assurance that QS control limits would perform their intended function. At some point, QP control amounts to the functional equivalent of QS control. The following examples illustrate undesirable forms of control:

Example 1. A QS holder enters into a multi-year agreement under which another person has the right to direct how the QS holder's QP is used. The person controlling the QP has essentially gained control of the QS even beyond the duration of the QP issued during the first year of the agreement.

Example 2. Vessel financing arrangements under which a lender who is engaged in the seafood business exercises control over the catch delivered by a fisherman-borrower are not uncommon. These arrangements sometimes require that the fisherman deliver his catch as the lender directs, and provide for a method of calculating "market value" of the catch. In other cases, the lender may hold a right of first refusal ("ROFR") over the catch. While the ROFR does not in and of itself require that the fisherman deliver to the lender, it provides the lender with the authority to decide on a delivery-by-delivery basis whether the catch would be delivered to a third party or the lender, and thereby effectively gives the lender control over catch. If a single lender entered into arrangements of this type with a number of fishermen, the lender could potentially control a percentage of QP for the fishery in excess of the QS control limit percentage through those arrangements, without having asserted direct control over the fishermen's QS.

Example 3. Crew assign QP to a vessel, or fishermen transfer QP to a vessel but do not grant control over QS. This would not count toward QS control limits; however, it would indicate control if long term control of disposition of the QP derived from the QS were granted.

Similar regulatory language would apply a control limit to Pacific halibut IBQ.

b. Divestiture

Amendment 20 would establish different rules for complying with the accumulation limits depending on when the permits were transferred. For permits transferred prior to November 8, 2008, and which exceed the accumulation limits, the permit owner would initially receive the entire amount of QS for which the permit qualifies. However, the permit owner would be required to divest of the amount in excess of the limit sometime during years 3 and 4 of the IFQ program, and, at the end of year 4 of the IFQ program, any QS owned or controlled by a person in excess of the accumulation limits would be revoked and redistributed to the remainder of the QS owners in proportion to the QS holdings in year 5. No compensation would be due for any revoked shares.

For permits transferred after November 8, 2008, the permit owner would only be able to receive QS amounts that are within the appropriate limits. The initial issuance of QS would be reduced in order to comply with the applicable control limits. For non-whiting species, whether NMFS applies the aggregate non-whiting control limit first or applies individual non-whiting species control limits first may affect the initial QS allocation for each species. Generally, application of the aggregate non-whiting control limit first would result in an allocation that more closely reflects the weighting of non-whiting species in the permit's history. NMFS highlights this issue to seek specific comment on which approach to use.

5. QS Account/Annual Renewal

Once a person is found eligible for a QS permit, NMFS would issue QS and register it to a QS account. At the beginning of each year and after QS permit renewal, NMFS would assign a specific amount of QP representing the QS percentage to the account. QS owners would be required to transfer their QP from their QS account to a vessel account in order for those QP to be fished.

6. Overages and Carryovers

Amendment 20 would provide flexibility by allowing a 30-day grace period after which an overage occurred to acquire QP into the vessel account to cover the overage. However, during this 30-day period, no more fishing could occur and no QS transfers could take place until the account is settled. If an overage shows on the fish ticket at the time of landing or in the vessel account at any time after the landing, the clock would start when any data/documentation from the trip which caused the overage is available or the vessel account shows there is an overage.

To the extent allowed by the conservation requirements of the MSA, Amendment 20 would include a "carryover allowance" that would allow surplus QP in a vessel account to be carried over from one year to the next or allow a deficit in a vessel account for one year to be carried over and covered with QP from a subsequent year. Surplus QP could not be carried over for more than 1 year and could not exceed in 1 year the carryover allowance as described below.

A vessel with a QP surplus at the end of the current year would be able to use that QP in the immediately following year, up to the limit of the carryover allowance (see below). However, if there is a decline in the OY, the amount of QP carried over as a surplus would be reduced in proportion to the reduction in the OY.

A vessel with a QP deficit in the current year would be able to cover that deficit with QP from the following year without incurring a violation if the amount of QP it needs from the following year is within the carryover allowance and the QP are acquired within the specified time limits.

The carryover amount for a deficit is based on the amount of QP in the vessel account at the end of the 30-day period during which a vessel would be required to cover its overage. The carryover amount for a surplus is based on the amount of QP in the vessel account at the end of the year.

The carryover allowance would be limited to up to 10 percent carryover for each species. This would apply to both non-overfished species and overfished species. The percentage would be calculated based on the total pounds (used and unused) in a vessel account for the current year. The percentage used for the carryover provision could be changed during the biennial specifications process.

7. Catch Monitoring and Tracking (or Tracking, Monitoring and Enforcement)

Amendment 20 would include a tracking and monitoring program to assure that all catch (including discards) would be documented and matched against QP. The Council specified that observers would be required on all vessels and shoreside monitoring (catch monitors) would be required during all offloading (100 percent coverage). Compared to status quo monitoring, this would be a monitoring and observer coverage level increase for a large portion of the trawl fleet, particularly non-whiting shore-based vessels. As a result, more accurate estimates of total mortality would be expected to benefit stock conservation goals, as well as other goals discussed herein.

The Council recommended providing NMFS flexibility to develop a monitoring program that would achieve the objectives of the trawl rationalization program. NMFS is working closely with the States and the Council to develop the details of the tracking and monitoring program, as reported by PSMFC at the April 2010 Council meeting. The details of the program would be proposed in the upcoming program components rule. As reported by PSMFC, the following tracking and monitoring components would be addressed.

Amendment 20 would require NMFS-certified at-sea observers on each vessel. These include shore-based catcher vessels, catcher vessels in the mothership sector, motherships, and C/Ps. Because this is a new program, ensuring adequate observer coverage would be particularly important for monitoring the complex suite of allocations. Observers aboard vessels would be required to adequately account for catch and bycatch in the fishery. Among his or her duties, the observer would record fishing effort and estimate total, retained and discarded catch weight by species; determine species composition of retained and discarded catch (non-whiting vessels) and document the reasons for discard; record interactions and sightings of protected species; and take biological samples from tagged fish and discards, and estimate the viability of Pacific halibut. Observers would be essential for monitoring the use of IBQ in the fishery, including the weighing and discarding of halibut bycatch.

An increase in observer and catch-monitoring coverage requirements would result in increased costs over the status quo observer program costs. There would be a combined status quo, pay-as-you-go industry funding and agency-funded observer and catch monitor system as required for each sector. 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 industry's successful transition to the new rationalized trawl fishery.

Amendment 20 would require that first receivers—the shoreside processors—sort, weigh and report all landings of IFQ species under a catch monitoring plan. First receivers would be required to hire NMFS-certified catch monitors to verify all shoreside deliveries of IFQ species, ensure that species are sorted to Federal species of species group, ensure that the fish are weighed on state-certified scales that are periodically tested, and record and submit catch data daily.

To ensure that the IFQ program goals are met and landings are tracked, first receivers would be required to submit electronic fish tickets using software provided by the PSMFC. Further, vessels would be required to use vessel monitoring systems (VMS) for purposes of indicating location of the vessels and to make declarations. In addition, there are plans to develop and require an electronic vessel logbook, but this component would not be immediately implemented.

To ensure that program goals are met to track transferrable QS and QP, NMFS is also developing an online accounting system for the tracking and trading of QS by owner and for the tracking, trading, and use of the QP that results from these QS by vessels.

8. Fees

The agency would collect fees to cover the administrative costs of issuing the QS, permit endorsements (one-time fee and annual renewal), and first receiver site licenses (annual). Amendment 20 would allow for assessing cost recovery fees of up to 3 percent of ex-vessel value, consistent with section 303A(e) of the MSA. The costs to be recovered would be the agency's costs of management, data collection, analysis, and enforcement activities. The Council would develop the methodology required by section 303(A)(e) in a trailing action.

9. Management (Accountability Measures)

If individual vessel overages (catch not covered by QP) make it necessary, area restrictions, season closures, or other measures could be used to prevent the trawl sector (in aggregate or the individual trawl sectors listed here) from going over allocations. The IFQ fishery may also be restricted or closed as a result of overages in other sectors.

10. Retention and Discard Provisions

For non-whiting vessels and whiting vessels sorting at-sea, Amendment 20 would allow discarding of IFQ species, but such discards would have to be covered by QP. Discarding of Pacific halibut would be required and would have to be covered by IBQ. Discarding of non-IFQ species and non-groundfish species would be allowed.

For whiting maximized retention vessels, discarding of fish covered by IFQ or IBQ, and discarding of nongroundfish species, would be prohibited.

11. First Receiver/Processor Permit

Amendment 20 would require processors that are the first receivers of IFQ species to obtain a site license in order to accept shoreside deliveries. A license could be issued to any site that meets the monitoring requirements.

12. Adaptive Management Program

Amendment 20 contains an AMP for the shore-based non-whiting sector that is intended to address: Community stability; processor stability; conservation; unintended and unforeseen consequences of IFQ management; and facilitating new entrants. Ten percent of the shore-based non-whiting QS would be reserved, or set aside, for the AMP. During the first 2 years of the IFQ program, the method to be used in distributing QP in years 3–5 would be determined, including the decision-making and organization structure to be used in distributing the QP set aside.

The set aside of QP for the identified objectives would be reviewed as part of the year 5 comprehensive review and a range of sunset dates would be considered, including 10-, 15-, 20-year and no sunset date options.

13. Data Collection

Amendment 20 would require expansion of the data collection program. Submission of economic data by harvesters and processors would be mandatory. Random and targeted audits could be used to validate mandatory data submissions. Information on QS transaction prices would be included in a central QS ownership registry.

14. Program Review

Amendment 20 provides for a review of the IFQ program to begin no later than 5 years after implementation of the program. The review would evaluate the progress the IFQ program has made in achieving the goal and objectives of Amendment 20. The result of this evaluation could include dissolution of the program, revocation of all or part of QS, or other fundamental changes to the program. Owners of QS should remain cognizant of this fact when making decisions regarding their QS, including buying selling, and leasing of these shares.

Amendment 20 requires the Council to consider the use of an auction or other non-history based methods when distributing QS that may become available after initial allocation. This may include quota created when a stock transitions from overfished to non-overfished status, quota not used by the adaptive management program, quota forfeited to "use it or lose it" provisions, and any quota that becomes available as a result of the initial or subsequent reviews of the program. The specific form of the auction or other method of distribution would be designed to achieve the goals of Amendment 20, specifically including minimizing the adverse effects from an IFQ program on fishing communities to the extent practical.

After the initial review, there would be a review process every four years. A community advisory committee would take part in the review of IFQ program performance.

B. Mothership Coop Program

The term "cooperative" refers to a collective arrangement among a like-minded group of individuals. Cooperatives, also called coops, are entities that are controlled by the people who use them. They differ from other business entities because they are member owned and operate for the benefit of members. The cooperatives designed under Amendment 20 are designed to coordinate harvest among members, thus they can be described as "harvest cooperatives." Under Amendment 20, each MS cooperative would annually be allocated an amount of catch based on the combined catch histories of its members for that year. As designed under Amendment 20, the harvest cooperatives for both the MS and C/P sectors would constitute a form of allocation that facilitates catch accounting down to individual vessel levels by allowing private contracts and intra-coop self-monitoring.

1. Structure Overview

The Mothership Coop Program (MS Coop Program) would apply to harvesters and processors in the MS sector of the at-sea whiting trawl fishery. The MS Coop Program would

also apply both to vessels participating in a coop as well those not participating in a coop. For those participating in coops, the program would assign to each MS coop a designated amount of harvest privilege representing a "sub-allocation" of the total MS sector allocation. MS coop membership would consist of MS/CV-endorsed permit owners who enter into a coop agreement that is accepted by NMFS. Participants in the MS coop include the catcher vessels registered to the member MS/CV-endorsed permits, LE permitted trawl vessels without an MS/CV-endorsed permit that are working with the coop, and the motherships to which the MS/CVs-endorsed permits are obligated. Once a coop agreement is accepted, NMFS would issue the coop a permit, and would assign to the coop a "sub-allocation" of catch that is derived from the catch histories of the individual MS/CV-endorsed permits in the coop.

The MS Coop Program would establish new requirements for MS permits and MS/CV permit endorsements. Similar to the shore-based IFQ program, NMFS would be required to track ownership interest in both MS permits and MS/CV-endorsed permits to determine if individual vessels are within set accumulation and usage limits, as described further below.

The vessels registered to MS/CV endorsed permits in the MS sector that do not participate in a coop would be able to fish in the non-coop fishery. The non-coop whiting fishery would be authorized to harvest the Pacific whiting remaining in the MS sector annual allocation after the deduction of all coop allocations. For non-whiting, the sub-allocation to the non-coop fishery would be in proportion to the MS/CV Pacific whiting catch history assignments for the non-coop fishery.

Participants in the MS sector would be required to declare annually in what capacity they would operate: Coop or non-coop. Additionally, MS/CV-endorsed permits operating in a coop would be required to indicate to which MS permit they would be obligated.

2. Coop Species

Pursuant to Amendment 20, hard caps would be established for the following species: Pacific whiting, Pacific ocean perch, widow rockfish, canary rockfish, and darkblotched rockfish. In addition, annual MS sector set-asides would be established for lingcod, Pacific cod, sablefish S. of 36° N. lat., chilipepper S. of 40°10′ N. lat., splitnose S. of 40°10′ N. lat., yellowtail N. of 40°10′ N. lat., shortspine N. of 34°27′ N. lat., shortspine S. of 34°27′ N. lat., longspine N. of 34°27′ N. lat., minor slope rockfish N. of 40°10′ N. lat., minor slope rockfish S. of 40°10′ N. lat., Dover sole, English sole, petrale sole, arrowtooth flounder, starry flounder, and Other Flatfish. Groundfish species with MS sector set-asides would be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on another fisheries, or conservation concerns in which case inseason action may be taken. Set-asides may be adjusted through the biennial specifications and management measures process as necessary.

The MS Coop Program would not establish allocations or set-asides for infrequently occurring species, such as shortbelly rockfish, longspine thornyhead S. of 34°27′ N. lat., black rockfish (WOC), minor rockfish north nearshore species complex, minor rockfish south nearshore species complex, CA scorpionfish, cabezon (CA only), kelp greenling, and Other Fish. Many of these occur primarily in nearshore areas where trawl gear does not operate and are mostly managed by the states. There is no market for shortbelly, and its OY is large compared to the amount of incidental catch. Other rockfish and other fish are not caught in large volumes and catch of these species would be constrained by limits on other species. Like set-asides, these species would be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on another fisheries, or conservation concerns (in which case inseason action may be taken). Annually, a specified amount of the Pacific halibut would be held in reserve as a set-aside for the Pacific whiting MS sector.

3. Who/How To Participate

The MS Coop Program would issue MS permits and MS/CV endorsements for LE permits to qualified applicants and would establish new requirements for participation.

a. Permit and Endorsement Requirements

Under the MS coop program, vessels participating as motherships would be required to be registered to MS permits. Catcher vessels fishing for a MS coop would need to be registered to a MS/CV-endorsed permit, or be registered to a LE trawl endorsed permit without an MS/CV endorsement with permission of the coop, as described below. Catcher vessels in the non-coop fishery would be required to be registered to a MS/CV-endorsed permit.

i. MS Permit Initial Issuance

The proposed program would close the MS sector by creating a LE program and requiring registration of the vessel to a new type of LE permit, an MS permit. The restriction preventing mothership vessels from operating as catcher vessels or C/Ps during a year in which they operate as motherships would be maintained. The owners of qualifying motherships would be issued MS permits. The following requirements govern the process for obtaining an MS permit.

(A) Eligibility

Generally, an owner of a vessel that processed whiting in the MS sector in the qualifying years would be eligible to apply for a MS permit. However, there would be an exception to address a vessel that was a bareboat charter during the qualifying period.

(B) Qualifying Criteria

In order for an owner of a mothership to qualify for a MS permit, the mothership would be required to have processed at least 1,000 mt of whiting in each of 2 years during the qualifying years of 1997–2003. The Council intended these criteria to recognize those participants that have substantially participated as a mothership in the Pacific whiting fishery. Using the years 1997 to 2003 is intended to reflect the time period between the date the C/P sector and the MS sector were separated from a general at-sea sector in regulation (1997) and to be consistent with the control date (2003).

(C) Application and Correction

NMFS would make a preliminary determination of whether a mothership meets the qualifying criteria using Pacific Whiting Observer data as extracted from the NORPAC database on July 1, 2010. If a mothership meets the qualifying criteria for an MS permit, NMFS would mail to the owner of the vessel an application pre-filled with qualifying information at the address of record as currently given in NMFS permit database. Pre-filled applications would be required to be completed and returned to NMFS by the application deadline date.

Owners of vessels that do not receive a prequalified application from NMFS, and believe they are qualified for a MS Permit, would be required to complete an application package (available from NMFS) and submit the completed application to NMFS by the deadline date. If an applicant fails to complete and return an application by the deadline date, the person forgoes the

opportunity to receive consideration for initial issuance of a MS permit.

If an applicant does not agree with the basis for NMFS' determination, the applicant would be required to submit, by the application deadline, a written statement identifying the incorrect information and providing credible documentation to support a correction, as set forth in the proposed rule at § 660.150(f)(6). Corrections may only be submitted for errors in NMFS' extraction, aggregation, or expansion of the dataset that was extracted from NORPAC by NMFS on July 1, 2010. Corrections may be submitted for errors in NMFS extraction of data from NORPAC, errors in NMFS calculation, and errors in the vessel registration as listed in NMFS permit database or in the identification of the mothership owner or bareboat charterer.

The current vessel owner would be required to then submit a completed application by the deadline date (60 days after date of publication of the final rule in the **Federal Register**). A complete application would be required to be signed and notarized, and must include all of the information required by NMFS which includes, but is not limited to, the factors specified at § 660.150(f)(6), including: Certification that the applicant qualifies to own a MS permit and indication of whether they agree or disagree with NMFS' determination on initial issuance of the MS permit provided in the application; a complete Trawl Identification of Ownership Interest Form; business entities may be required to submit a corporate resolution or any other credible documentation as proof that the representative of the entity is authorized to act on behalf of the entity; a bareboat charterer would be required to provide credible evidence that demonstrates it was chartering the MS vessel under a private contract during the qualifying years. NMFS may request additional information of the applicant as necessary to make an IAD.

(D) IAD and Appeals

NMFS would issue an IAD for all complete, certified applications received by the application deadline date. If NMFS approves an application, the applicant would receive a MS permit. If NMFS disapproves an applicant's request to correct the application, the IAD would provide the reasons NMFS did not accept the corrections. 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.

An applicant who disagrees with NMFS' determination on the application would be required to appeal within 30 days or the IAD would become final. The proposed rule's appeals procedures at § 660.25(g) would apply to this section as well as additional specific requirements at § 660.25(f)(6), which limit the scope of appeals to the issues that can be corrected and further specify that some issues are not subject to appeal, including but not limited to: The accuracy of data in the dataset extracted from NORPAC by NMFS on July 1, 2010.

ii. MS/CV Endorsement, Initial Issuance, Catch History Assignment (CHA), and Appeals

In order to fish in the MS sector, a catcher vessel would be required to be either registered to a MS/CV-endorsed LE permit or registered to a trawl-endorsed LE permit without a MS/CV or C/P endorsement. Vessels registered to a MS/CV-endorsed LE permit would be able to elect to fish in either the coop or non-coop sector. Vessels registered to a trawl-endorsed LE permit without MS/CV-endorsed LE permits would only be able to fish in the coop sector under a specific coop agreement with permission of the coop. Vessels registered to a C/P-endorsed LE permit could not fish in the MS sector. Vessels fishing as catcher vessels in the MS sector could not function as motherships or C/Ps during the same calendar year.

(A) Eligible Applicant

Only an owner of a current trawl endorsed LE permit with a history of whiting deliveries in the MS whiting sector is eligible to receive a MS/CV endorsement. Any past catch history associated with a current trawl permit would accrue to the current permit owner. If a trawl limited entry permit is eligible to receive both a C/P endorsement and a MS/CV endorsement, the permit owner would be required to choose which endorsement to apply for (i.e., the owner of such a permit may not receive both a C/P and MS/CV endorsement).

(B) Endorsement Qualifying Criteria

In order to qualify for a MS/CV endorsement, vessels registered to a trawl-endorsed LE permit would be required to have caught and delivered more than 500 mt of whiting to motherships from 1994 through 2003. Deliveries of whiting by vessels registered to permits that were subsequently combined to generate the current permit would count toward qualifying tonnage unless the permit owner also applies for a C/P permit. These criteria were selected to demonstrate substantial participation and to include the years between the establishment of the LE period and the control date. While the at-sea sectors were separated in 1997, this would not necessarily have affected catcher vessels.

(C) Catch History Assignment Qualifying Criteria

The catch history assignment (CHA) calculation for the MS/CV-endorsed permit would be based on the whiting relative history of vessels registered to the permit in each year from 1994 through 2003, dropping the two worst years (lowest relative history) unless otherwise indicated by the applicant.

The proposed rule sets forth the specific approach NMFS would use to calculate the CHA at § 660.150(g)(6). Based on Pacific whiting observer data that reside in NORPAC on July 1, 2010, NMFS would calculate the CHA as a percentage of Pacific whiting of the total MS sector allocation for each year. The catch history would be used to assign both whiting and bycatch species allocations to a coop and the non-coop fishery. The catch history would include any deliveries of whiting by vessels registered to a permit that were combined to generate the current permit. Illegal landings would not count towards catch history; nor would landings history from Federal LE groundfish permits that were revoked or retired either through the Federal buyback program. Landings history associated with provisional "A" permits that did not result in an "A" permit and that associated with "B" permits would also not count towards catch history; these permits no longer exist.

(D) Application and Correction

The proposed rule sets forth the process for applications and corrections at § 660.150(g)(6). NMFS would mail a prequalified application form to current trawl permit owners where NMFS finds their LE permits to have a catch history that meets the qualifying criteria. This application would be mailed to current permit owner's address of record in the NMFS permit data base. Prequalified applications would be partially pre-filled by NMFS and would be required to be completed by the applicant and returned to NMFS by the application deadline date.

If a current trawl LE permit owner does not receive a prequalified application from NMFS and the permit owner believes the permit's catch history qualifies for a MS/CV endorsement and associated CHA, the

permit owner would be required to complete an application package (available from NMFS) and submit the application package to NMFS by the application deadline. If the permit owner fails to submit an application to NMFS by the deadline date, the person forgoes the opportunity to receive consideration for initial issuance of a MS/CV endorsement and associated CHA.

If an applicant does not accept NMFS' calculation in the prequalified application, the applicant would be required to identify in writing to NMFS which parts of the application the applicant contends to be inaccurate, and provide credible information to substantiate any request for correction by the application deadline date. Requests for corrections, as specified in § 660.150(g)(6), may only be granted for changes to the selection of eight years with the highest relative history of whiting and errors in NMFS' extraction, aggregation, or expansion of data, including errors in NMFS extraction of data from NORPAC; errors in NMFS calculation; and errors in the identification of the permit owner, permit combinations, or vessel registration as listed in NMFS permit database. Requests for corrections would be required to be submitted no later than the application deadline date. NMFS would review a correction provided by the applicant and either accept or not accept the correction. If a correction is accepted by NMFS, the CHA would be revised. If the applicant fails to provide the request for correction or documentation supporting the correction by the deadline date, NMFS would make its IAD based on the catch history data provided in the prequalified application.

An applicant would be required to sign and notarize the completed application and return it to NMFS by the application deadline date (60 days after date of publication of the final rule in the **Federal Register**). A completed application would be required to contain the items listed in § 660.150(g)(6), which include, but are not limited to: Certification that the applicant qualifies to own a MS/CV-endorsed permit and indication as to whether they agree or disagree with NMFS' determination on initial issuance of the MS/CV-endorsed permit and CHA provided in the application; and a complete Trawl Identification of Ownership Interest Form. Business entities may be required to submit a corporate resolution or any other credible documentation as proof that the representative of the entity is authorized to act on behalf of the entity. NMFS could request additional information of the applicant as necessary to make an IAD.

(E) IAD

NMFS would issue an IAD for all complete, certified applications received by the application deadline date. If NMFS approves the application, the applicant would receive a MS/CV endorsement and associated Pacific whiting CHA on their LE trawl-endorsed permit. If NMFS disapproves an applicant's request to correct the application, the IAD would provide the reasons NMFS did not accept the corrections. If known at the time of the IAD, NMFS would indicate if the MS/CV-endorsed permit owner has ownership interest in CHAs that exceed the accumulation limits and are subject to divestiture provisions given at § 660.150(g)(3). 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.

(F) Appeals

An applicant who disagrees with NMFS' determination on the application would be required to appeal within 30 days or the IAD would become final. The proposed rule sets forth procedures and timelines for making appeals at § 660.25(g). Only the applicant may appeal the IAD. The appeal would be required to be in writing and allege credible facts to show why the criteria have been met. In addition, § 660.150(g)(6) of the proposed rule specifies that certain issues may not be appealed, including but not limited to the accuracy of data in the dataset extracted from NORPAC by NMFS on July 1, 2010.

The proposed rule would address the status of permits pending appeal as follows. For the MS/CV endorsement qualifications and eligibility appeals, any endorsement under appeal after December 31, 2010, may not fish in the Pacific Coast groundfish fishery until a final decision on the appeal has been made. If the MS/CV endorsement would be issued, the endorsement would be effective upon approval. For a Pacific whiting CHA associated with a MS/CV endorsement under appeal, the CHA would remain as that previously assigned to the associated MS/CV-endorsed LE permit before the appeals process (i.e. at the time of the IAD). The MS/CV-endorsed LE permit may be used to fish in the Pacific Coast groundfish fishery with the catch history assigned to the MS/CV-endorsed permit before the appeal. Once a final decision on the appeal has been made and if a revised CHA would be issued, the Pacific whiting CHA associated with the MS/CV endorsement would be effective at the start of the second year after the trawl rationalization program is implemented.

(G) Permit Transfer During Application Period

There would be a prohibition on transferring ownership of LE trawl permits during the application process until the final decision for that application has been made.

iii. MS Coop Permit

In order for NMFS to assign a sub-allocation to an MS coop, the coop would be required to obtain a coop permit each year. A coop permit would not be renewable and would need to be reissued annually. The application would be required to be submitted between February 1 and March 31 each year, which is before the start of the whiting season. While formation of a coop would be voluntary, certain rules would apply: The coop would be required to be a legal entity with a designated manager, it would be required to include at least 20 percent of the MS/CV-endorsed LE permit owners as members, and it would be required to represent all of its members. Coops would have to be responsible for monitoring and enforcing the terms of the coop agreement on their members. The MS Coop Program would allow for inter-coop agreements as well. Additional requirements pertaining to contents of coop agreements, inter-coop agreements, and the application process for a coop permit would be set forth in the program components rule.

b. CHAs Allocation to the MS Coop

CHAs would initially be allocated to the LE permits associated with individual whiting catcher vessels in the MS fishery that also qualify for an MS/CV endorsement, and would be non-severable from the LE permit. The CHA allocated to the LE permit would reflect that permit's contribution to the total amount of fish its MS coop can harvest.

Under the proposed program, NMFS would calculate the CHA for each individual MS/CV-endorsed LE permit as follows. First, NMFS would determine the total catch of whiting associated with each such permit for the years 1994–2003. Next, NMFS would calculate the permit's "relative" pounds for each year by dividing the total catch of whiting by vessels registered to that permit by the total catch of whiting by all qualified permits. Unless otherwise

specified by the permit owner, the 8 years with the highest relative history would be used. NMFS would then calculate the permit's CHA as a percentage of the total relative histories of all eligible permits combined. NMFS would permanently assign a CHA to the MS/CV-endorsed LE permit, and the CHA would not be severable from its underlying permit.

c. Transfer Provisions

An MS permit would be transferable, and could be transferred to a vessel of any size (there would be no size endorsements associated with the permit). MS permits could not be transferred to a vessel engaged in the harvest of whiting in the year of the transfer. MS permits could be transferred two times during the fishing year provided that the second transfer is back to the original mothership (i.e., only one transfer per year to a different mothership). However, in order to acquire an MS permit, a person would have to be a U.S. citizen, permanent resident alien, or a corporation, partnership or other entity established under the laws of the United States or any State.

MS/CV endorsements would not be severable from the LE permit. The CHA associated with the MS/CV endorsement could not be subdivided. MS/CV endorsed LE permits could be transferred two times during the fishing year, provided that the second transfer would be back to the original catcher vessel (i.e., only one transfer per year to a different catcher vessel).

The annual allocations received by a coop based on catch history of the whiting endorsements held by its members could be transferred among coop members and, through the inter-coop agreement, from one coop to another so long as obligations to processors are met. Whiting allocations may not be transferred from the MS sector to another sector. However, non-whiting groundfish species with MS allocations may be reapportioned between the MS and C/P sectors subject to the provisions at § 660.150(d).

4. Accumulation and Use Limits

a. MS/CV-Endorsed Permit Ownership Limits

An MS/CV-endorsed permit owner would not be allowed to accumulate more than 20 percent of the sector's whiting allocation. NMFS would require submission of an ownership information form to track this requirement. In addition to the ownership limit, the program would restrict catcher vessel usage to no more than 30 percent of the MS sector whiting allocation. Ownership interest would be tracked pursuant to the "individual and collective" rule, which means that the whiting CHA that counts toward a person's accumulation limit would include both the CHA owned by the person, and a portion of the CHA owned by an entity in which that person has an interest.

NMFS would notify entities found to exceed these limits so that they could come into compliance prior to issuance of the permit.

b. MS Usage Limits

Owners of MS permits would be prohibited from processing more than 45 percent of the MS sector whiting allocation. To monitor this requirement, NMFS would require annual renewal of the MS permit along with annual submission of an ownership interest form. Details regarding the MS permit usage limits would be set forth in the program components rule.

5. Annual Renewal and MS Obligations

Participants in the MS sector would be required to declare annually (between September 1 and December 31 of the year before the whiting season) through the LE permit renewal process in what capacity they would operate: Coop or non-coop. Additionally, catcher vessels operating in a coop would be required to indicate which mothership they would be associated with, and which mothership it intends to obligate its catch to for the following year.

If a mothership transfers its MS permit to a different mothership or different owner, the MS/CV-endorsed permit obligation for that year would remain in place and transfer with the MS permit to the replacement mothership unless the obligation is changed by mutual agreement. The obligation would not extend beyond the fishing year.

If a MS/CV-endorsed permit owner transfers coop allocations to another coop member within the coop, or if a coop transfers allocations to another coop within an inter-coop agreement, such allocations would have to be delivered to the mothership to which the allocation is obligated through the preseason declaration, unless released by mutual agreement. By mutual agreement of the MS/CV-endorsed permit owner and mothership to which the permit is obligated, a permit would be allowed to deliver to a licensed mothership other than that to which it is obligated.

If a mothership withdraws subsequent to quota assignment, then the MS/CV-endorsed permit that it is obligated to would be free to participate in the coop or non-coop fishery. The MS permit owner would be required to notify NMFS as well as linked MS/CV-endorsed permit owners of its withdrawal, and MS/CV-endorsed permit owners would be required to notify NMFS of their intent to participate in the coop or non-coop fishery thereafter. If continuing in a coop fishery, then the MS/CV-endorsed permit owner would be required to provide NMFS with the name of the new mothership to which it would be obligated for that season.

6. Closures and Reapportionment

Coops would provide for more direct accountability from coop participants. NMFS would be able to close the coop fishery (all MS coops combined), non-coop fishery, or entire MS sector upon the attainment, or projection of attainment, of its sub-allocation of any groundfish species with a formal allocation to the MS sector. The program would allow NMFS to close or restrict the MS Coop Program fisheries through management measures such as the inseason implementation of bycatch reduction areas. 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 would be used to prevent the trawl sectors in aggregate or the individual sector (Shorebased IFQ, MS Coop, or C/P Coop) from exceeding an OY, or allocation. The program would also allow for the reallocation of non-whiting between MS and C/P sectors, as well as redistribution of a sub-allocation within a sector.

7. Monitoring and Observer Requirements

Amendment 20 would continue the current observer coverage aboard motherships. Catcher vessels would be required to carry a single observer whenever they are participating in the fishery. To ensure accurate catch weights, motherships would be required to make sure that all catch is weighed in its round form on a NMFS-approved scale. Scales meeting the NMFS-approval and the use of such scales, including testing and maintenance, would be specified. NMFS is working with the PSMFC to develop additional details regarding this provision. It is anticipated that observers would record fishing effort and estimate total, retained and discard catch weight by species; determine species composition of

retained and discarded catch (non-whiting vessels) and document the reasons for discard; record interactions and sightings of protected species; and take biological samples from tagged fish and discards, and estimate viability of Pacific halibut.

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. The industry proportion of the costs of hiring observers 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.

8. Fees

The agency would collect fees to cover the administrative costs of issuing permits (one-time fee and annual renewal). In addition, Amendment 20 would allow for assessing cost recovery fees of up to 3 percent of ex-vessel value, consistent with section 303A(e) of the MSA. The costs to be recovered would be the agency's costs of management, data collection, analysis, and enforcement activities. The Council would develop the methodology required by section 303(A)(e) in a trailing action.

9. Retention Requirements

Catcher vessels would be prohibited from sorting or discarding any portion of the catch taken before the observer on the catcher vessel completes sampling of the catch, with the exception of minor amounts of catch that are lost when the codend is separated from the net and prepared for transfer. This is different from current regulations where catcher vessels are prohibited from discarding catch other than minor operational amounts.

10. Data Collection

Amendment 20 includes a comprehensive plan for collection of economic data as part of the coop program. While the upcoming program components rule would provide details on these provisions, the following are the central elements:

- Mandatory submission of economic data for LE trawl industry (harvesters and processors).
- Voluntary submission of economic data for other sectors of the fishing industry.
- Include transaction value information in a centralized registry of ownership.
- Formal monitoring of government costs.

The mandatory data collection would focus on cost, revenue, ownership, and employment data. Data would be collected on a periodic basis (based on scientific requirements) to provide the information necessary to study the impacts of the program, including achievement of goals and objectives associated with the rationalization program. These data may also be used to analyze the economic and social impacts of future FMP amendments on industry, regions, and localities.

The program would address the type of enforcement actions that could be taken if inaccuracies are found in mandatory data submissions. The intent of this provision is to ensure that accurate data are collected without being overly burdensome to the industry in the event of unintended errors. Annual reports would be provided to NMFS and the Council.

A voluntary data collection program would collect information to assess spillover impacts on non-trawl fisheries. There would be a central registry for maintaining information on transaction prices. Data would also be collected and maintained on the costs to the government of monitoring, administration, and enforcement related to governance of the rationalization program.

11. Reporting

Each permitted MS coop would be required to submit a complete annual coop report to NMFS before the issuance of a new coop permit in a subsequent year. The contents of a complete annual report would be specified in regulation by NMFS through the program components rule.

12. Bycatch Allocation and Management

Amendment 20 provides for management of bycatch species with hard caps in both at-sea whiting fisheries (MS and C/P) as follows. Allocations of bycatch species with hard caps would be subdivided between the MS and C/P sectors. The MS subdivision would then be further subdivided between the coop and non-coop sectors. The MS coop sector subdivision would then be distributed among the individual coops.

Unused bycatch could be rolled over (*i.e.,* reapportioned) from one sector to another if the sector's full allocation of whiting has been harvested or participants in the sector do not intend to harvest the remaining sector allocation, as indicated by the submission of a cease fishing report.

NMFS could choose to close the whole MS sector, the non-coop fishery, and permitted coops based on the projected attainment of the at-sea whiting fishery bycatch cap for any one species. Each permitted MS coop would be responsible for monitoring its catch and to cease fishing when its bycatch allocation is reached.

C. Catcher/Processor (C/P) Coop Program

1. Structure Overview

The C/P Coop Program would be a limited-access program that applies to participants in the C/P sector of the Pacific whiting at-sea trawl fishery. It would allow for the establishment of a single voluntary coop consisting of owners of C/P-endorsed LE permits and vessels registered to those permits. NMFS would annually permit the coop. The entire C/P sector allocations of whiting and non-whiting groundfish with formal allocations would be allocated to the permitted C/P sector coop. For the issuance of a C/P coop permit, a coop agreement would need to be accepted by NMFS. The coop would be expected to help achieve benefits that result from a slower-paced, more controlled harvest. If the coop fails, NMFS would implement an IFQ system that would equally divide the whiting QS for the C/P sector among all C/P-endorsed permits.

2. Coop Species

Pursuant to Amendment 20, hard caps would be established for the following species: Pacific whiting, canary rockfish, darkblotched rockfish, Pacific ocean perch, and widow rockfish.

3. How To Participate

a. The C/P-Endorsed Permit Requirement

All vessels participating in the C/P coop fishery would be required to be registered to a LE permit with a C/P endorsement. The C/P endorsement would not be severable from the LE permit and would have to be renewed each year with a declaration of the participant's intent to participate in the C/P coop fishery. Only parties who are eligible to own a U.S.-documented vessel may own a C/P-endorsed LE permit.

A C/P permit that is combined with a LE trawl permit that is not C/P endorsed would result in a single C/P permit with a larger size endorsement. An MS/CV endorsement on one of the permits being combined would not be reissued on the resulting permit. The resulting size endorsement would be determined based on the existing permit combination formula.

Length endorsement restrictions on LE permits endorsed for groundfish gear

would be retained; however, the provision that requires that the size endorsements on trawl permits transferred to smaller vessels be reduced to the size of that smaller vessel would be eliminated (i.e., length endorsements would not change when a trawl-endorsed permit is transferred to a smaller vessel).

i. Eligible To Apply

Only an owner of a current trawl-endorsed LE permit that has been registered to a vessel that has participated in the C/P fishery during the qualifying period would be 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 would 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

In order to qualify for the endorsement, vessels registered to the permit would be required to have caught and/or processed any amount of whiting during a primary C/P season during the period January 1, 1997, through December 31, 2003. This criterion recognizes participants who purchased LE permits and have historically participated as a C/P sector of the Pacific whiting fishery. Using the years 1997 to 2003 reflects the time period after the separation of the at-sea sector into the C/P and MS sectors and is consistent with the control date for this action (2003).

NMFS would rely on Pacific whiting observer data residing in the NORPAC database and NMFS trawl LE permit data as extracted by NMFS on July 1, 2010, to determine whether a permit meets the qualifying criteria. A permit's catch and/or processing history would include only the C/P history of whiting for those vessels registered to that particular permit during the qualifying years. Only whiting regulated by this subpart that was taken with midwater (or pelagic) trawl gear would count for the C/P endorsement. History of illegal landings would not count; nor would landings history from Federal LE groundfish permits that were revoked, retired through the Federal buyback program or otherwise discontinued, including B permits. NMFS recognizes that some permits combined to meet the size endorsements for C/Ps may have catch history as catcher vessels in the MS sector. Because a current permit may not qualify for both catch history under a MS/CV and a C/P endorsement, the proposed rule provides that the current permit owner may only apply for one and not both.

iii. Application and Correction

NMFS would mail a prequalified application to the owner of a vessel that NMFS preliminarily determines qualifies for a C/P endorsement. NMFS would mail the application to the current address of record in the NMFS permit database. The application would contain the basis of NMFS' determination based on Pacific whiting observer data recorded in the data set that was extracted from NORPAC by NMFS on July 1, 2010. Prequalified applications would be partially pre-filled by NMFS and would be required to be completed by the applicant and returned to NMFS by the application deadline date.

If a current owner of a LE trawl-endorsed permit does not receive a prequalified application and the permit owner believes the permit's catch history qualifies for a C/P endorsement, the permit owner would be required to complete an application package (available from NMFS) and submit the application package to NMFS by the application deadline date. The applicant would be required to provide credible documentation to substantiate their claim as described in the proposed rule at § 660.160(d)(7). If the permit owner fails to contact NMFS in writing by the application deadline date, the person forgoes the opportunity to receive consideration for a C/P endorsement.

If the applicant does not accept NMFS' calculation in the prequalified application, the applicant would be required to identify in writing to NMFS which parts of the application the applicant contends to be in accurate, and provide credible information to substantiate any request for correction by the application deadline date, as described in the proposed rule at § 660.160(d)(7). Requests for corrections may only be granted for errors in NMFS' extraction, aggregation, or expansion of data, including errors in NMFS extraction of data from NORPAC, errors in NMFS' calculation, and errors in identification of the permit owner, permit combinations, or vessel registration as listed in NMFS permit database.

The applicant would be required to submit a completed application, which has been signed and notarized by the application deadline date (60 days after date of publication of the final rule in the **Federal Register**). To be complete, an application would be required to include certification that the applicant qualifies to own a C/P-endorsed permit and indication as to whether the applicant agrees or disagrees with NMFS' determination on initial issuance of the C/P endorsed permit provided in the application. Business entities may be required to submit a corporate resolution or any other credible documentation as proof that the representative of the entity is authorized to act on behalf of the entity. NMFS may request additional information of the applicant as necessary to make an IAD.

iv. IAD and Appeal

NMFS would issue an IAD for all complete, certified applications received by the application deadline date. If NMFS approves the application, the applicant would receive a C/P-endorsed LE permit. If NMFS disapproves an applicant's request to correct the application, the IAD would provide the reasons NMFS did not accept the corrections. 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.

For a C/P-endorsed permit issued under this section, the appeals process and timelines are specified at § 660.25(g). For the initial issuance of a C/P-endorsed permit, the basis for appeal is described in § 660.160(d)(7). Items not subject to appeal include, but are not limited to, the accuracy of data in the dataset extracted from NORPAC by NMFS on July 1, 2010.

v. Permit Transfer During Application Period

During the application process for initial issuance of a C/P endorsement, a LE trawl permit owner would not be able to transfer ownership of the LE trawl permit until the final decision for that application has been made.

vi. Renewals and Declarations

A C/P endorsed LE permit would be required to be renewed annually during the existing LE permit renewal process. A C/P vessel would be prohibited from acting as a mothership or catcher vessel in the MS sector during the same year in which it operates as a C/P. A vessel would have to declare, at the beginning of each year, in which capacity it would operate.

b. C/P Coop Permit

In order for the C/P coop to receive the C/P sector allocation, the coop would be required to apply for and obtain a permit each year. A C/P coop permit would not be renewable and would need to be reissued annually. Between February 1 and March 31,

before the whiting season, the coop would be required to apply for a coop permit, which would include submitting a coop agreement to NMFS. While formation of a coop would be voluntary, coops would have to be responsible for monitoring and enforcing the terms of the coop agreement on their members. Additional requirements pertaining to the contents of coop agreements and the application process for a coop permit would be set forth in the program components rule.

c. Transfers

C/P permits may be transferred two times during the fishing year, provided that the second transfer would be back to the original vessel (*i.e.,* only one transfer per year to a different vessel).

4. Coop Failure/IFQ

If the coop system fails, it would be replaced by an IFQ program and the initial issuance of IFQ would be allocated equally among the permits (equally divided among all C/P-endorsed permits).

5. Accumulation Limits

There would be no accumulation limits for the C/P coop since there would be only one coop. Within the coop, accumulation limits could be addressed through private arrangements if desired.

6. Annual Report

The C/P coop would be required to submit an annual report to NMFS and to the Council at its November meeting. The report would contain information about the current year's C/P fishery, including the C/P sector's annual allocation of Pacific whiting; the C/P coop's actual retained and discarded catch of Pacific whiting, salmon, rockfish, groundfish, and other species on a vessel-by-vessel basis; a description of the method used by the C/P coop to monitor performance of coop vessels that participated in the C/P sector of the fishery; and a description of any actions taken by the C/P coop in response to any vessels that exceed their allowed catch and bycatch. The report would also identify plans for the next year's C/P fishery, including the companies participating in the coop, the harvest agreement, and catch monitoring and reporting requirements.

7. Catch Management

Under Amendment 20, unused catch of non-whiting groundfish species with formal allocations could be rolled over (*i.e.* reapportioned) from one sector to another if the sector's full allocation of whiting has been harvested or if participants in the sector do not intend to harvest the remaining sector allocation of whiting, as indicated by the submission of a cease fishing report. The C/P coop would be responsible for monitoring its catch of all species with formal allocations and to cease fishing when any formal allocation is reached.

The C/P Coop Program may be restricted or closed as a result of projected overages within the C/P Coop Program, the MS Coop Program, or the Shore-based IFQ Program. As determined necessary by the Regional Administrator, area restrictions, season closures, or other measures would be used to prevent the trawl sectors in aggregate or the individual sector (Shore-based IFQ, MS Coop, or C/P Coop) from exceeding an OY, or formal allocation. To prevent the attainment of an overfished species allocation, NMFS could implement bycatch reduction areas inseason. These provisions would be implemented through the program components rule.

8. Monitoring and Observer Requirements

Amendment 20 would require 100 percent observer coverage. Additional details regarding monitoring provisions would be set forth in the upcoming program components rule.

9. Data Collection

Amendment 20 includes a mandatory provision for collection of economic data as part of the coop program, consistent with the MSA. While the upcoming program components rule would provide details on these provisions, the following are the central elements:

- Mandatory submission of economic data for LE trawl industry (harvesters and processors).
- Voluntary submission of economic data for other sectors of the fishing industry.

The mandatory data collection would focus on cost, revenue, ownership, and employment data. Data would be collected on a periodic basis (based on scientific requirements) to provide the information necessary to study the impacts of the program, including achievement of goals and objectives associated with the rationalization program. These data may also be used to analyze the economic and social impacts of future FMP amendments on industry, regions, and localities.

The program would address the type of enforcement actions that could be taken if inaccuracies are found in mandatory data submissions. The intent of this provision is to ensure that accurate data are collected without being overly burdensome to the industry in the event of unintended errors. Annual reports would be provided to the Council.

A voluntary data collection program would collect information to assess spillover impacts on non-trawl fisheries.

10. Reporting

The permitted C/P coop would be required to submit a complete annual coop report before the issuance of a new coop permit in a subsequent year. Amendment 20 outlines the requirement for an annual report. The contents of a complete annual report would be specified in regulation through the program components rule.

The Council gave NMFS the flexibility to further develop the tracking and monitoring components of the trawl rationalization program.

III. Amendment 21 Allocations Description

A. Overview

For species subject to trawl rationalization, Amendment 21 would modify the manner in which the annual OYs are distributed. Under the current allocation strategy established in Amendment 6, a commercial HG is divided between LE and OA, as necessary. For groundfish species covered under Amendment 21, the LE fixed gear fishery would no longer share an allocation with the LE trawl fishery. The recreational, directed OA, and the limited entry fixed gear fisheries would share an allocation. The OY would be reduced by the tribal fishery, incidental catch in the non-groundfish fishery, research catch, and the bycatch limits in exempted fishing permits, which would result in the fishery harvest guideline. The fishery harvest guideline would be divided between the trawl fishery and non-trawl fisheries (recreational, limited entry fixed gear, and directed open access) based on the percentages in Amendment 21. The distribution of harvest among the non-trawl fisheries would be established during the biennial specifications process. This proposed rule sets forth the specific percentages of the fishery HG for Amendment 21 species that would be allocated to the trawl and non-trawl fisheries.

In order to implement the recommended IFQ and coop programs, it would be necessary for each of these trawl sectors to have a specific allocation of catch that could be divided among participants. While this could be accomplished through the specification process under the status quo, the Council determined that a fixed

allocation within the FMP would be preferable because it would promote predictability and the type of stability that facilitates successful relationships that make individual-based programs work. Thus, the Council recommended the allocations contained in Amendment 21. In addition, Amendment 21 would establish total catch limits (TCLs) for Pacific halibut, as well as set-asides to accommodate the rationalized trawl fleet. The TCLs would protect the directed fishery for halibut.

Species not covered by Amendment 21 would continue to be allocated through the biennial specifications process. The allocations in Amendment 21 would constrain trawl harvests to a slightly lower level than status quo.

Amendment 21 addresses six separate issues pertaining to allocation decisions:

1. How to allocate species between the trawl and non-trawl categories;

2. How to allocate between shore-based whiting and shore-based non-whiting, for species other than darkblotched, Pacific ocean perch, widow, and sablefish North of 36° N. lat.;

3. How to apportion among the 4 trawl sectors (shore-based whiting, shore-based non-whiting, MS, and CP) the LE trawl allocation of darkblotched, Pacific ocean perch, widow, and sablefish North of 36° N.;

4. Providing yield set-asides to accommodate non-overfished species bycatch in the at-sea (whiting) sectors;

5. Limiting bycatch of halibut (a prohibited species); and

6. Determining the process for future modification of allocations.

B. Covered Species

Species subject to Amendment 21's trawl/non-trawl allocations would be: Lingcod, Pacific cod, sablefish south of 36° N. lat., Pacific ocean perch, widow rockfish, chilipepper rockfish, splitnose rockfish, yellowtail rockfish north of 40° 10′ N. lat., shortspine thornyhead (north and south of 34°27′ N. lat.), longspine thornyhead north of 34°27′ N. lat., darkblotched rockfish, minor slope rockfish (north and south of 40°10′ N. lat.), Dover sole, English sole, petrale sole, arrowtooth flounder, starry flounder, and the Other Flatfish complex.

C. Proposed Actions

1. Trawl vs. Non-Trawl

Amendment 21 would formally allocate a subset of the HG to the 4 trawl sectors: Shore-based (whiting and non-whiting), MS, and C/P. With respect to covered species, this would leave the LE fixed gear, OA, and recreational fisheries in a pool that would divide the remaining HG (via the biennial specification process). These allocations are set forth in the proposed rule at § 660.55(m).

In general, the allocations are based on catch history from 2003–2005 and the recommendations of the Groundfish Allocation Committee. The reason for this period is that the Council believed that a relatively recent catch period should form the basis for deciding sector allocations since discards during this period were better informed, and current management strategies, such as specification of Rockfish Conservation Areas, are more likely in the near future. However, for several species, the Council made modifications. For chilipepper rockfish south of 40°10′ N. lat., Amendment 21 contains a higher non-trawl allocation. This is intended to provide greater non-trawl access to this healthy stock off California.

Amendment 21 would not allocate longspine thornyhead south of 34°27′ N. lat. to the trawl fishery. Longspine thornyhead are an incidentally caught species south of 34°27′ N. lat. and the available yields are not projected to constrain any of the groundfish fisheries there that incidentally catch these fish.

Amendment 21 would allocate a much higher percentage of the available yield of starry flounder to non-trawl sectors (50 percent) than recommended by the Groundfish Allocation Committee. The catch history of starry flounder is highly uncertain, but they are significantly caught in nearshore trawl fisheries and recreational fisheries. The Council thought a 50:50 trawl and non-trawl sharing of the available harvest of starry flounder was the fairest allocation.

Amendment 21 includes a higher non-trawl allocation of species in the Other Flatfish complex than recommended by the Groundfish Allocation Committee (10 percent vs. 5 percent). While most of these species are dominant to the trawl fishery, there are some species, such as Pacific sanddabs, that are significantly caught in non-trawl fisheries. The Council believed a higher non-trawl share of the available harvest of Other Flatfish species would better preserve non-trawl fishing opportunities.

2. Allocations Between Shore-Based Whiting and Non-Whiting Sectors

For the shore-based trawl fishery, Amendment 21 would establish a weighting scheme for distributing IFQ for covered species other than darkblotched rockfish, Pacific ocean perch, widow rockfish, and sablefish N. of 36° N. lat. between the shore-based whiting and shore-based non-whiting sectors. For species other than yellowtail rockfish and the trawl-dominant overfished species, Amendment 21 uses a weighting scheme based on the shore-based sector catch percentages during the 1995–2005 period.

Amendment 21 would allocate 300 mt of yellowtail rockfish to the shore-based whiting sector, and the shore-based non-whiting sector would receive the remaining yield of yellowtail rockfish available to the LE trawl sectors minus any set-aside amount of yellowtail rockfish for the at-sea whiting sectors decided in the future. The initial set-aside of yellowtail rockfish to accommodate bycatch by the at-sea whiting sectors is 300 mt.

3. Apportionment of Three Overfished Species Among the Four Trawl Sectors

For darkblotched, Pacific ocean perch, and widow, Amendment 21 would apportion the LE trawl allocation among the four main subdivisions: Shore-based whiting, shore-based non-whiting, MS, and C/P. These allocations would take the form of QS for the shore-based sectors and of non-whiting groundfish species catch limits for the at-sea sectors (MS and C/P). Initial sector allocation of canary rockfish would be decided in the biennial harvest specification and management measures process.

The initial sector allocation of the trawl-dominant overfished species under Amendment 21 would be as follows:

- For darkblotched rockfish, there would be an allocation of 9 percent or 25 mt, whichever is greater, of the total LE trawl allocation of darkblotched rockfish to the whiting fisheries (at-sea and shore-based combined). The distribution of the whiting trawl allocation of darkblotched to individual whiting sectors would be done pro rata relative to the sectors' whiting allocation. The remainder would be made available to the shore-based non-whiting trawl fishery.
- For Pacific ocean perch, there would be an allocation of 17 percent or 30 mt, whichever is greater, of the total LE trawl allocation of Pacific ocean perch to the whiting fisheries (at-sea and shore-based combined). The distribution of the whiting trawl allocation of Pacific ocean perch to individual whiting sectors would be done pro rata relative to the sectors' whiting allocation. The remainder would be made available to the shore-based non-whiting trawl fishery.
- For widow rockfish, there would be an initial allocation of 52 percent of the total LE trawl allocation of widow

rockfish to the whiting sectors if the stock is under rebuilding or 10 percent of the total LE trawl allocation or 500 mt of the trawl allocation to the whiting sectors, whichever is greater, if the stock is rebuilt. If the stock is overfished when the initial allocation is implemented, the latter allocation scheme automatically kicks in when it is declared rebuilt. The distribution of the whiting trawl allocation of widow to individual whiting sectors would be done pro rata relative to the sectors' whiting allocation. The remainder would be made available to the shore-based non-whiting trawl fishery.

4. Yield Set-Asides for Bycatch of Non-Overfished Species by the Two At-Sea Sectors

The estimated fishing mortality of Amendment 21 species in the at-sea whiting fishery (MS and C/P sectors) other than Pacific whiting and the three trawl-dominant overfished species would be set-aside from the LE trawl allocations prior to making the initial shore-based trawl sector allocations. Set-aside amounts would not be allocations specified in the PCGFMP. It is anticipated that the projected incidental bycatch amounts in the at-sea whiting fishery will change in the future as better information becomes available. Therefore, set-asides would be implemented in and could be modified through the biennial specifications and management measures process.

5. Halibut

As set forth in the proposed rule at § 660.55(m), Amendment 21 would establish a trawl mortality bycatch limit for legal and sublegal halibut in Area 2A (off Washington, Oregon and California) at 15 percent of the Area 2A constant exploitation yield (CEY) for legal size halibut, not to exceed 130,000 lbs for the first 4 years of trawl rationalization and not to exceed 100,000 lbs 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 TCL would be a set-aside of 10 mt of Pacific halibut, to accommodate bycatch in the at-sea Pacific whiting fishery and in the shore-based trawl fishery south of 40°10′ N. lat. (estimated at approximately 5 mt each).

By holding the limit at 130,000 lbs for 4 years and providing flexibility to make adjustments, the Council intended to address the uncertainty of how these constraints would affect the fleet and give the fleet time to learn strategies and areas for minimizing its halibut bycatch.

6. Process for Future Re-Allocations

The Council considered allowing the allocations in Amendment 21 that are specified in the PCGFMP to be modified through a framework action as part of the biennial management measures, but decided to recommend that these allocations specified in the PCGFMP be modified through an FMP amendment. The rationale was that the FMP amendment process imposes a higher standard for considering a change to the fishery, and that the Amendment 21 allocations should be durable and not subject to reconsideration every 2 years in the biennial management process. Many representatives of the trawl industry recommended maintaining this process to provide more long-term stability to allow better business planning.

7. Declaration as Overfished

Amendment 21 would not affect the FMP provision to temporarily suspend any formal allocations for a species if it is declared overfished. Shorter-term ad hoc allocations would then be decided in an approved rebuilding plan (or in the biennial management process while the stock is still being managed under a rebuilding plan).

8. 5-Year Review

Amendment 21 would provide for a formal review of all Amendment 21 allocations 5 years after implementation. This 5-year review is also a provision in the Amendment 20 preferred alternative to formally review the trawl rationalization program 5 years after implementation.

IV. Proposed Rule

As referenced above, while NMFS is reviewing Amendments 20 and 21 in their entirety, due to the complexity of the proposed program, this proposed rule focuses only on certain key components that would be necessary to have permits and endorsements issued in time for use in the 2011 fishery and in order to have the 2011 specifications reflect the new allocation scheme. On May 12, 2010, NMFS published a notice of availability of Amendments 20 and 21, and consistent with requirements of the MSA, must make a decision to approve, disapprove, or partially approve the amendments by August 10, 2010. Comments on the approvability of the amendments must be submitted to NMFS by July 12, 2010.

At the April, 2010 Council meeting in Portland, Oregon, the Council deemed a version of these regulations as being necessary or appropriate to implement Amendments 20 and 21 and directed the Council staff to make specific revisions to the regulations, and additional edits as appropriate. The Council staff and NMFS coordinated on revisions to those regulations. The Council's Executive Director has deemed that these regulations continue to be necessary or appropriate for the purpose of implementing the plan amendments consistent with the Council's policy intent.

A primary modification from the regulations reviewed by the Council in April, other than the ones specifically directed by the Council, is a revision of the sections regarding the formulas for the initial allocations. After the April meeting, NOAA and the Council staff corrected the regulations to ensure that they accurately reflect the amendments. The preamble highlights some questions regarding these formulas, and specifically seeks comment on them. Other changes have been made to ensure consistency with the amendments, to ensure consistency within the regulations, and to clarify some of the language.

Specifically, this rule would establish the formal allocations set forth under Amendment 21 and establish procedures for initial issuance and appeals of permits, endorsements, and QS under the IFQ and coop programs. While there are changes in many sections of these draft regulations for the trawl rationalization program, the main areas that are new for the trawl rationalization program are highlighted below.

- Section 660.25 contains general rules regarding permit requirements, including requirements for new permits and endorsements required for trawl rationalization: MS permits, MS/CV endorsements, and C/P endorsements.
- Section 660.55 is the allocation section and contains the proposed allocations set forth in Amendment 21.
- Section 660.111 contains definitions specific to the trawl fisheries, including new terminology that would be used under the proposed rationalization program, such as "catch history assignment," "IFQ," "first receivers," and "processor obligations."
- Section 660.140 would set forth the requirements for the proposed IFQ program for the shore-based trawl sector. The provisions contained in this proposed rule would include initial requirements, including: The species covered; the general program structure and management; accumulation limits and how to define ownership and control; divestiture; the application process, and deadlines; eligibility criteria; how QS would be calculated; how to reassign landings history for Pacific whiting; IADs, and limitations

on appeals; and rules regarding transfers of permits during the application period.

• Section 660.150 would set forth the requirements for the proposed MS Coop Program. The provisions contained in this proposed rule would include initial requirements including the species covered; the general program structure and management; accumulation limits and how to define ownership and control; divestiture; the application process, and deadlines; eligibility criteria for MS permits, MS/CV endorsement, and CHA assignments; characteristics of permits, how CHA would be assigned; IADs, and limitations on appeals; and rules regarding transfers of permits during the application period.

• Section 660.160 would set forth the requirements for the proposed CP Coop Program. The provisions contained in this proposed rule would include initial requirements, including: The species covered; the general program structure and management; the application process and deadlines; eligibility criteria; IADs and limitations on appeals; and rules regarding transfers of permits during the application period.

In addition, this proposed rule would also restructure the entire Pacific Coast groundfish regulations at 50 CFR part 660 by moving from one subpart (subpart G) to five subparts (subparts C–G). This restructuring of existing groundfish regulations is necessary to make room for the expansion of regulations with the new trawl rationalization program and to make the regulations more clearly organized according to sectors within the groundfish fishery. The following table lists the distribution of the sections of 50 CFR part 660 subpart G to the new subparts in 50 CFR 660 subparts C through G in this restructuring.

Old	New
§ 660.301 Purpose and scope	§ 660.10, Subpart C Purpose and scope.
§ 660.302 Definitions	§ 660.11, Subpart C General definitions.
	§ 660.111, Subpart D Trawl fishery definitions.
	§ 660.211, Subpart E Fixed gear fishery definitions.
	§ 660.311, Subpart F Open access fishery definitions.
	§ 660.351, Subpart G Recreational fishery definitions.
§ 660.303 Reporting and recordkeeping	§ 660.113, Subpart C Recordkeeping and reporting.
	§ 660.113, Subpart D Trawl fishery recordkeeping and reporting.
	§ 660.213, Subpart E Fixed gear fishery recordkeeping and reporting.
	§ 660.313, Subpart F Open access fishery recordkeeping and reporting.
	§ 660.353, Subpart G Recreational fishery recordkeeping and reporting.
§ 660.305 Vessel identification	§ 660.20, Subpart C Vessel and gear identification.
	§ 660.219, Subpart C Fixed gear identification and marking.
	§ 660.319, Subpart C Open access fishery gear identification and marking.
§ 660.306 Prohibitions	§ 660.12, Subpart C General groundfish prohibitions.
	§ 660.112, Subpart D Trawl fishery prohibitions.
	§ 660.212, Subpart E Fixed gear fisheries prohibitions.
	§ 660.312, Subpart F Open access fisheries prohibitions.
	§ 660.352, Subpart G Recreational fishery prohibitions.
§ 660.312 Vessel Monitoring System (VMS) requirements	§ 660.14, Subpart C Vessel Monitoring System (VMS) requirements.
§ 660.314 Groundfish observer program	§ 660.16, Subpart C Groundfish observer program.
	§ 660.18, Subpart C Certification and decertification procedures for observers, catch monitors, catch monitor providers and observer providers.
	§ 660.116, Subpart D Trawl fishery observer requirements.
	§ 660.216, Subpart E Fixed gear fishery observer requirements.
	§ 660.316, Subpart F Open access fishery observer requirements.
	§ 660.356, Subpart G Recreational fishery observer requirements.
§ 660.320 Allocations	§ 660.55, Subpart C Allocations.
§ 660.321 Black rockfish harvest guideline	§ 660.55(l), Subpart C Black rockfish harvest guideline.
§ 660.322 Sablefish allocations	§ 660.55(h), Subpart C Sablefish allocations (north of 36° N. lat.).
§ 660.323 Pacific whiting allocations, allocation attainment, and inseason allocation reapportionment.	§ 660.55(i), Subpart C.
	§ 660.131 Pacific Whiting Fishery Management Measures.
§ 660.324 Pacific Coast treaty Indian fisheries	§ 660.50, Subpart C.
§ 660.331 Limited entry and open access fisheries—general	§ 660.24, Subpart C Limited entry and open access fisheries.
§ 660.333 Limited entry fishery—eligibility and registration	§ 660.25(b)(1), Subpart C.
§ 660.334 Limited entry permits—endorsements	§ 660.25(b)(3), Subpart C.
§ 660.335 Limited entry permits—renewal, combination, stacking, change of permit ownership or permit holdership, and transfer.	§ 660.25(b)(4), Subpart C.
§ 660.336 Pacific whiting vessel licenses	§ 660.26, Subpart C Pacific Whiting Vessel Licenses.
§ 660.337 Trawl Rationalization program—data collection requirements.	removed.
§ 660.338 Limited entry permits—small fleet	§ 660.25(b)(5), Subpart C.
§ 660.339 Limited entry permit and Pacific whiting vessel license fees	§ 660.26, Subpart C Pacific Whiting Vessel Licenses.
§ 660.340 Limited entry permit appeals	§ 660.25(g), Subpart C.
§ 660.341 Limited entry permit sanctions	§ 660.25(h), Subpart C.
§ 660.350 Compensation with fish for collecting resource information—exempted fishing permits off Washington, Oregon, and California.	§ 660.30, Subpart C Compensation With Fish for Collecting Resource Information—EFPs.
§ 660.365 Overfished species rebuilding plans	§ 660.40, Subpart C Overfished species rebuilding plans.
§ 660.370 Specifications and management measures	§ 660.60, Subpart C Specifications and Management Measures.

Old	New
	§ 660.120, Subpart D Trawl Fishery Crossover Provisions.
	§ 660.220, Subpart E Fixed Gear Fishery Crossover Provisions.
	§ 660.320, Subpart F Open Access Crossover Provisions.
§ 660.371 Black rockfish fishery management	§ 660.230(d), Subpart E Fixed Gear Fishery Management Measures.
	§ 660.330(e), Subpart E Fixed Gear Fishery Management Measures.
§ 660.372 Fixed gear sablefish fishery management	§ 660.231, Subpart E Limited Entry Fixed Gear Primary Fishery for Sablefish.
	§ 660.232, Subpart E Limited Entry Sablefish Daily Trip Limit (DTL) Fishery for Sablefish.
	§ 660.332, Subpart F Open Access Sablefish Daily Trip Limit (DTL) Fishery for Sablefish.
§ 660.373 Pacific whiting (whiting) fishery management	§ 660.131, Subpart D Pacific Whiting Fishery Management Measures.
(j) Additional requirements for participants in the Pacific Whiting Shoreside fishery.	§ 660.15, Subpart C Equipment Requirements.
	§ 660.12 General Groundfish Prohibitions (a)(13).
§ 660.380 Groundfish harvest specifications	§ 660.65, Subpart C.
§ 660.381 Limited entry trawl fishery management measures	§ 660.130 Trawl Fishery Management Measures.
	§ 660.230, Subpart E Fixed Gear Fishery Management Measures.
§ 660.382 Limited entry fixed gear fishery management measures	§ 660.330, Subpart F Open Access Fishery Management Measures.
§ 660.383 Open access fishery management measures	§ 660.333, Subpart F Open Access Non-groundfish Trawl Fishery—Management Measures.
§ 660.384 Recreational fishery management measures	§ 660.360, Subpart G Recreational Fishery Management Measures.
§ 660.385 Washington coastal tribal fisheries management measures	§ 660.50, Subpart C Pacific Coast Treaty Indian Fisheries.
§ 660.390 Groundfish conservation areas	§ 660.70, Subpart C Groundfish conservation areas.
§ 660.391 Latitude/longitude coordinates defining the 10-fm (18-m) through 40-fm (73-m) depth contours.	§ 660.71, Subpart C Latitude/longitude coordinates defining the 10-fm (18-m) through 40-fm (73-m) depth contours.
§ 660.392 Latitude/longitude coordinates defining the 50 fm (91 m) through 75 fm (137 m) depth contours.	§ 660.72, Subpart C Latitude/longitude coordinates defining the 50 fm (91 m) through 75 fm (137 m) depth contours.
§ 660.393 Latitude/longitude coordinates defining the 100 fm (183 m) through 150 fm (274 m) depth contours.	§ 660.73, Subpart C Latitude/longitude coordinates defining the 100 fm (183 m) through 150 fm (274 m) depth contours.
§ 660.394 Latitude/longitude coordinates defining the 180 fm (329 m) through 250 fm (457 m) depth contours.	§ 660.74, Subpart C Latitude/longitude coordinates defining the 180 fm (329 m) through 250 fm (457 m) depth contours.
§ 660.395 Essential Fish Habitat (EFH)	§ 660.75, Subpart C Essential Fish Habitat (EFH).
§ 660.396 EFH Conservation Areas	§ 660.76, Subpart C EFH Conservation Areas.
§ 660.397 EFH Conservation Areas off the Coast of Washington	§ 660.77, Subpart C Conservation Areas off the Coast of Washington.
§ 660.398 EFH Conservation Areas off the Coast of Oregon	§ 660.78, Subpart C Conservation Areas off the Coast of Oregon.
§ 660.399 EFH Conservation Areas off the Coast of California	§ 660.79, Subpart C Conservation Areas off the Coast of California.
Table 1a to Part 660, Subpart G—2009, Specifications of ABCs, OYs, and HGs, by Management Area (weights in metric tons).	Table 1a to Part 660, Subpart C—2009, Specifications of ABCs, OYs, and HGs, by Management Area (weights in metric tons).
Table 1b to Part 660, Subpart G—2009, Harvest Guidelines for Minor Rockfish by Depth Sub-groups (weights in metric tons).	Table 1b to Part 660, Subpart C—2009, Harvest Guidelines for Minor Rockfish by Depth Sub-groups (weights in metric tons).
Table 1c to Part 660, Subpart G—2009, Open Access and Limited Entry Allocations by Species or Species Group (weights in metric tons).	Table 1c to Part 660, Subpart C—2009, Open Access and Limited Entry Allocations by Species or Species Group (weights in metric tons).
Table 2a to Part 660, Subpart G—2010, Specifications of ABCs, OYs, and HGs, by Management Area (weights in metric tons).	Table 2ato Part 660, Subpart C—2010, Specifications of ABCs, OYs, and HGs, by Management Area (weights in metric tons).
Table 3 (North) 660, Subpart G—2010 Trip Limits for Limited Entry Trawl Gear North of 40°10′ N. Lat.	Table 1 (North) 660, Subpart D—2010 Trip Limits for Limited Entry Trawl Gear North of 40°10′ N. Lat.
Table 3 (South) 660, Subpart G—2010 Trip Limits for Limited Entry Trawl Gear South of 40°10′ N. Lat.	Table 1 (South) 660, Subpart D—2010 Trip Limits for Limited Entry Trawl Gear South of 40°10′ N. Lat.
Table 4 (North) 660, Subpart G—2009–2010 Trip Limits for Limited Entry Fixed Gear North of 40°10′ N. Lat.	Table 2 (North) 660, Subpart E—2009–2010 Trip Limits for Limited Entry Fixed Gear North of 40°10′ N. Lat.
Table 4 (South) 660, Subpart G—2009–2010 Trip Limits for Limited Entry Fixed Gear South of 40°10′ N. Lat.	Table 2 (South) 660, Subpart E—2009–2010 Trip Limits for Limited Entry Fixed Gear South of 40°10′ N. Lat.
Table 5 (North) 660, Subpart G—2009–2010 Trip Limits for Open Access Gears North of 40°10′ N. Lat.	Table 3 (North) 660, Subpart F—2009–2010 Trip Limits for Open Access Gears North of 40°10′ N. Lat.
Table 5 (South) 660, Subpart G—2009–2010 Trip Limits for Open Access Gears South of 40°10′ N. Lat.	Table 3 (South) 660, Subpart F—2009–2010 Trip Limits for Open Access Gears South of 40°10′ N. Lat.
Figure 1 to Subpart G of Part 660—Diagram of Selective Flatfish Trawl	Figure 1 to Subpart C of Part 660—Diagram of Selective Flatfish Trawl.
Table 2 to Part 660—Vessel Capacity Ratings for West Coast Groundfish Limited Entry Permits.	Table 3 to Subpart C of Part 660—Vessel Capacity Ratings for West Coast Groundfish Limited Entry Permits.

In addition to the reorganization of the existing groundfish regulations into the new regulatory structure, NMFS has made some minor revisions to regulatory language. Most changes revise the existing regulatory language to work with the new structure and the proposed changes to the limited entry trawl fishery, including but not limited to: Revising the definitions used for the trawl fishery; revising definitions used for allocations; moving definitions, prohibitions, recordkeeping and reporting requirements, observer requirements, crossover provisions, and management measures to the subpart for each fishery (trawl, fixed gear, open access, recreational); and updating cross references.

Some minor revisions not directly related to the trawl rationalization program or intersector allocations were made to update regulatory language. The following definitions were revised: Address of record, Council, fishing gear, groundfish, groundfish trawl, initial

administrative determination, non-groundfish trawl, overage, permit holder, and permit owner. New definitions were added for the following terms: Bag limits, boat limits, daily trip limit fishery, endorsement, entity, calendar year, fish, fishing, fishing vessel, hook limits, non-groundfish fishery, observer, operate a vessel, primary season, sablefish tier limit fishery, tier limit, vessel of the United States, and vessel owner. In order to improve clarity and better match the MSA definition, the term "participate" was changed to "fish" where appropriate throughout the regulations. NMFS is particularly seeking comment on the revised and new definitions. NMFS may implement these definitions under section 303(d) of the Magnuson Act.

In the new § 660.20, vessel and gear identification language was combined to make it easier for readers to find the identification requirements. In the new § 660.25, old language referring to the LE fixed gear sablefish permit stacking program's application requirements and qualifying criteria for the endorsement/tier assignment and various exemptions (at-sea processing, adding spouse to permit, owner on board exemption) were removed because the application window for these closed between 1998 and 2007, depending on the provision. In the new § 660.50, regulations affecting treaty tribes were combined from §§ 660.324 and 660.385 to make it easier for the reader to find the tribal requirements. In the new § 660.60 paragraph (f), the description of Exempted Fishing Permits (EFPs) was revised to clarify the different types of EFPs: Compensation fishing EFPs versus all other EFPs. In the new §§ 660.231 and 660.232, the fixed gear sablefish tier limit fishery and the LE daily trip limit fishery have been separated from one section to two to make it easier to find the requirements for each of these fisheries. In the new § 660.333, the OA non-groundfish trawl fishery management measures were separated into their own section to make it easier to find these requirements; they were previously combined with the general OA fishery management measures listed in the new § 660.330. In the new § 660.352, new gear and trip prohibitions were added for the recreational fishery.

Revisions to Paperwork Reduction Act (PRA) References

Section 3507 of the PRA requires that agencies inventory and display a current control number assigned by the Director, OMB, for each agency information collection, and 15 CFR 902.1(b) identifies the location of NOAA regulations for which OMB approvals have been issued. Because this rule codifies recordkeeping and reporting requirements, 15 CFR 902.1(b) is revised to correctly reference the new sections resulting from the reorganization.

The following table lists the derivation of the NOAA PRA approvals for regulatory requirements in 50 CFR part 660:

Old section	New section	OMB Control No.
§ 660.303 Reporting and recordkeeping	§ 660.113, Subpart C Recordkeeping and Reporting § 660.113, Subpart D Trawl Fishery Recordkeeping and Reporting § 660.213, Subpart E Fixed Gear Fishery Recordkeeping and Reporting § 660.313, Subpart F Open Access Fishery Recordkeeping and Reporting § 660.353, Subpart G Recreational Fishery Recordkeeping and reporting	−0271
§ 660.305 Vessel identification	§ 660.20, Subpart C Vessel and Gear Identification § 660.219, Subpart C Fixed Gear Identification and Marking § 660.319, Subpart C Open Access Fishery Gear Identification and Marking	−0355
§ 660.322 Sablefish allocations	§ 660.55 (h), Subpart C Sablefish Allocations (north of 36° N. lat.).	−0352
§ 660.323 Pacific whiting allocations, allocation attainment, and inseason allocation reapportionment	§ 660.55 (i), Subpart C § 660.131 Pacific Whiting Fishery Management Measures	−0243
§ 660.331 Limited Entry and open access fisheries—general	§ 660.25(a), Subpart C	−0243
§ 660.333 Limited entry fishery—eligibility and registration	§ 660.25(b)(1), Subpart C	−0203
§ 660.334 Limited entry permits—endorsements	§ 660.25(b)(3), Subpart C	−0203
§ 660.335 Limited entry permits—renewal, combination, stacking, change of permit ownership or permit holdership, and transfer	§ 660.25(b)(4), Subpart C	−0203
§ 660.336 Pacific whiting vessel licenses	§ 660.26, Subpart C	−0583
§ 660.337 Trawl Rationalization program—data collection requirements	removed.	−0599
§ 660.338 Limited entry permits—small fleet	§ 660.25(b)(5), Subpart C	−0203
§ 660.339 Limited entry permit and Pacific whiting vessel license fees	§ 660.26, Subpart C	−0203
§ 660.340 Limited entry permit appeals	§ 660.25(g), Subpart C	−0203
§ 660.341 Limited entry permit sanctions	§ 660.25(h), Subpart C	−0203
§ 660.350 Compensation with fish for collecting resource information—exempted fishing permits off Washington, Oregon, and California	§ 660.30, Subpart C	−0203

V. Related Rulemakings and Future Actions

Previous Rule

On January 29, 2009, NMFS published a final rule to initiate the data collection necessary to support initial issuance of permits, endorsement, and QS under the IFQ and Coop programs. This rule provided notice to participants in the industry to review their catch data for purposes of ensuring that the quota share and other calculations undertaken by NMFS would be based on the best available data (74 FR 4684).

Program Components Rule

NMFS plans to publish additional details regarding implementation of Amendment 20 through an upcoming "program components" rule. This rule would address details regarding IFQ gear switching provisions, observer programs, retention requirements, equipment requirements, catch monitors, catch weighing requirements, coop permits/agreements, first receiver site licenses, and vessel QP accounts. Additionally, further tracking and monitoring components may be proposed, as well as requirements for economic data collection requirements, and cost recovery.

The Council plans to address additional details related to implementation of Amendments 20 and 21 through subsequent Council actions ("trailing actions"). Details to be addressed through trailing actions could include:

- Adaptive Management Program.
- Community Fishing Associations.
- Cost Recovery details.
- Safe harbors for control language.
- Severability for MS/CV–endorsed permits and catch history assignment.

Classification.

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pacific Coast Groundfish FMP.

The Council prepared a draft environmental impact statement for Amendment 20 to the Pacific Coast Groundfish FMP; a notice of availability was published on December 4, 2009 (74 FR 63751). The Council also prepared a draft environmental impact statement for Amendment 21 to the Pacific Coast Groundfish FMP; a notice of availability was published on January 29, 2010 (75 FR 4812). The trawl rationalization program would consist of: (1) An IFQ program for the shore-based LE groundfish trawl fleet; and (2) coop programs for the at-sea whiting LE groundfish trawl fleet. 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.

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the IRFA is available from NMFS (*see* **ADDRESSES**) and a summary of the IRFA, per the requirements of 5 U.S.C. 604(a) 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. The draft RIR and IRFAs were updated and combined into a single RIR/IRFA. Among other things, this single RIR/IRFA contains additional information on characterizing the participants in the fishery and on the tracking and monitoring costs associated with this program.

Due to the complexity of the proposed fishery management measures, the rule associated with this analysis proposes only certain key components that would be necessary to have permits and endorsements issued in time for use in the 2011 fishery and in order to have the 2011 specifications reflect the new allocation scheme. Specifically, this rule would establish the allocations set forth under Amendment 21 and would establish procedures for initial issuance of permits, endorsements, and QS under the IFQ and Coop programs. NMFS plans to propose additional program details in a future proposed rule. Such additional details would include: Program components applicable to IFQ gear switching, observer programs, retention requirements, equipment requirements, catch monitors, catch weighing requirements, coop permits/agreements, first receiver site licenses, quota share accounts, vessel QP accounts, further tracking and monitoring components, and economic data collection requirements. In order to encourage more informed public comment, this proposed rule includes a general description of these additional program requirements. NMFS is also planning a future "Cost-Recovery" rule, based on a recommended methodology yet to be developed by the Pacific Fishery Management Council.

The RIR/IRFA analyzes two alternatives—the No-Action Alternative and the Preferred Alternative. The analysis of the no action alternative describes what is likely to occur in the absence of the proposed action. It provides a benchmark against which the incremental effects of the proposed 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 proposed action. Under the preferred alternative, the existing shore-based whiting and shore-based non-whiting sectors of the Pacific Coast groundfish limited entry trawl fishery would be managed as one sector under a system of IFQs, and the at-sea whiting sectors of the fishery (i.e., catcher-processor sector and mothership sector, which includes motherships and catcher vessels) would be managed under a system of sector-specific harvesting cooperatives (co-ops). The catcher-processor sector would continue to operate under the existing, self-developed co-op program entered into voluntarily by that sector. A distinct set of groundfish species and Pacific halibut would be covered by the rationalization program. Amendment 20 would include a tracking and

monitoring program to assure that all catch (including discards) would be documented and matched against QP. The Council specified that observers would be required on all vessels and shore-based monitoring (catch monitors) would be required during all off-loading (100 percent coverage). Compared to status quo monitoring, this would be a monitoring and observer coverage level increase for a large portion of the trawl fleet, particularly for non-whiting shore-based vessels.

The limited entry trawl fishery is divided into two broad sectors: A multi-species trawl fishery, which most often uses bottom trawl gear (hereafter called the non-whiting fishery), and the Pacific whiting fishery, which uses midwater trawl gear. The non-whiting fishery is principally managed through 2-month cumulative landing limits along with closed areas to limit overfished species bycatch. Fishery participants target the range of species described above with the exception of Pacific whiting. By weight, the vast majority of trawl vessel groundfish is caught in the Pacific whiting fishery. In contrast, the non-whiting fishery accounts for the majority of limited entry trawl fishery ex-vessel revenues. On average for the period 2000–2005, Pacific whiting accounted for about 75 percent of the quantity of groundfish landed in the limited entry trawl fishery, but only 21 percent of the value due to their relatively low ex-vessel price.

Non-whiting trawl vessels deliver their catch to shoreside processors and buyers located along the coasts of Washington, Oregon, and California, and tend to have their homeports located in towns within the same general area where they make deliveries, though there are several cases of vessels delivering to multiple ports during a year. Some Pacific whiting trawl vessels are catcher-processors, which, as their name implies, process their catch on-board, while other vessels in this sector deliver their catch to shoreside processors or motherships that receive Pacific whiting for processing but do not directly harvest the fish.

Over time, landings in the limited entry trawl fishery have fluctuated, especially on a species-specific basis. Pacific whiting has grown in importance, especially in recent years. Through the 1990s, the volume of Pacific whiting landed in the fishery increased. In 2002 and 2003, landings of Pacific whiting declined due to information showing the stock was depleted and the subsequent regulations that restricted harvest in order to rebuild the species. Over the years 2003–2007, estimated Pacific whiting ex-vessel revenues averaged about $29 million. In 2008, these participants harvested about 248,000 tons of whiting worth about $63 million in ex-vessel revenues, based on shore-based ex-vessel prices of $254 per ton, the highest ex-vessel revenues and prices on record. In comparison, the 2007 fishery harvested about 224,000 tons worth $36 million at an average ex-vessel price of about $160 per ton.

While the Pacific whiting fishery has grown in importance in recent years, harvests in the non-whiting component of the limited entry trawl fishery have declined steadily since the 1980s. Ex-vessel revenues in the fishery peaked in the mid 1990s at over $60 million. Following the passage of the Sustainable Fisheries Act (1996) and the listing of several species as overfished, harvests became increasingly restricted and landings and revenues declined steadily until 2002. Since 2002, ex-vessel revenues have stabilized at approximately $23–$27 million per year. In 2007, the Council estimates that 159 trawlers landed 94,000 mt of groundfish, earning $37 million in ex-vessel revenues, for an average of $234,000 per vessel.

Expected Effects of Amendment 21—Intersector Allocation

The allocation of harvest opportunity between sectors under the proposed regulation does not differ significantly from the allocation made biennially under the no action alternative. The primary economic effect of the long-term allocation under the proposed regulations is to provide more certainty in future trawl harvest opportunities, which would enable better business planning for participants in the rationalized fishery. As described elsewhere, the trawl rationalization program could create an incentive structure and facilitate more comprehensive monitoring to allow bycatch reduction and effective management of the groundfish fisheries. In support of the trawl rationalization program, the main socioeconomic impact of Amendment 21 allocations is longer term stability for the trawl industry. While the preferred Amendment 21 allocations do not differ significantly from status quo ad hoc allocations made biennially, there is more certainty in future trawl harvest opportunities, which enables better business planning for participants in the rationalized fishery. This is the main purpose for the Amendment 21 actions. The economic effects of Amendment 21 arise from the impacts on current and future harvests. The need to constrain groundfish harvests to address overfishing has had substantial socioeconomic impacts. The groundfish limited entry trawl sector has experienced a large contraction, spurred in part by a partially federally-subsidized vessel and permit buyback program implemented in 2005. This $46 million buyback program was financed by a Congressional appropriation of $10 million and an industry loan of $36 million. Approximately 240 groundfish, crab, and shrimp permits were retired from state and federal fisheries, and there was a 35 percent reduction in the groundfish trawl permits. To repay the loan, groundfish, shrimp and crab fisheries are subject to landings fees. Follow-on effects of the buyback have been felt in coastal communities where groundfish trawlers comprise a large portion of the local fleet. As the fleet size shrinks and ex-vessel revenues decline, income and employment in these communities is affected. Fishery-related businesses in the community may cease operations because of lost business. This can affect non-groundfish fishery sectors that also depend on the services provided by these businesses, such as providing ice and buying fish. An objective to the trawl rationalization program is to mitigate some of these effects by increasing revenues and profits within the trawl sector. However, because further fleet consolidation is expected, the resulting benefits are likely to be unevenly distributed among coastal communities. Some communities may see their groundfish trawl fleet shrink further as the remaining vessels concentrate in a few major ports. Species subject to Amendment 21 allocations would be: Lingcod, Pacific cod, sablefish south of 36°N. lat., Pacific ocean perch, widow rockfish, chilipepper rockfish, splitnose rockfish, yellowtail rockfish north of 40°10′ N. lat., shortspine thornyhead (north and south of 34°27′ N. lat.), longspine thornyhead north of 34°27′ N. lat., darkblotched rockfish, minor slope rockfish (north and south of 40°10′ N. lat.), Dover sole, English sole, petrale sole, arrowtooth flounder, starry flounder, and Other Flatfish. While the preferred Amendment 21 allocations of these species do not differ significantly from status quo ad hoc allocations made biennially, there is more certainty in future trawl harvest opportunities, which enables better business planning for participants in the rationalized fishery. This is the main purpose for the Amendment 21 actions.

Based on ex-vessel revenue projections, Table 4–18 (ISA DEIS) shows the potential 2010 yield to trawl and non-trawl (including recreational)

sectors under the Amendment 21 alternatives and the potential 2010 value of alternative trawl allocations. Under the status quo option Alternative 1, the projected ex-vessel value of the trawl allocation is $56 million while the projected ex-vessel value of the Council's preferred alternative is $54 million, indicating a potential increase to the non-trawl sectors and a potential decrease to the trawl sector.

In addition to the species above, halibut would also be specifically allocated to the trawl fishery. The proposed regulations include a halibut trawl bycatch reduction program in phases to provide sufficient time to establish a baseline of trawl halibut bycatch and for harvesters to explore methods (*e.g.,* adjustments to time and/or area fished, gear modifications) to reduce halibut bycatch and bycatch mortality. Pacific halibut are currently not allowed to be retained in any U.S. or Canadian trawl fisheries per the policy of the IPHC. The Council's intent on setting a total catch limit of Pacific halibut in Area 2A trawl fisheries is to limit the bycatch and progressively reduce the bycatch to provide more benefits to directed halibut fisheries. The program establishes a limit for total Pacific halibut bycatch mortality (legal-sized and sublegal fish) through the use of an individual bycatch quota in the trawl fishery. The initial amount for the first two years of the trawl rationalization program would be calculated by taking 15% of the Area 2A Total Constant Exploitation Yield (CEY) as set by the International Pacific Halibut Commission (IPHC) for the previous year, not to exceed 130,000 lbs per year for total mortality. For example, if the trawl rationalization program went into effect in 2013, the trawl halibut IBQ would be set at 15% of the Area 2A CEY adopted for 2012 or 130,000 lbs per year, whichever is less, for 2013 and 2014 (Years 1 and 2 of the program). Beginning with the third year of implementation, the maximum amount set aside for the trawl rationalization program would be reduced to 100,000 lbs per year for total mortality. This amount may be adjusted downward through the biennial specifications process for future years.

Currently there are no total catch limits of Pacific halibut specified for the west coast trawl fishery. Trawl bycatch of Pacific halibut, therefore, does not limit the trawl fishery. A phased in, halibut bycatch reduction program, would provide sufficient time to establish a baseline of trawl halibut bycatch under the new rationalization program and for harvesters to explore methods (e.g., adjustments to time and/or area fished, gear modifications) to reduce both halibut bycatch and bycatch mortality. By limiting the bycatch of Pacific halibut in the LE trawl fisheries, Amendment 21 would control bycatch and could provide increased benefits to Washington, Oregon, and California fishermen targeting Pacific halibut. Reducing the trawl limit would also provide more halibut to those who participate in the directed tribal, commercial and recreational halibut fisheries.

Effects of Amendment 20—Trawl Rationalization

Due to the lack of quantitative data, an overall comprehensive model was not feasible. Instead, a set of models designed to focus on specific issues was developed. For example, models were used to: Analyze the effects of the initial allocation of QS in the trawl IFQ program; project geographic shifts in fishery patterns; and illustrate the potential for reducing bycatch, increasing target catch, and increasing revenues. To illustrate the benefits of the IFQ program, a model projecting the expected amount of fleet consolidation in the shore-based non-whiting fishery was developed. This model illustrates the potential for the fleet to reduce bycatch and potentially increase the amount of target species harvested. This model is primarily based on bycatch reduction experiences in the Pacific whiting fishery and under an Exempted Fishing Permit carried out in the arrowtooth flounder fishery. The model accounts for the fact that trawlers harvest many species (multiple outputs). The model also uses fish ticket data and the data from the recently completed West Coast Limited Entry Cost Earnings Survey sponsored by the NMFS Northwest Fisheries Science Center. (For the other sectors, similar models could not be developed because the appropriate cost data was unavailable).

Estimates of potential economic benefits are generated based on the predicted harvesting practices from the first step analysis. Because the west coast non-whiting groundfish fishery is not a derby fishery, it is expected that economic benefits will come through cost reductions and increased access to target species that arise from modifications in fishing behavior (overfished species avoidance). The key output of this analysis is an estimate of post-rationalization equilibrium harvesting cost.

Changes in harvesting costs can arise from three sources. First, the total fixed costs incurred by the groundfish trawl fleet change as the size of the fleet changes. Since many limited entry trawlers incur annual fixed costs of at least $100,000, reductions in fleet size can result in substantial cost savings. In other words, a fewer number of vessels in the fishery will lead to decreased costs through a decrease in annual fixed costs. Second, costs may change as fishery participation changes and no longer incur diseconomies of scope (such as the costs of frequently switching gear for participating in multiple fisheries). Third, costs may change as vessels are able to buy and sell quota to take advantage of economies of scale and operate at the minimum point on their long-run average cost curve (i.e. the strategy that minimizes the cost of harvesting).

The major conclusions of this model suggest that (with landings held at 2004 levels), the current groundfish fleet (non-whiting component) which consisted of 117 vessels in 2004, will be reduced by roughly 50% to 66%, or 40–60 vessels under an IFQ program. The reduction in fleet size implies cost savings of $18–$22 million for the year 2004 (most recent year of the data). Vessels that remain active will, on average, be more cost efficient and will benefit from economies of scale that are currently unexploited under controlled access regulations in the fishery. The cost savings estimates are significant, amounting to 60% of the costs incurred currently, suggesting that IFQ management may be an attractive option for the Pacific Coast Groundfish Fishery. Assuming a 10% annual return to the vessel capital investment, estimates indicate that the 2004 groundfish fleet incurred a total cost of $39 million. The PacFIN data indicate fleetwide revenue at roughly $36 million in 2004, and, therefore, fleet wide losses of about $3 million occurred in 2004. Based on a lower 5% return to vessel capital, the results suggest that the groundfish fleet merely broke even in 2004; i.e., dockside revenues were offset by the fleet wide harvesting costs. The results also suggest a switch from the current controlled access management program to IFQs could yield a significant increase in resource rents in the Pacific Coast Groundfish fishery. For instance, the analysis finds that the 2004 groundfish catch generated zero resource rent. Instead, it could have yielded a substantial positive rent at about $14 million.

As the model was based on the 2004 fishery, it may be useful to show current trends in the fishery. In 2004, the shorebased non-whiting trawl fishery generated about $30 million in ex-vessel revenues. But according to cost estimates discussed above, this fishery

was at best breaking even or perhaps suffering a loss of up to $2 million. Since 2004, shorebased non-whiting trawl fisheries have increased their revenues to about $40 million. The increases in shorebased revenues have come from increased landings of flatfish and sablefish and significant increase in sablefish ex-vessel prices. Sablefish now accounts for almost half of the trawl fleet's revenues. While revenues were increasing, so were fuel prices. Fuel costs are about 30 to 40% of the vessels' revenues. The average 2005–2009 revenues were about $28 million, or 22 percent greater than 2004. The average 2005–2009 fuel price was about $2.81, 70% greater than that of 2004. Therefore, it appears that 2009 fishery may not be that much improved over that of 2004.

Based on the various models, ex-vessel revenues for the non-whiting sector of the limited entry trawl fishery are estimated to be approximately $30–50 million per year under the preferred alternative, compared to $22–25 million under the no action alternative. This revenue increase is expected to occur in a rationalized fishery, because target species quotas can be more fully utilized. Currently, in the non-whiting sector, cumulative landing limits for target species have to be set lower because the bycatch of overfished species cannot be directly controlled. Introducing accountability at the individual vessel level by means of IFQs provides a strong incentive for bycatch avoidance (because of the actual or implicit cost of quota needed to cover bycatch species) and prevents the bycatch of any one vessel from affecting the harvest opportunity of others. In addition, under the preferred alternative, the non-whiting sector would have control over harvest timing over the whole calendar year. Under the no action alternative, the non-whiting sector would continue to operate under 2-month cumulative landing limits, which reduces flexibility within the period, because any difference between actual limits and the period limit cannot be carried over to the next period. Finally, the ability for vessels managed under IFQs to use other types of legal groundfish gear could allow some increases in revenue by targeting higher-value line or pot gear caught fish. This opportunity would mainly relate to sablefish, which are caught in deeper water, rather than nearshore species where state level regulatory constraints apply.

The preferred alternative may also increase ex-vessel revenues of non-whiting trawl harvesters by changing their bargaining power with processors over ex-vessel prices. Under the preferred alternative, the current 2-month cumulative limits structure of the non-whiting trawl fishery would be replaced with QP that is available for a year, thereby extending the time horizon harvesters have to negotiate prices with processors without losing available fishing opportunity. The extended period would give harvesters greater latitude to hold out for better prices compared to the no action alternative. However, it should also be noted that these negotiations will also be affected by the availability of target species, as well as the availability of bycatch.

Costs for the non-whiting sector of the limited entry trawl fishery are expected to decrease under the preferred alternative because of productivity gains related to fleet consolidation. Productivity gains would be achieved through lower capital requirements and a move to more efficient vessels. Operating costs for the non-whiting sector are predicted to decrease by as much as 60 percent annually. Based on estimates of current costs, this percentage decrease represents a $13.8 million cost reduction relative to the no action alternative.

The accumulation limits considered under the preferred alternative are not expected to introduce cost inefficiencies in the non-whiting sector, provided that current prices and harvest volumes do not decrease. However, the preferred alternative would impose new costs on the non-whiting sector that would not be incurred under the no action alternative. First, a landings fee of up to 3 percent of the ex-vessel value of fish harvested would be assessed under the preferred alternative to recover management costs, such as maintenance of the system of QS accounts. Second, new at-sea observer requirements would be introduced, and vessels would have to pay the costs of complying with these requirements, estimated at $500 a day if independent contractors are hired. The daily observer cost could place a disproportionate adverse economic burden on small businesses because such costs would comprise a larger portion of small vessels costs than that of larger vessels.

The increase in profits that commercial harvesters are expected to experience under the preferred alternative may render them better able to sustain the costs of complying with the new reporting and monitoring requirements. The improved harvesting cost efficiency under the preferred alternative may allow the non-whiting sector to realize profits of $14–23 million compared to $0 or less under the no action alternative. In addition, a provision that allows vessels managed under the IFQ program to use other legal gear (gear switching) would allow sablefish allocated to the trawl sector to be sold at a higher price per pound, possibly contributing to increased profits. The imposition of accumulation limits could reduce the expected increase in the profitability of the non-whiting sector by restricting the amount of expected cost savings, and the costs of at-sea observers may reduce profits by about $2.2 million, depending on the fee structure. However, the profits earned by the non-whiting sector would still be substantially higher under the preferred alternative than under the no action alternative.

New entrants are likely to face a barrier to entry in the Pacific Coast groundfish limited entry trawl fishery in the form of the cost of acquiring QS (or a co-op share in the case of the at-sea whiting sector). This disadvantages them in comparison to those entities that receive an initial allocation of harvest privileges. Small entities may be particularly disadvantaged to the degree that they may find it more difficult to finance such quota purchases. Among the goals the Council identified for the adaptive management program was to use the reserved non-whiting QS to facilitate new entry into the fishery. In addition, the Council identified, as a trailing action, a framework to allow the establishment and implementation of Community Fishing Associations as part of the adaptive management program. These entities could facilitate entry into the fishery by leasing QS at below market rates, thereby leveling the playing field in terms of costs between initial recipients of QS and new entrants.

The incremental effects of the preferred alternative on buyers and processors of trawl caught groundfish are detailed Sections 4.9–4.10 of the Rationalization of the Amendment 20 Pacific Coast Groundfish Limited Entry Trawl Fishery DEIS. 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. Processors could use current plant capacity more efficiently, because available information suggests that processing facilities are currently underutilized. Fleet consolidation in the non-whiting sector could also provide cost savings for processors if landings occur in fewer locations, thereby reducing the need for facilities and/or transport. The preferred alternative would also impose new costs on

processors that would not be incurred under the no action alternative. Processors would be required to pay some or all of the costs of plant monitors, who would verify landings. Similar to at-sea observers, these monitors would be independent contractors rather than direct employees of the processing firm.

In the non-whiting processing industry, harvest volumes may increase because of a decrease in constraining species bycatch and a subsequent increase in under-utilized target species catch. This boost in target species catch may increase utilization of processing capital and processing activity. (It should be noted that if under the current system bycatch has been underreported, with 100 percent observer coverage under the new system, the gains in increased target catches may be less than expected.) Consequently, the possibility of capital consolidation in the non-whiting shore-based sector may be less than in the shore-based whiting sector. However, shifts in the distribution of landings across ports 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) could lead to consolidation in processing activity at a localized or regional scale and an expansion in processing activity elsewhere. To mitigate harm to adversely impacted non-whiting shoreside processors, the adaptive management program provides a mechanism to distribute non-whiting QS to processors, thereby ensuring that some processors receive greater landings of groundfish than would otherwise be the case.

As noted above, the preferred alternative may reduce the power of non-whiting shoreside processors to negotiate ex-vessel prices with harvesters. The larger harvest volume due to bycatch avoidance may lower processor average costs, which could offset the negative effects on non-whiting shoreside processors of a shift in bargaining power. In addition, QS could be purchased by processors over the long term, thereby increasing processors' negotiation power. However, the accumulation limits included in the preferred alternative would limit the ability of processors to purchase substantial quantities of QS. Alternatively, the adaptive management provision could be used to allocate QS to non-whiting shoreside processors, thereby providing them additional leverage when negotiating terms with harvesters.

The allocation of 20 percent of the initial shore-based whiting QS to the shoreside processor portion of the groundfish fishery would give these processors more influence in negotiations over ex-vessel prices and would tend to offset the gains in bargaining power for harvesters. For example, a processor could use QS to induce a harvester that is short of quota pounds for a Pacific whiting trip to make deliveries under specified conditions and prices. However, because of a reduction in peak harvest volume, fewer processing companies and/or facilities may be necessary to handle harvest volumes of Pacific whiting, meaning some companies may find themselves without enough product to continue justifying processing operations of Pacific whiting. Revenues from harvesting and processing trawl-caught groundfish are expected to increase. Total revenue from non-whiting trawl fisheries was $25 million in 2007. Revenue is expected to increase 1.1 to 1.6 times in a rationalized fishery, depending on bycatch rate reductions and stock status. Revenue increases are mainly expected because under rationalized fisheries, target species quotas can be more fully utilized. Currently, in the non-whiting sector, cumulative landing limits for target species have to be set lower because the bycatch of overfished species cannot be directly controlled. Introducing accountability at the individual vessel level provides a strong incentive for bycatch avoidance (because of the actual or implicit cost of quota needed to cover bycatch species) and prevents the bycatch of any one vessel from affecting the harvest opportunity of others. Whiting fisheries are more directly managed through quotas, and in recent years, by limits on bycatch. Beginning in 2009, bycatch limits have been established for each of the three whiting sectors. For the shore-based and mothership whiting sectors, the fishery can potentially close before the whiting allocation is fully harvested because a bycatch cap is reached. (The catcher-processor sector currently operates as a voluntary co-op and is therefore better able to coordinate harvest strategy to avoid reaching bycatch limits.) However, in general, the whiting sectors have been able to harvest their sector allocations. Whiting vessels could increase revenues due to improved product recovery as a result of the ability to better control harvest timing. As mentioned above, the ability for vessels managed under IFQs to use other types of legal groundfish gear could allow some increases in revenue by targeting higher-value line or pot gear caught fish.

Harvester and possibly processor costs are expected to decrease because of productivity gains related to fleet consolidation. Cost savings would be due to lower capital requirements and a move to more efficient vessels in the non-whiting sector. Costs are predicted to decrease by as much as 60 percent annually, which based on estimates of current operating costs would represent a $13.8 million decrease. Similar levels of consolidation are expected for shorebased and mothership catcher vessels. Proposed mitigation measures could reduce these costs savings. For example, a 1 percent quota share accumulation limit could reduce cost savings by as much as 20 percent. But the accumulation limits considered in the alternatives are not expected to introduce higher costs at current prices and harvest volume. The proposed action would introduce some new costs. First, up to 3 percent of the value of landings may be assessed to cover administrative and management costs. Second, new at-sea observer requirements would be introduced and vessels would have to pay the cost, estimated at $350–$500 a day.

Processors may see cost-savings to the degree that rationalization allows greater control over the timing and location of landings. Processors could use current plant capacity more efficiently, because available information suggests that processing facilities are currently underutilized. Fleet consolidation could also drive some cost savings on the part of processors if landings occur in fewer locations. This would reduce the need for facilities and/or transport. Under the proposed action, processors would be required to pay the costs of plant monitors, who would verify landings. These monitors would not be directly employed by the processing firm but, similar to at-sea observers, be independent contractors.

Rationalization of the groundfish trawl sector is expected to free up capital and labor because of increases in productivity. (Since the basic input, trawl-caught fish, is subject to an underlying constraint due to biological productivity, increases in labor and capital productivity are expected to reduce the amount of those inputs needed.) However, from a national net benefit perspective these effects are neutral since capital and labor can be put to some productive use elsewhere in the broader economy. Also, current groundfish fishery participants that

receive QS (trawl limited entry trawl permit holders and eligible shoreside processors) are compensated to the degree that the asset value of the QS covers capital losses.

The tracking and monitoring costs of this program will be provided in more detail with the "program components" rule making. However, the RIR/IRFA to this rule contains some preliminary estimates. After a transition period, for the shore-based fishery, the initial estimates of the annual federal and state agency costs to run this program are about $5 million. Based on the observer cost of $500 per day, the annual costs of observers monitoring is about $4 million and at $350 per day, the compliance monitor program is just over $1 million annually. These figures add up just over $10 million. From a cost-benefit view point, if consolidation leads to $14 million savings from reduced harvesting costs and the new program increases the tracking and monitoring costs of $10 million, there is a projected net gain of about $4 million. This does not take into account expectations that costs will likely be reduced due to consolidation or the expected increases in revenues discussed above.

While the effect of the preferred alternative on revenues and costs in the whiting sector of the limited entry trawl fishery is more difficult to estimate, the lower motivation to "race for fish" due to coop harvest privileges is expected to result in improved product quality, slower-paced harvest activity, increased yield (which should increase exvessel prices), and enhanced flexibility and ability for business planning. The overall effect of these changes would be higher revenues and profits for harvesters in the shoreside and mothership portions of the whiting fishery in comparison to the no action alternative. Under the preferred alternative, some consolidation may occur in the shoreside and mothership sectors of the Pacific whiting fishery, though the magnitude of consolidation is expected to be less than in the non-whiting sector. The existing catcher-processor coop would continue under the preferred alternative, with effects on the catcher-processor sector that look similar, or identical, to those of the no action alternative. However, the change from a vessel-based limit under Amendment 15 to the permit-based limit of Amendment 21 will provide additional flexibility that currently does not exist in the whiting fishery.

This proposed rule would regulate businesses that harvest groundfish and processors that wish to process limited entry trawl groundfish. Under the RFA, the term "small entities" includes small businesses, small organizations, and small governmental jurisdictions. For small businesses, the SBA has established size criteria for all major industry sectors in the US, including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of $4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the $4.0 million criterion for fish harvesting operations. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. For marinas and charter/party boats, a small business is one with annual receipts not in excess of $7.0 million. The RFA defines a small organization as any nonprofit enterprise that is independently owned and operated and is not dominant in its field. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

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 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 "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 greater than $150,000 but less than $1,000,000); and 13 large purchasers (purchases 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.

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 60 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.

A summary of the proposed action is as follows. The proposed action is to replace the current, primary management tool used to control the West Coast groundfish trawl catch—a system of 2-month cumulative landing limits for most species and season closures for whiting—with a system requiring more individual accountability by the assignment of limited access privileges (LAPs). LAPs are a form of output control whereby an individual fisherman, community, or other entity is granted the privilege to catch a specified portion of the total allowable catch (TAC). The alternatives include (1) a catch-based IFQ system where all groundfish catch (landings plus bycatch) by LE trawl vessels would count against a vessel's IFQ holdings, which could be applied to the whole groundfish trawl fishery or selected trawl sectors; and (2) a system of coops that would be applied to one or more of the fishery sectors that target Pacific whiting. The status quo alternative (no action) could also be considered for application to one or more trawl fishery sectors even if one or both action alternatives (IFQs or coops) are chosen for the other trawl sectors.

The description of purpose and need in section 1.2 of the Amendment 20 DEIS also outlines the objectives of the proposed action. The introductory paragraph in Chapter 1 and section 1.3 of the DEIS, background to the purpose and need, provide information on the legal basis for the proposed action (proposed rule). The Council articulated the following goal for the trawl rationalization program: "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 objectives supporting this goal are: Provide a mechanism for total catch accounting; provide for a viable, profitable, and efficient groundfish fishery; promote practices that reduce bycatch and discard mortality, and minimize ecological impacts; increase operational flexibility; minimize adverse effects from an IFQ program on fishing communities and other fisheries to the extent practical; promote measurable economic and employment benefits through the seafood catching, processing, distribution elements, and support sectors of the industry; provide quality product for the consumer; and increase safety in the fishery.

As part of the proposed action, NMFS would be placing observers and/or cameras on board all catcher vessels in the shore-based sector (which combines the current shore-based whiting and non-whiting trawl sectors). Existing requirements for motherships, catcher vessels in the MS sector, and C/Ps would continue. Independently contracted processing plant monitors would track landings. Also, there would be new reporting requirements related to the tracking of QS and QP in the shore-based fishery.

No Federal rules have been identified that duplicate, overlap, or conflict with the alternatives. Public comment is hereby solicited, identifying such rules. A copy of this analysis is available from NMFS (*see* **ADDRESSES**).

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. 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.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; 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, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS, Northwest Region, at the **ADDRESSES** section above; e-mail to *David_Rostker@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 have 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) were also recently listed as threatened under the ESA. As a consequence, NMFS has reinitiated its Section 7 consultation on the PFMC's Groundfish FMP.

After reviewing the available information, NMFS concluded that, in keeping with Sections 7(a)(2) and 7(d) of the ESA, the proposed action 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.

This proposed rule was developed after meaningful consultation and collaboration with the tribal representative on the Council who has agreed with the provisions that apply to tribal vessels.

This action does not conflict with the provisions implemented to protect migratory birds. Vessels participating in the limited entry trawl fishery rarely interact with migratory birds or their habitat.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Dated: May 27, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR Chapter IX and 50 CFR Chapter VI are proposed to be 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. Amend the table in § 902.1(b) under 50 CFR by:

a. Removing the entries and corresponding OMB numbers for §§ 660.303, 660.305, 660.322, 660.323, 660.333, and 660.337.

b. Adding new entries and corresponding OMB numbers for §§ 660.20, 660.25, 660.55, 660.113, 660.131, 660.213, 660.219, 660.313, 660.319, and 660.353.

The additions read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

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
660.55	–0243 and –0352
660.113	–0271
660.131	–0243
660.213	–0271
660.219	–0355
660.313	–0271
660.319	–0355
660.353	–0271
* * * * *	

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. 773 *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, mothership permit, and a 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 shore-based or on the water.

(2) Shore-based 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 shoreside 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 shoreside 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.

(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 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 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 nontrawl 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 nontrawl 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 nontrawl 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 midwater trawl, non-whiting,

(*4*) Limited entry midwater trawl, Pacific whiting shorebased sector,

(*5*) Limited entry midwater trawl, Pacific whiting catcher/processor sector,

(*6*) Limited entry midwater trawl, Pacific whiting mothership sector,

(*7*) Limited entry bottom trawl, not including demersal trawl,

(*8*) Limited entry demersal 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 e-mailing 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 e-mail 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 e-mail, 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 vessel's 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 (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 administrative decision of the Department 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, shore-based 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, shore-based or floating stationary processing facility; or

(C) Any business involved with purchasing raw or processed products from any vessel, shore-based 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 shore-based 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. A MS permit is a type of limited entry permit. A 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. A 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.* A 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 Mothership 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 a 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 a 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 a 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. A 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 a 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.

(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*) 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 quota share for designated species and species groups and to fish in the Shorebased IFQ Program described in § 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 Permits.* [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 subpart 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 RA 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 RA, which shall be advisory only. The recommendation must be based solely on the record. Upon receiving the findings and recommendation, the RA shall issue a final decision on the appeal in accordance with paragraph (g)(6)(ii) of this section.

(ii) *Final decision on appeal.* The RA 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 amount for specific IFQ management unit species under appeal, the QS 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 amounts assigned to the QS permit in the IAD. Once a final decision on the appeal has been made and if a revised QS amount for a specific IFQ species will be assigned to the QS permit, the additional QS 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 a 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 Act at 16 U.S.C. 1858(g) and 15 CFR part 904, subpart D.

(2) All shorebased IFQ fishery permits (QS permit, first receiver site license), QS accounts, vessel accounts, and Coop fishery permits (MS permit, MS/CV endorsed permit, C/P endorsed permit, 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 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 shore-based 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 administrative decision of the Department 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 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. For other species and/or areas, separate allocations for the limited entry and open access fisheries will 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 50 CFR 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 (percent)	All non-treaty non-trawl sectors (percent)
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
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% 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 non-whiting fishery.

(B) *Pacific Ocean Perch (POP).* Allocate 17% 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 non-whiting fishery.

(C) *Widow rockfish.* Allocate 52% of the total trawl allocation of widow rockfish to the whiting sectors if the stock is under rebuilding or 10% 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 non-whiting 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.* If a species is declared overfished, the open access/limited entry allocation may be suspended for the duration of the rebuilding plan. 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 not listed in paragraph (c) of this section, 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.)*—(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 commercial fishery (limited entry and open access).

(2) *Between the limited entry and open access fisheries.* Sablefish is allocated between the limited entry and open access fisheries according to the procedure described in Chapter 6 of the PCGFMP.

(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 shore-based 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.

TABLE 1d TO PART 660, SUBPART C—2011 AT-SEA WHITING FISHERY SET-ASIDES

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 by-catch 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 2d TO PART 660, SUBPART C—2012 AT-SEA WHITING FISHERY SET-ASIDES

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

TABLE 2d TO PART 660, SUBPART C—2012 AT-SEA WHITING FISHERY SET-ASIDES—Continued

Species or species complex	Set-aside (mt)
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).

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 Mothership 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 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 Mothership Program that is a party to the coop agreement, or a permit owner of a C/P-endorsed permit for the C/P Program that is legally obligated to the 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 and 660.160, 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 Act. IFQ species for the shorebased IFQ fishery are listed at § 660.140, subpart D.

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.

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 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 Mothership 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 a MS/CV-endorsed limited entry permit to withdraw the catcher vessel's obligation to a permitted mothership processor, when mutually agreed to with the mothership processor, and to deliver 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 when 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 shore-based 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 shore-based sector allocation for delivery to a Pacific whiting shoreside first receiver during the primary season.

Processor obligation means an annual requirement for a 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 QS permit owners in the Shorebased IFQ Program based on the amount of QS they own and the amount of fish allocated to the shorebased IFQ fishery. 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. 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 are registered for use by a vessel in the Shorebased IFQ Program.

Vessel limits means the maximum amount of QP a vessel can hold, acquire, and/or use during a calendar year. Vessel limits specify the maximum amount of QP that may be registered to a single vessel during the year (QP Vessel Limit) and, for some species, the maximum amount of unused QP 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 an 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 fishery.* [Reserved]

(c) *Mothership and Catcher/Processor Sectors.* [Reserved]

(d) *Mothership Coop Program (Coop And Non-Coop Fisheries).* [Reserved]

(e) *Catcher/Processor 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 shore-based 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) *IFQ program.* [Reserved].

(b) *Mothership coop program (coop and non-coop fisheries).* [Reserved].

(c) *Catcher/processor 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 600×800 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 weight 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.

§ 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 lbs. (136 kg) of chilipepper rockfish with small footrope-gear, it may harvest up to 11,700 lbs. (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 lbs. (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 shore-based 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 shore-based 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) Shore-based 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 shore-based 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 6.1 mt of canary rockfish, 85.0 mt of widow rockfish, and 8.5 mt of darkblotched rockfish; for motherships 4.3 mt of canary rockfish, 60.0 mt of widow rockfish, and 6.0 mt of darkblotched rockfish; and for shore-based 7.6 mt of canary rockfish, 105.0 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) Shore-based sector. 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), 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.**

(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.]

(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 fishery—(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 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 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 fishery may be restricted or closed as a result of projected overages within the Shorebased IFQ Program, the Mothership 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, Mothership 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 will be issued. QS 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).
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 registered to the account and the amount of fish allocated to the Shorebased IFQ Program.

(d) *QS permits and QS accounts*—(1) *General.* In order to obtain QS, a person must apply for a QS permit. NMFS will determine if the applicant is eligible to acquire QS 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 and establish a QS account. QP will be issued annually at the start of the calendar year to a QS account based on the percent of QS registered to the account and the amount of fish allocated to the Shorebased IFQ Program. QP will be issued to the nearest whole pound using standard rounding rules (i.e. decimal amounts from 0 up to 0.5 round down and 0.5 and above round up), except that initial allocations 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 trawl rationalization program. QS owners must transfer their QP from their QS account to a vessel account in order for those QP to be fished. QP must be transferred in whole pounds (i.e. no fraction of a QP can be transferred). All

QP 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 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 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 non-whiting QS holdings.* To determine how much aggregate non-whiting 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 non-whiting species will be summed and divided by the shoreside trawl allocation of all non-whiting species to calculate the person's share of the aggregate non-whiting trawl quota.

(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
Other Fish	5.0
Pacific Halibut	5.4

(ii) *Ownership—individual and collective rule.* The QS that counts toward a person's accumulation limit will include:

(A) The QS owned by that person, and

(B) A portion of the QS owned by an entity in which that person has an interest, where the person's share of interest in that entity will determine the portion of that entity's QS 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 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 are registered;

(C) The person has the right to direct, or does direct, the transfer of QS, or the resulting QP;

(D) The person, through loan covenants or any other means, has the right to restrict, or does restrict, the day to day business activities and management policies of the entity to which the QS are registered;

(E) The person, through loan covenants or any other means, has the right to restrict, or does restrict, use of QS, or the resulting QP, or disposition of fish harvested under the resulting QP;

(F) The person 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 the resulting QP, are registered;

(G) The person has the right to cause, or does cause, the sale, lease or other disposition of QS, or the resulting QP; and

(H) The person has the ability through any means whatsoever to control the entity to which QS 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 individuals that have greater than or equal to 2 percent ownership interest in the permit. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form sent to the permit owner with their application. 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 Control Limit table from paragraph (d)(4)(i) of this section.

(v) *Divestiture.* For QS permit owners 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 divest of QS in excess of the accumulation limits. QS 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 not registered with NMFS by November 30, 2008 will only be eligible to receive an initial allocation for that permit of those QS that are within the accumulation limits; any QS in excess of the accumulation limits will be redistributed to the remainder of the initial recipients of QS in proportion to each recipient's initial allocation of QS for each species. Any person that qualifies for an initial allocation of QS in excess of the accumulation limits will be allowed to receive that allocation but must divest themselves of the excess QS during years three and four of the IFQ program. Holders of QS in excess of the control limits may receive and use the QP associated with that excess, up to the time their divestiture is completed. At the end of year 4 of the IFQ program, any QS held by a person in excess of the accumulation limits will be revoked and redistributed to the remainder of the QS holders in proportion to the QS 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*—(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:

(A) *non-whiting 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. Relative history is expressed as a percent.

(D) *Shoreside processor* means an operation, working on US 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 into 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.* Only the following persons are eligible to receive a QS permit or QS:

(A) The owner of a valid trawl limited entry permit is eligible to receive a QS permit and its associated QS 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.

(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 dataset extracted from PacFIN by NMFS on July 1, 2010, subject to correction as described in paragraph (d)(8)(iv)(G) of this section.

(iii) *Steps for QS allocation formula.* The QS allocation formula is 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.

(iv) *Allocation formula for specific QS 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:

(*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 extracted PacFIN data includes species compositions based on port sampled data and applied to data at the vessel level. 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.

(*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 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 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.

(*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 limited entry trawl-endorsed permits during the time they were simultaneously registered to the vessel.

(*8*) Unless otherwise noted, the calculation for QS allocation under paragraph (d)(8) of this section will be based on state landing receipts (fish tickets) as recorded in the dataset that was extracted from PacFIN by NMFS 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, 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 short-term 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%
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 non-whiting 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% 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. Steps (*iii*) to (*vi*) estimate the permit's total 2003–2006 target species by area. Steps (*vii*) to (*xii*) 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. Steps (*xiv*) to (*xvii*) convert these amounts into QS. As with Group 1 species, preliminary QS totaling 100% 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.

(*v*) For each limited entry trawl permit, NMFS will divide logbook aggregate target species catch in each area (step (*iii*)) by the permit's total coastwide target species catch (step (*iv*)) 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 step (*iii*), (b) NMFS will sum coastwide all limited entry trawl permits' total logbook target catches across all areas from step (*iv*), 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 short term allocation 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 short term allocation amounts for each of the 11 target species from step (*vii*) by each permit's target species QS allocation percentage from step (*viii*).

(*x*) For each limited entry trawl permit, NMFS will sum the projected quota pounds for the 11 target species from step (*ix*) 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 step (*v*) (permits with logbook data) or step (*vi*) (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:

BOCACCIO

Area	Shoreward	Seaward
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.	0.01114773	0.00120015

COWCOD

Area	Shoreward	Seaward
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.	0.00088891	0.00001074

DARKBLOTCHED

Area	Shoreward	Seaward
N. of 47°40′ N. lat.	0.00122003	0.00860467
43°55′ N. lat. to 47°40′ N. lat.	0.00185020	0.01836550
40°10′ N. lat. to 43°55′ N. lat.	0.00253201	0.01476165
S. of 40°10′ N. lat.	0.00000255	0.00480063

PACIFIC OCEAN PERCH

Area	Shoreward	Seaward
N. of 47°40′ N. lat.	0.00088011	0.01766360
43°55′ N. lat. to 47°40′ N. lat.	0.00015827	0.01529318
40°10′ N. lat. to 43°55′ N. lat.	0.00014424	0.00114965
S. of 40°10′ N. lat.	.....	0.00021813

WIDOW

Area	Shoreward	Seaward
N. of 47°40′ N. lat.	0.00001142	0.00005472
43°55′ N. lat. to 47°40′ N. lat.	0.00033788	0.00049695
40°10′ N. lat. to 43°55′ N. lat.	0.00015165	0.00000766
S. of 40°10′ N. lat.	0.00003513	0.00009855

YELLOWEYE

Area	Shoreward	Seaward
N. of 47°40′ N. lat.	0.00017625	0.00000160
43°55′ N. lat. to 47°40′ N. lat.	0.00004802	0.00000893
40°10′ N. lat. to 43°55′ N. lat.	0.00005309	0.00000556
S. of 40°10′ N. lat.	0.00007739	.....

(*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 step (*xi*) by the applicable average bycatch ratio for each Group 2 species and corresponding area of step (*xii*).

(*xiv*) For each limited entry trawl permit, NMFS will sum all area amounts for each Group 2 species from step (*xiii*) 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 step (*xiv*) 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 step (*xiv*) by the coastwide total projected amount for that species from step (*xv*).

(*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.	0.00613838	0.00001714
43°55′ N. lat. to 47°40′ N. lat.	0.00186217	0.00006486
40°10′ N. lat. to 43°55′ N. lat.	0.00485013	0.00001435
S. of 40°10′ N. lat.	0.00050248	0.00000245

(*ii*) Through these two processes, preliminary QS totaling 100% 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% 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 short term allocation between and 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*) *non-whiting 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 short term allocation 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 short term allocation 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 processor*s 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% 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 dataset that was extracted from PacFIN by NMFS 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. Steps (*3*) to (*6*) estimate the permit's total 2003–2006 target species by area. Steps (*7*) to (*13*) 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. Steps (*14*) to (*16*) 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 (step (*3*)) the by the sum of the permit's catch of each target species in all four bycatch areas (step (*4*)) 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 step (*3*), and sum all limited entry trawl permits' total logbook target catches across all four areas from step (*4*); and divide these sums to create average permit logbook area target catch ratios.

(*7*) NMFS will calculate the 2011 non-whiting short term allocation amount for each of the two target species by multiplying the limited entry trawl allocation amounts for 2011 for each by the corresponding short term allocation 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 step (*8*).

(*10*) For each limited entry trawl permit, NMFS will sum the projected quota pounds for the two target species from step (*9*) 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 step (*5*) (permits with logbook data) or step (*6*) (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.	0.117	0.061
40°10′ N. lat. to 47°30′ N. lat.	0.07	0.03

(*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 step (*11*) by the average bycatch ratio for the corresponding area of step (*12*).

(*14*) For each limited entry trawl permit, NMFS will sum all area amounts from step (*13*) 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 step (*14*) 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 step (*14*) by the aggregate total amounts of Pacific halibut from step (*15*).

(v) *QS application.* Persons may apply for an initial issuance of QS 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.

(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. 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. 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 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 dataset extracted from PacFIN by NMFS 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 does not receive a prequalified application, must complete an application package and submit the completed application to NMFS by the application deadline. The completed application must either be post-marked or hand-delivered within normal business hours no later than [*date 60 calendar days after publication of the final rule in the* ***Federal Register***]. 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. 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 QS.

(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 [*date 60 calendar days after publication of the final rule in the* ***Federal Register***]. Requests for corrections may only be granted for the following reasons:

(A) 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 the permit owner, permit combinations, or vessel registration as listed in NMFS permit database;

(*5*) Errors in identification of or ownership information for the first receiver or the processor that first processed the fish.

(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 receiver identified in the 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.

(*3*) The applicant must indicate they accept NMFS' calculation of initial issuance of QS provided in the prequalified application, or provide credible information that demonstrates their qualification for QS.

(*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 QS issuance.

(B) *Application deadline.* A complete, certified application must be mailed or hand-delivered to NMFS, Northwest Region, Permits Office, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115, and postmarked no later than [*date 60 calendar days after publication of the final rule in the* ***Federal Register***]. 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 [*DATE FINAL RULE PUBLISHED IN* ***Federal Register***] until a final decision is made by the Regional Administrator on behalf of the Secretary of Commerce regarding the QS 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, the applicant will receive a QS Permit specifying the amounts of QS 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 NMFS did not approve the application. As part of the IAD, NMFS will indicate whether the QS Permit owner qualifies for QS 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 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 issued under this section, the appeals process and timelines are specified at § 660.25(g), subpart C. For the initial issuance of QS 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 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 dataset extracted from PacFIN by NMFS 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 effectively 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 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 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) *Eligibility to own or hold an MS permit.* 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.

(ii) *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 a MS permit.

(iii) *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 toward a person's accumulation limit will include:

(A) Any MS permit owned by that person, and

(B) A portion of any MS permit owned by an entity in which that person has an 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 individuals that have greater than or equal to 2 percent ownership interest in the permit. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form sent to the permit owner with their application. SFD will not issue an MS Permit unless the Trawl Identification of Ownership Interest Form has been completed.

(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.

(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 of the vessel or charterer of the bareboat 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. The completed application must be either post-marked or hand-delivered within normal business hours no later than [*date 60 days after publication of the final rule in the* ***Federal Register***]. 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. 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.

(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 [*date 60 days after publication of the final rule in the* ***Federal Register***]. Requests for corrections may only be granted for errors in NMFS' extraction, aggregation, or expansion of data, including:

(A) Errors in NMFS' extraction 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 mailed or hand-delivered to NMFS, Northwest Region, Permits Office, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115, and postmarked no later than [*date 60 days after publication of the final rule in the* ***Federal Register***]. 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 NMFS did not approve the application. 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 dataset extracted from NORPAC by NMFS on July 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 a coop. Within the MS Coop Program, an MS/CV endorsed permit may participate in an MS 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 0 up to 0.5 round down and 0.5 and above round up).

(ii) *Pacific whiting Mothership Sector Allocation.* The catch history allocation accrues to the coop to which the MS/CV 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 MS/CV endorsed permit.* 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 owned by that person, and

(*2*) A portion of the catch history assignment owned by an entity in which that person has an 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 individuals that have greater than or equal to 2 percent ownership interest in the permit. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form sent to the permit owner with their application. SFD will not issue an MS/CV endorsement 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, the person will subject to divestiture provisions specified in paragraph (g)(3)(i)(D) of this section.

(D) *Divestiture.* If NMFS determines that an applicant exceeds the MS/CV-endorsed permit ownership limit, NMFS will notify the applicant. The applicant must comply with the MS/CV-endorsed permit ownership limit requirement prior to issuance of the MS/CV endorsement.

(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 dataset that was extracted from NORPAC by NMFS on July 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 permits.

(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 dataset that was extracted from NORPAC by NMFS on July 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 permits.

(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.

(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. The completed application must be either post-marked or hand-delivered within normal business hours no later than [*date 60 days after publication of the final rule in the* ***Federal Register***]. 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. 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 a 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 [*date 60 days after publication of the final rule in the* ***Federal Register***]. 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' extraction, aggregation, or expansion of data, including:

(A) Errors in NMFS' extraction 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.

(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 mailed or hand-delivered to NMFS, Northwest Region, Permits Office, Bldg. 1, 7600 Sand Point Way, NE., Seattle, WA 98115, and postmarked no later than [*date 60 days after publication of the final rule in the* ***Federal Register***]. 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 [*Date final rule will publish in the* ***Federal Register***] 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 NMFS did not approve the application. 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 dataset extracted from NORPAC by NMFS on July 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 dataset that was extracted from NORPAC by NMFS on July 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 toward the allocation of QS.

(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.

(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. The completed application must be either post-marked or hand-delivered within normal business hours no later than [*date 60 days after publication of the final rule in the* ***Federal Register***]. 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. 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.

(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 [*date 60 days after publication of the final rule in the* ***Federal Register***]. Requests for corrections may only be granted for errors in NMFS' extraction, aggregation, or expansion of data, including:

(A) Errors in NMFS' extraction 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 mailed or hand-delivered to NMFS, Northwest Region, Permits Office, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115, and postmarked no later than [*date 60 days after publication of the final rule in the* ***Federal Register***]. 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 [*date final rule publishes in* ***Federal Register***] 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 NMFS did not approve the application. 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 dataset extracted from NORPAC by NMFS on July 1, 2010.

(e) *Retention Requirements.* [Reserved]

(f) *Observers Requirements.* [Reserved]

(g) [Reserved]

(h) *Catch Weighting Requirements.* [Reserved]

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.). [Reserved]

(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]

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, subpart C, and 660.70, subpart C, through 660.74. 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.

(v) "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 this paragraph 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 to 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 inseason 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-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.

(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.

(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.

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. Redesignate Tables 1a through 2c to part 660, subpart G as Tables 1a through 2c to part 660, subpart C, as follows:

Old table	New table
Table 1a to part 660, subpart G.	Table 1a to part 660, subpart C.
Table 1b to part 660, subpart G.	Table 1b to part 660, subpart C.
Table 1c to part 660, subpart G.	Table 1c to part 660, subpart C.
Table 2a to part 660, subpart G.	Table 2a to part 660, subpart C.
Table 2b to part 660, subpart G.	Table 2b to part 660, subpart C.
Table 2c to part 660, subpart G.	Table 2c to part 660, subpart C.

7. Redesignate Table 3 (North) and Table 3 (South) to part 660, subpart G as Table 1 (North) through Table 1 (South) to part 660, subpart D, as follows:

Old table	New table
Table 3 (North) to part 660, subpart G.	Table 1 (North) to part 660, subpart D.
Table 3 (South) to part 660, subpart G.	Table 1 (South) to part 660, subpart D.

8. Redesignate Table 4 (North) and Table 4 (South) to part 660, subpart G as Table 1 (North) through Table 1 (South) to part 660, subpart E, as follows:

Old table	New table
Table 1 (North) to part 660, subpart G.	Table 1 (North) to part 660, subpart E.
Table 1 (South) to part 660, subpart G.	Table 1 (South) to part 660, subpart E.

9. Redesignate Table 5 (North) and Table 5 (South) to part 660, subpart G as Table 1 (North) through Table 1 (South) to part 660, subpart F, as follows:

Old table	New table
Table 1 (North) to part 660, subpart G.	Table 1 (North) to part 660, subpart F.
Table 1 (South) to part 660, subpart G.	Table 1 (South) to part 660, subpart F.

10. Redesignate Figure 1 to subpart G of part 660 as Figure 1 to subpart D of part 660.

11. Redesignate Table 2 to part 660 as Table 3 to part 660, subpart C.

12. Revise subpart G to part 660 to read as follows:

Subpart G—West Coast Groundfish—Recreational Fisheries

Sec.

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.

[FR Doc. 2010–13312 Filed 6–1–10; 4:15 pm]

BILLING CODE 3510–22–P

Federal Register

Thursday,
June 10, 2010

Part III

Securities and Exchange Commission

17 CFR Parts 240 and 241
Amendment to Municipal Securities Disclosure; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 241

[Release No. 34–62184A; File No. S7–15–09]

RIN 3235–AJ66

Amendment to Municipal Securities Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Final rule and interpretation.

SUMMARY: The Securities and Exchange Commission ("Commission" or "SEC") is adopting amendments to Rule 15c2–12 ("Rule 15c2–12" or "Rule") under the Securities Exchange Act of 1934 ("Exchange Act") relating to municipal securities disclosure. The amendments revise certain requirements regarding the information that a broker, dealer, or municipal securities dealer acting as an underwriter in a primary offering of municipal securities must reasonably determine that an issuer of municipal securities or an obligated person has undertaken, in a written agreement or contract for the benefit of holders of the issuer's municipal securities, to provide to the Municipal Securities Rulemaking Board ("MSRB"). Specifically, the amendments require a broker, dealer, or municipal securities dealer to reasonably determine that the issuer or obligated person has agreed to provide notice of specified events in a timely manner not in excess of ten business days after the event's occurrence; amend the list of events for which a notice is to be provided; and modify the events that are subject to a materiality determination before triggering a requirement to provide notice to the MSRB. In addition, the amendments revise an exemption from the Rule for certain offerings of municipal securities with put features (defined below as "demand securities"). The Commission also is providing interpretive guidance intended to assist municipal securities brokers, dealers, and municipal securities dealers in meeting their obligations under the antifraud provisions of the federal securities laws.

DATES: *Effective Date:* August 9, 2010, except Part 241 will be effective June 10, 2010.

Compliance Date: December 1, 2010 with respect to § 240.15c2–12.

FOR FURTHER INFORMATION CONTACT: Martha Mahan Haines, Assistant Director and Chief, Office of Municipal Securities, at (202) 551–5681; Nancy J. Burke-Sanow, Assistant Director, Office of Market Supervision, at (202) 551–5620; Mary N. Simpkins, Senior Special Counsel, Office of Municipal Securities, at (202) 551–5683; Molly M. Kim, Special Counsel, Office of Market Supervision, at (202) 551–5644; Rahman J. Harrison, Special Counsel, Office of Market Supervision, at (202) 551–5663; and Steven Varholik, Special Counsel, Office of Market Supervision, at (202) 551–5615, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6628.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to Rule 15c2–12 under the Exchange Act.[1]

I. Executive Summary

On July 24, 2009, the Commission published for comment amendments to Rule 15c2–12 to improve the quality and timeliness of information about municipal securities that are outstanding in the secondary market.[2] The proposed amendments would have required a broker, dealer, or municipal securities dealer to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract for the benefit of holders of the issuer's municipal securities ("continuing disclosure agreement"), to provide notice to the MSRB of specified events in a timely manner not in excess of ten business days after the event's occurrence. The proposal also would have amended the list of events for which a notice is to be provided and would have modified the events that are subject to a materiality determination before triggering the obligation to submit a notice to the MSRB. In addition, the amendments would have revised an exemption from the Rule for certain offerings of demand securities.

The Commission received twenty-nine comment letters in response to the proposed amendments from a wide range of commenters.[3] The respondents included the MSRB; state and local governments; mutual funds; trade organizations representing broker-dealers, government financial officials, and bond lawyers; and individual investors. Of the comment letters received, four expressed support for the proposed amendments; ten expressed support, but suggested modifications to certain provisions of the proposed amendments; three supported some of the proposed amendments and objected to others; and eight opposed the proposed amendments. In addition, four comment letters neither expressed support for nor opposed the proposed amendments.

Some of the main concerns raised in the comment letters include: (i) The burden and costs associated with the proposed maximum ten business day time frame for submission of event notices; (ii) application of the proposed amendments to remarketings of demand securities;[4] and (iii) the proposed removal of the materiality condition from various disclosure events that trigger submission of an event notice to the MSRB. A number of commenters offered alternative approaches to the proposal to address their concerns and made suggestions regarding implementation of the proposed amendments. Also, some commenters addressed two proposals submitted by the MSRB relating to modifications to its Electronic Municipal Market Access ("EMMA") system.[5]

This release describes and addresses only those portions of the comment letters that are relevant to the proposed amendments. The portions of the comment letters that discuss the MSRB proposals relating to the EMMA system are being considered separately in the Commission's orders approving the MSRB proposals.[6]

The Commission has carefully considered all the comments it received regarding the proposed amendments and, as discussed below, is adopting the amendments substantially as proposed, with some modifications in response to comments. The amendments are intended to enhance the quality and availability of information about outstanding municipal securities. For

[1] 17 CFR 240.15c2–12.

[2] *See* Securities Exchange Act Release No. 60332 (July 17, 2009), 74 FR 36831 (July 24, 2009) ("Proposing Release"). The comment period for the proposed amendments expired on September 8, 2009.

[3] Copies of all comments received on the proposed amendments are available on the Commission's Internet Web site, located at *http://www.sec.gov/comments/s7-15-09/s71509.shtml.* Comments are also 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. Exhibit A, which is attached to this release, contains a citation key to the comment letters received by the Commission on the proposed amendments.

[4] *See infra* note 28 and accompanying text for a description of demand securities.

[5] *See* Securities Exchange Act Release Nos. 60314 (July 15, 2009), 74 FR 36300 (July 22, 2009); 61238 (December 23, 2009), 75 FR 492 (January 5, 2010); 60315 (July 15, 2009), 74 FR 36294 (July 22, 2009); and 61237 (December 23, 2009), 75 FR 485 (January 5, 2010). The EMMA system is a component of the MSRB's central municipal securities document repository for the collection and availability of continuing disclosure documents over the Internet. *See http://emma.msrb.org.*

[6] *See* Securities Exchange Act Release Nos. 62182 (May 26, 2010) (SR–MSRB–2010–09) and 62183 (May 26, 2010) (SR–MSRB–2010–10) (pursuant to delegated authority).

the reasons discussed in this release,[7] the Commission believes that the amendments are consistent with the Commission's mandate to, among other things, adopt rules reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices in the market for municipal securities. In addition, the Commission is issuing interpretive guidance that is substantially the same as the guidance set forth in the Proposing Release and that is intended to assist municipal securities brokers, dealers, and municipal securities dealers in meeting their obligations under the antifraud provisions of the federal securities laws.

II. Background

Rule 15c2–12 is intended to enhance disclosure, and thereby reduce fraud, in the municipal securities market by establishing standards for obtaining, reviewing, and disseminating information about municipal securities by their underwriters.[8] In 1989, the Commission adopted paragraphs (a) and (b)(1)–(4) of Rule 15c2–12[9] to require brokers, dealers, and municipal securities dealers ("Participating Underwriters") acting as underwriters in primary offerings of municipal securities of $1,000,000 or more (subject to certain exemptions set forth in paragraph (d) of the Rule) to obtain, review, and distribute to potential customers copies of the issuer's official statement.[10] In 1994, the Commission adopted paragraph (b)(5) of the Rule ("1994 Amendments"),[11] which became effective in 1995 and was amended in 2008.[12] Paragraph (b)(5) prohibits Participating Underwriters from purchasing or selling municipal securities covered by the Rule in a primary offering, unless the Participating Underwriter has reasonably determined that an issuer or an obligated person [13] of municipal securities has undertaken in a continuing disclosure agreement to provide specified information to the MSRB in an electronic format as prescribed by the MSRB.[14] The information to be provided consists of: (1) Certain annual financial and operating information and audited financial statements ("annual filings"); [15] (2) notices of the occurrence of any of eleven specific events ("event notices"); [16] and (3) notices of the failure of an issuer or obligated person to make a submission required by a continuing disclosure agreement ("failure to file notices").[17]

Since the adoption of the 1994 Amendments, the amount of outstanding municipal securities has more than doubled to $2.8 trillion.[18] Notably, despite this large increase in the amount of outstanding municipal securities, direct investment in municipal securities by individuals remained relatively steady from 1996 to 2009, ranging from approximately 35% to 39% of outstanding municipal securities.[19] At the end of 2009, individual investors held approximately 35% of outstanding municipal securities directly and up to another 34% indirectly through money market funds, mutual funds, and closed end funds.[20] There is also substantial trading volume in the municipal securities market. According to the MSRB, almost $3.8 trillion of long and short term municipal securities were traded in 2009 in over 10 million transactions.[21] Further, there are approximately 51,000 state and local issuers of municipal securities, ranging from villages, towns, townships, cities, counties, and states, as well as special districts, such as school districts and water and sewer authorities.[22]

In addition, municipal bonds can and do default. In fact, at least 917 municipal bond issues went into monetary default during the 1990s, with a defaulted principal amount of over $9.8 billion.[23] Bonds for healthcare,

---

[7] *See also* Proposing Release, *supra* note 2, 74 FR 36831.

[8] *See* Securities Exchange Act Release No. 26985 (June 28, 1989), 54 FR 28799 (July 10, 1989) ("1989 Adopting Release"). For additional information relating to the history of the Rule, *see* Securities Exchange Act Release Nos. 34961 (November 10, 1994), 59 FR 59590 (November 17, 1994) ("1994 Amendments Adopting Release") and 59062 (December 5, 2008), 73 FR 76104 (December 15, 2008) ("2008 Amendments Adopting Release").

[9] *See* 1989 Adopting Release, *supra* note 8.

[10] 17 CFR 240.15c2–12(a).

[11] 17 CFR 240.15c2–12(b)(5).

[12] *See* 1994 Amendments Adopting Release and 2008 Amendments Adopting Release, *supra* note 8.

[13] The term "obligated person" means "any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person committed by contract or other arrangement to support payment of all, or part of the obligations of the municipal securities to be sold in the Offering (other than providers of municipal bond insurance, letters of credit, or other liquidity facilities)." *See* 17 CFR 240.15c2–12(f)(10).

[14] On December 5, 2008, the Commission adopted amendments to Rule 15c2–12 ("2008 Amendments") to provide for a single centralized repository, the MSRB, for the electronic collection and availability of information about outstanding municipal securities in the secondary market. Specifically, the 2008 Amendments require a Participating Underwriter to reasonably determine that the issuer or obligated person has undertaken in its continuing disclosure agreement to provide the continuing disclosure documents: (1) Solely to the MSRB; and (2) in an electronic format and accompanied by identifying information, as prescribed by the MSRB. *See* 2008 Amendments Adopting Release, *supra* note 8. *See also* Securities Exchange Act Release No. 58255 (July 30, 2008), 73 FR 46138 (August 7, 2008) ("2008 Proposing Release"). The 2008 Amendments became effective on July 1, 2009.

[15] 17 CFR 240.15c2–12(b)(5)(i)(A) and (B).

[16] 17 CFR 240.15c2–12(b)(5)(i)(C). Currently, the following events, if material, require notice: (1) Principal and interest payment delinquencies; (2) non-payment related defaults; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax opinions or events affecting the tax-exempt status of the security; (7) modifications to rights of security holders; (8) bond calls; (9) defeasances; (10) release, substitution, or sale of property securing repayment of the securities; and (11) rating changes. In addition, Rule 15c2–12(d)(2) provides an exemption from the application of paragraph (b)(5) of the Rule with respect to certain primary offerings if, among other things, the issuer or obligated person has agreed to a limited disclosure obligation. *See* 17 CFR 240.15c2–12(d)(2). As discussed in detail in Section III.C. below, the Commission is adopting amendments to the Rule to eliminate the materiality determination for certain of these events.

[17] 17 CFR 240.15c2–12(b)(5)(i)(D). Annual filings, event notices, and failure to file notices are referred to collectively herein as "continuing disclosure documents."

[18] According to statistics assembled by the Securities Industry and Financial Markets Association ("SIFMA"), the amount of outstanding municipal securities grew from approximately $1.26 trillion in 1996 to $2.81 trillion at the end of 2009. *See SIFMA Holders of U.S. Municipal Securities* (available at *http://www.sifma.org/uploadedFiles/Research/Statistics/SIFMA_USMunicipalSecuritiesHolders.pdf)* ("SIFMA Report"). As noted in the Proposing Release, the amount of outstanding municipal securities was $2.69 trillion at the end of 2008, according to statistics assembled by SIFMA. *See* Proposing Release, *supra* note 2, 74 FR at 36834, n. 16 and accompanying text.

[19] *See* SIFMA Report, *supra* note 18. As noted in the Proposing Release, direct investment in municipal securities by individuals from 1996 to 2008 ranged from approximately 35% to 39% of outstanding municipal securities, according to statistics assembled by SIFMA. *See* Proposing Release, *supra* note 2, 74 FR at 36834, n. 17 and accompanying text.

[20] *See* SIFMA Report, *supra* note 18. As noted in the Proposing Release, at the end of 2008, individual investors held approximately 36% of outstanding municipal securities directly and up to another 36% indirectly through money market funds, mutual funds, and closed end funds, according to statistics assembled by SIFMA. *See* Proposing Release, *supra* note 2, 74 FR at 36834, n. 18 and accompanying text.

[21] *See* MSRB, *Real-Time Transaction Reporting, Statistical Patterns in the Municipal Market, Monthly Summaries 2009* (available at *http://www.msrb.org/msrb1/TRSweb/MarketStats/statistical_patterns_in_the_muni.htm*). As noted in the Proposing Release, in 2008, almost $5.5 trillion of long and short term municipal securities were traded in 2008 in nearly 11 million transactions. *See* Proposing Release, *supra* note 2, 74 FR at 36834, n. 19 and accompanying text.

[22] *See, e.g., Report on Transactions in Municipal Securities* prepared by Office of Economic Analysis and Office of Municipal Securities, the Division of Market Regulation, Commission, (July 1, 2004) (available at *http://www.sec.gov/news/studies/munireport2004.pdf*).

[23] *See* Standard and Poor's, *A Complete Look at Monetary Defaults in the 1990s* (June, 2000) (available at *http://www.kennyweb.com/kwnext/mip/paydefault.pdf*) ("Standard and Poor's Report").

Continued

multifamily housing, and industrial development, together with land-backed debt, accounted for more than 80% of defaulted dollar amounts.[24] In 2007, a total of $226 million in municipal bonds defaulted (including both monetary and covenant defaults).[25] In 2008, 140 issuers defaulted on $7.6 billion in municipal bonds.[26] There are reports that approximately $5 billion in municipal bonds are in default today.[27]

The Commission's experience with the operation of the Rule over the past 20 years, changes in the municipal market since the adoption of the 1994 Amendments, and recent market events have suggested the need for the Commission to reconsider certain aspects of the Rule. In particular, the Commission proposed amendments to the Rule's exemption for primary offerings of municipal securities in authorized denominations of $100,000 or more which, at the option of the holder thereof, may be tendered to the issuer or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by the issuer or its designated agent ("demand securities").[28]

As the Commission discussed in the Proposing Release, at the time the Rule was adopted in 1989, demand securities were relatively new to the municipal market.[29] Approximately $13 billion of variable rate demand obligations ("VRDOs") [30] were issued in 1989.[31] However, by 2009, it has been reported that approximately $32 billion of VRDOs were issued,[32] with trading in VRDOs representing approximately 34% of trading volume of all municipal securities.[33] Further, it has been reported that as of early 2009, the outstanding amount of VRDOs was estimated at approximately $400 billion.[34] During the fall of 2008, the VRDO market experienced significant volatility.[35] As the size, volatility, and complexity of the VRDO market and the number of investors have grown, so have the risks associated with less complete disclosure. Moreover, representatives of the primary purchasers of VRDOs—money market funds—have expressed concerns suggesting that the exemption in Rule 15c2–12 for these securities may no longer be justified.[36] These developments highlight the need for the Commission to improve the availability to investors of important information regarding demand securities.

The Commission believes that investors and other municipal market participants today should be able to obtain continuing disclosure information regarding demand securities so that they can make more knowledgeable investment decisions and effectively manage and monitor their investments so as to reduce the likelihood of fraud facilitated by inadequate disclosure. Accordingly, the Commission is modifying the exemption in the Rule, as discussed below, for demand securities [37] by requiring

See also Moody's Investors Service, *The U.S. Municipal Bond Rating Scale: Mapping to the Global Rating Scale And Assigning Global Scale Ratings to Municipal Obligations* (March, 2008) (available at *http://www.moodys.com/cust/content/content.ashx?source=StaticContent/Free%20pages/Credit%20Policy%20Research/documents/current/102249_RM.pdf*) (regarding municipal defaults of Moody's rated municipal securities).

[24] *See* Standard and Poor's Report, *supra* note 23. *See also* Proposing Release, *supra* note 2, 74 FR at 36834.

[25] See Joe Mysak, *Subprime Finds New Victim as Muni Defaults Triple,* Bloomberg News, May 30, 2008.

[26] *See* Joe Mysak, *Municipal Defaults Don't Reflect Tough Times: Chart of Day,* Bloomberg News, May 28, 2009 (also noting that since 1999, issuers have defaulted on $24.13 billion in municipal bonds).

[27] *See, e.g.,* Mary Williams Walsh, *State Debt Woes Grow Too Big to Camouflage,* The New York Times, March 30, 2010.

[28] 17 CFR 240.15c2–12(d)(1)(iii).

[29] *See* Proposing Release, *supra* note 2, 74 FR at 36834–5.

[30] The Commission is not currently aware of any demand securities that were not issued as VRDOs. *The MSRB describes VRDOs as* "[f]loating rate obligations that have a nominal long-term maturity but have a coupon rate that is reset periodically (*e.g.,* daily or weekly). The investor has the option to put the issue back to the trustee or tender agent at any time with specified (*e.g.,* seven days') notice. The put price is par plus accrued interest." *See http://www.msrb.org/MSRB1/glossary/view_def.asp?vID=4310.*

[31] *See Two Decades of Bond Finance: 1989–2008,* The Bond Buyer/Thomson Reuters 2009 Yearbook 4 (Matthew Kreps ed., Source Media, Inc.) (2009).

[32] *See* Thomson Reuters, "A Decade of Municipal Bond Finance" (available at *http://www.bondbuyer.com/marketstatistics/decade_1*).

[33] According to the MSRB, trading volume in VRDOs in 2009 was approximately $1.3 trillion. Total trading volume in 2009 for all municipal securities was approximately $3.8 trillion. *See* E-mail between Martha M. Haines, Assistant Director and Chief, Office of Municipal Securities, Division, Commission, and Marcelo Vieira, Director of Research, MSRB, January 26, 2010. As noted in the Proposing Release, in 2008, approximately $115 billion of VRDOs were issued, with trading in VRDOs representing approximately 38% of trading volume of all municipal securities. *See* Proposing Release, *supra* note 2, 74 FR at 36834, n. 27 and accompanying text.

[34] *See* Andrew Ackerman, *Regulation: MSRB Files Disclosure Proposals; Board Offers Four New Rules to SEC,* The Bond Buyer, July 15, 2009. *See also* Proposing Release, *supra* note 2, 74 FR at 36834 and n. 27.

[35] *See* Diya Gullapalli, *Crisis On Wall Street: Muni Money-Fund Yields Surge—Departing Investors Send 7-Day Returns Over 5%,* Wall Street Journal, September 27, 2008; Andrew Ackerman, *Short-Term Market Dries Up: Illiquidity Leads to Lack of Bank LOCs,* The Bond Buyer, October 7, 2008. ("The reluctance of financial firms to carry VRDOs is evident in the spike in the weekly [SIFMA] municipal swap index, which is based on VRDO yields and spiked from 1.79% on Sept. 10 to 7.96% during the last week of the month. It has since declined somewhat to 5.74%."). *See also* Proposing Release, *supra* note 2, 74 FR at 36834, n. 33.

[36] *See, e.g.,* Letter from Karrie McMillan, General Counsel, Investment Company Institute ("ICI"), to Florence E. Harmon, Secretary, Commission (July 25, 2008) (available at *http://www.sec.gov/comments/s7-13-08/s71308-44.pdf*); comments of participants in the 2001 SEC Municipal Market Roundtable—"Secondary Market Disclosure for the 21st Century," (available at *http://www.sec.gov/info/municipal/roundtables/thirdmuniround.htm*) (Leslie Richards-Yellen, Principal, The Vanguard Group: " * * * what I'd like to see change the most is the inclusion of securities that have been carved out of Rule 15c2–12. I would like securities such as money market securities to be within the ambit of Rule 15c2–12. In addition, I'd like to see the eleven material events be expanded. The first eleven were very helpful. The ICI drafted a letter and we've added another twelve for the industry to think about and cogitate on * * *", and Dianne McNabb, Managing Director, A.G. Edwards & Sons, Inc: "I think that in summary, we could use more specificity as far as what needs to be disclosed, the timeliness of that disclosure, such as the financial statements, more events, I think that we would agree that there are more events * * *"); and National Federation of Municipal Analysts, *Recommended Best Practices in Disclosure for Variable Rate and Short-Term Securities,* February, 2003 (recommendations for continuing disclosures of specified information) (available at *http://www.nfma.org/publications/short_term_030207.pdf*); *see* Proposing Release, *supra* note 2, 74 FR at 36834, n. 15. *See also* ICI Letter at 5 ("We support the proposed amendment to improve VRDO disclosure * * *. Specifically, the availability of continuing disclosure information regarding VRDOs would greatly benefit investors by enhancing their ability to make and monitor their investment decisions and protect themselves from misrepresentations and questionable conduct in this segment of the municipal securities market."), and Fidelity Letter at 2. Fidelity indicated in its letter that it assisted in the preparation of the ICI Letter and expressed support for all of the statements made in the ICI Letter.

[37] *See* 17 CFR 240.15c2–12(d)(1)(iii). Specifically, the Commission is eliminating the exemption for primary offerings of demand securities contained in paragraph (d)(1)(iii) of the Rule and adding new paragraph (d)(5) to the Rule. Paragraph (d)(5) of the Rule, as revised, exempts primary offerings of demand securities from all of the provisions of the Rule except those relating to a Participating Underwriter's obligations pursuant to paragraph (b)(5) of the Rule and relating to recommendations by brokers, dealers, and municipal securities dealers pursuant to paragraph (c) of the Rule. As discussed in Section III.A. below, the Commission is adopting a modified version of its initial proposal to cover demand securities issued on or after the amendments' compliance date. As a result of these changes, Participating Underwriters, in connection with a primary offering of demand securities, will need to reasonably determine that the issuer or obligated person has entered into a continuing disclosure agreement with respect to the submission of continuing disclosure documents to

Participating Underwriters to reasonably determine that the issuer of demand securities, or any obligated person, has undertaken in a written agreement to provide continuing disclosure documents to the MSRB.

As discussed in detail below, the Commission is adopting, substantially as proposed, the amendments to Rule 15c2–12. In sum, the Commission is modifying, substantially as proposed, the Rule's exemption for demand securities by deleting current paragraph (d)(1)(iii) and adding new paragraph (d)(5) to the Rule, thereby applying the continuing disclosure requirements of paragraphs (b)(5) and (c) of the Rule [38] to a primary offering of demand securities. The amendments also modify, as proposed, paragraph (b)(5)(i)(C) of the Rule, thereby requiring all Participating Underwriters to reasonably determine that the issuer or obligated person has undertaken in a continuing disclosure agreement to provide event notices to the MSRB in a timely manner not in excess of ten business days, rather than merely in "a timely manner."

In addition, the Commission is adopting, with a few revisions from the proposal in the Proposing Release, an amendment to paragraph (b)(5)(i)(C) of the Rule relating to adverse tax events. Under the amendment, as revised from the proposal in the Proposing Release, this event item includes "the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701–TEB) or other material notices or determinations with respect to the tax status of the security or other material events affecting the tax status of the security." The amendments also add, as proposed, the following events to paragraph (b)(5)(i)(C) of the Rule: (1) Tender offers; (2) bankruptcy, insolvency, receivership or similar event of the issuer or obligated person; (3) the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and (4) appointment of a successor or additional trustee, or the change of name of a trustee, if material.

Finally, the amendments delete the general materiality condition from paragraph (b)(5)(i)(C) of the Rule. In connection with the deletion of the general materiality condition from paragraph (b)(5)(i)(C) of the Rule, the amendments also add a materiality condition to select events contained in paragraph (b)(5)(i)(C) of the Rule. For those events in paragraph (b)(5)(i)(C) of the Rule that do not contain a materiality condition, Participating Underwriters will now need to reasonably determine that an issuer or obligated person has undertaken in a written agreement to provide notice of such events in all circumstances. These events include: (1) Principal and interest payment delinquencies with respect to the securities being offered; (2) unscheduled draws on debt service reserves reflecting financial difficulties; (3) unscheduled draws on credit enhancements reflecting financial difficulties; (4) substitution of credit or liquidity providers, or their failure to perform; (5) defeasances; and (6) rating changes.

III. Discussion of Amendments and Comments Received

A. Modification of the Exemption for Demand Securities

As discussed in the Proposing Release, generally there are no continuing disclosure agreements for demand securities today because primary offerings of these securities are currently exempt from the Rule.[39] When the Rule was adopted in 1989, the Commission exempted demand securities from its coverage in response to concerns that the Rule "might unnecessarily hinder the operation of the market" [40] for VRDOs, or similar securities. Paragraphs (b)(1) through (b)(4) of the Rule require a Participating Underwriter to review an official statement that the issuer "deems final" before it may bid for, purchase, offer, or sell municipal securities in an offering, deliver preliminary and final official statements to any potential customer, on request, and contract with the issuer to receive an adequate number of the final official statements to fulfill its regulatory responsibilities. Although remarketings of VRDOs may be primary offerings,[41] the Commission did not impose the requirements of paragraphs (b)(1) through (b)(4) of the Rule on Participating Underwriters of each remarketing—which could occur as frequently as weekly, and sometimes even daily, for each outstanding demand security—in part because of the burden this could impose on Participating Underwriters to comply with the Rule's provisions.[42] The Commission, in the 1994 Amendments Adopting Release, did not specifically address the application of paragraph (b)(5) of the Rule, which currently requires Participating Underwriters to reasonably determine that an issuer of municipal securities or an obligated person [43] has undertaken in a continuing disclosure agreement to provide specified information to the MSRB, to remarketings of demand securities.[44]

As discussed above, the Commission today is modifying the Rule's exemption for demand securities because its experience with the operation of the Rule and market changes since the adoption of the 1994 Amendments have suggested a need to reconsider its scope. The increased issuance, trading volume, and outstanding dollar amount of VRDOs indicate that many more investors currently own such securities than when the Rule was adopted in 1989.[45] Further, despite the periodic

the MSRB. In addition, brokers, dealers, and municipal securities dealers recommending the purchase or sale of demand securities will need to have procedures in place that provide reasonable assurance that they would receive prompt notice of event notices and failure to file notices. *See* 17 CFR 240.15c2–12(c).

[38] *See supra* notes 11 through 16 and accompanying text for a description of paragraph (b)(5) of the Rule. Paragraph (c) of the Rule requires a broker, dealer, or municipal securities dealer that recommends the purchase or sale of a municipal security to have procedures in place that provide reasonable assurance that it will receive prompt notification regarding any event notice and any failure to file notice related to the municipal security. *See* 17 CFR 240.15c2–12(c).

[39] *See* Proposing Release, *supra* note 2, 74 FR at 36836.

[40] *See* 1989 Adopting Release, *supra* note 8, 54 FR at 28808, n. 68. *See also* Proposing Release, *supra* note 2, 74 FR at 36836.

[41] *See* Rule 15c2–12(f)(7) for the definition of "primary offering." 17 CFR 240.15c2–12(f)(7). Making a determination concerning whether a particular remarketing of demand securities is a primary offering by the issuer of the securities requires an evaluation of relevant provisions of the governing documents, the relationship of the issuer to the other parties involved in the remarketing transaction, and other facts and circumstances pertaining to such remarketing, particularly with respect to the extent of issuer involvement.

[42] *See* 1989 Adopting Release, *supra* note 8, 54 FR at 28808 and n. 68. *See also* Proposing Release, *supra* note 2, 74 FR at 36836.

[43] The term "obligated person" means "any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person committed by contract or other arrangement to support payment of all, or part of the obligations of the municipal securities to be sold in the Offering (other than providers of municipal bond insurance, letters of credit, or other liquidity facilities)." *See* 17 CFR 240.15c2–12(f)(10).

[44] *See* 1994 Amendments Adopting Release, *supra* note 8.

[45] As stated in the Proposing Release, the increased investment interest and activity in VRDOs during 2008 may be attributable, in part, to the turmoil in the market for auction rate securities ("ARS") that began in February 2008. *See* Proposing Release, *supra* note 2, 74 FR at 36834 and 36835, n. 48.

ability to tender VRDOs to issuers for repurchase, some investors, such as mutual funds, appear to hold VRDOs for long periods of time and therefore have a need for continuing disclosure information about the issuer or obligated person.[46]

Accordingly, the Commission believes that developments since 1989 warrant narrowing the Rule's provision exempting demand securities from continuing disclosure obligations in order to improve the availability of information to investors. Indeed, representatives of money market funds, the primary purchasers of demand securities, have expressed difficulty or, on some occasions, the inability to obtain information that they believe is necessary to oversee their investments in demand securities.[47] By narrowing the exemption for demand securities, the Commission intends to improve the availability of continuing disclosures, not only to institutional investors, such as mutual funds, that acquire these securities for their portfolios, but also to individual investors who own, or who may be interested in owning, demand securities. The availability of information regarding demand securities, in turn, should help institutional and individual investors make more informed decisions with respect to investments in those securities and should reduce the likelihood that such investors will be subject to fraud facilitated by inadequate disclosure. The Commission believes that broader requirements for consistent and accurate disclosure of important information should enhance the efficiency of the relevant capital market segments by better allocating capital at appropriate prices.

Consequently, the Commission is deleting the exemption for demand securities[48] set forth in paragraph (d)(1)(iii) of the Rule and adding new paragraph (d)(5) to the Rule, thereby making the continuing disclosure provisions of paragraphs (b)(5)[49] and (c)[50] of the Rule apply to a primary offering[51] of demand securities.[52] This change applies to any primary offering of demand securities (including a remarketing that is a primary offering) occurring on or after the compliance date of the amendments.[53] However, as more fully discussed below,[54] the Commission is revising the amendment from that proposed to include a "limited grandfather provision" (as defined below) for remarketings of currently outstanding demand securities.[55] Specifically, the continuing disclosure provisions will not apply to remarketings of demand securities that are outstanding in the form of demand securities on the day preceding the compliance date of the amendments and that continuously have remained outstanding[56] in the form of demand securities.

Thus, as amended, paragraph (d)(2)(B)(5) of the Rule states that "[w]ith the exception of paragraphs (b)(1) through (b)(4), this section shall apply to a primary offering of municipal securities in authorized denominations of $100,000 or more if such securities may, at the option of the holder thereof, be tendered to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by an issuer or its designated agent; *provided, however, that paragraphs (b)(5) and (c) shall not apply to such securities outstanding as of November 30, 2010 for so long as they continuously remain in authorized denominations of $100,000 or more and may, at the option of the holder thereof, be tendered to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by an issuer or its designated agent*" (emphasis added to indicate revised language) ("limited grandfather provision").[57]

In the Proposing Release, the Commission requested comment on whether it is appropriate to revise the Rule's exemption for demand securities. The Commission specifically requested comment regarding investors' and other municipal market participants' need for continuing disclosure information relating to demand securities and the extent to which the amendment would provide benefits to these individuals. The Commission also requested comment regarding the effect of the amendment on Participating Underwriters, issuers, obligated persons, and others.

Commenters were generally supportive of applying the continuing disclosure provisions of paragraph (b)(5) of the Rule to demand securities, so that a Participating Underwriter of these securities will be required to reasonably determine that the issuer or obligated person has entered into a continuing disclosure agreement to submit continuing disclosure documents to the MSRB.[58] A number of commenters agreed that applying continuing disclosure obligations to demand securities is "critical" to assist investors in making informed investment decisions.[59] One commenter noted that the market for VRDOs was among the sectors most affected by the recent market turmoil and, consequently, there is good reason to increase the availability of information about these securities to investors.[60] Similarly, another commenter stated that, during the recent market downturn, investors in VRDOs were well served by those issuers or obligated persons who voluntarily provided continuing

[46] *See* Proposing Release, *supra* note 2, 74 FR at 36835, n. 45.

[47] *See* Proposing Release, *supra* note 2, 74 FR at 36836.

[48] *See supra* note 28 and accompanying text.

[49] *See supra* note 14 and accompanying text.

[50] *See supra* note 38 for a description of Rule 15c2–12(c).

[51] *See* Rule 15c2–12(f)(7) for the definition of primary offering. 17 CFR 240.15c2–12(f)(7).

[52] *See supra* note 41.

[53] As noted in Section III.G., the compliance date of the amendments to the Rule adopted herein is December 1, 2010.

[54] *See infra* notes 111 and 112 and accompanying text, as well as the paragraph following the accompanying text.

[55] *See infra* note 112 and accompanying text for discussion of comments related to the limited grandfather provision.

[56] "Outstanding" generally means bonds that have been issued but have not yet matured or been otherwise redeemed. *See, e.g,* MSRB Glossary of Municipal Security Terms at *http://www.msrb.org/msrb1/glossary/glossary_db.asp?sel=o.*

[57] The Commission also is slightly modifying the text of paragraph (d)(2)(B)(5) of the Rule from the version in the Proposing Release to clarify that demand securities remain exempt from paragraphs (b)(1)–(4) of the Rule, consistent with the Commission's description and discussion of the amendment in the Proposing Release.

[58] *See* California Letter at 1, CHEFA Letter at 2, Connecticut Letter at 1, DAC Letter at 3, e-certus Letter I at 11, Fidelity Letter at 3, Folts Letter at 1, ICI Letter at 2, NFMA Letter at 1, RBDA Letter at 2, and SIFMA Letter at 2.

Although the Commission is eliminating certain exemptions, demand securities will continue to be exempt from paragraphs (b)(1)–(4) of the Rule. In other words, a Participating Underwriter of a demand security will continue to be exempt from the obligation to review an official statement that the issuer "deems final" before it may bid for, purchase, offer, or sell municipal securities. Some commenters urged the Commission to eliminate the exemption for demand securities from these provisions. *See* Fidelity Letter at 3 and RBDA Letter at 2, and SIFMA Letter at 2. One commenter expressed concern that not requiring Participating Underwriters to comply with these provisions with regard to demand securities suggests that the information required in the continuing disclosure documents may not be material for investors at the initial issuance of the demand securities. *See* SIFMA Letter at 2. The Commission believes that it is important for investors to have adequate information in order to make informed investment decisions. The Commission also notes that many official statements are prepared for demand securities. *See http://www.emma.msrb.org.*

[59] *See* ICI Letter at 5. *See also* SIFMA Letter at 2 and RBDA Letter at 2.

[60] *See* RBDA Letter at 2. *See also* Fidelity Letter at 2.

disclosure documents, despite the Rule's exemption.[61]

Further, two commenters noted that application of paragraph (b)(5) of the Rule to demand securities might not significantly increase the disclosure burdens for many issuers and obligated persons.[62] One commenter noted that, because many VRDO issuers are already subject to continuing disclosure undertakings for their fixed rate debt, extending these obligations to VRDOs would impose minimal additional burdens, while enhancing disclosure to a much broader segment of investors.[63] Two commenters also noted that, as issuers of VRDOs, they have for a number of years voluntarily entered into continuing disclosure undertakings for those securities.[64]

Two commenters, however, disputed the assessment that extending paragraph (b)(5) to demand securities would not significantly increase the disclosure burdens for issuers and obligated persons.[65] These commenters focused particularly on the impact the amendment would have on borrowers who access tax-exempt debt markets through demand securities that are fully backed by direct-pay letters of credit ("LOC-backed demand securities"). One of the commenters noted that many of these are non-governmental conduit borrowers[66] who have no previous undertakings to provide continuing disclosure information and, for such entities, complying with paragraph (b)(5) of the Rule would not merely be an extension of preexisting obligations but a new and significant burden.[67] Moreover, the two commenters opposing the proposed change stated that many obligated persons with respect to LOC-backed demand securities do not prepare annual filings, such as audited financial statements, in the ordinary course of their business.[68] They therefore believed that eliminating the exemption from paragraph (b)(5) would impose costs and burdens that could potentially force some conduit borrowers using LOC-backed demand securities to withdraw from the tax-exempt bond market.[69]

As the Commission stated in the Proposing Release, it does not anticipate a significant increase in disclosure burdens with respect to demand securities.[70] Those issuers with outstanding demand securities—including LOC-backed demand securities—will have the limited grandfather provision available to them, and thus likely will not be subject to an undertaking to provide continuing disclosures for those securities. The Commission acknowledges that, if issuers of demand obligations, or obligated persons, have not previously issued securities that were subject to the Rule (*i.e.,* municipal securities other than demand securities), they will be entering into a continuing disclosure agreement for the first time and thereby will incur some costs and burdens to provide continuing disclosure documents to the MSRB.[71] However, as the Commission noted in proposing these amendments, a number of issuers of VRDOs, and obligated persons, already have outstanding fixed rate municipal securities, and some of these securities likely are subject to continuing disclosure agreements under the Rule.[72] Because any existing continuing disclosure agreement obligates an issuer or an obligated person to provide annual filings, event notices, and failure to file notices with respect to these fixed rate securities, providing disclosures by such issuers or obligated persons with respect to VRDOs is not expected to be a significant additional burden.[73] As the Commission stated in proposing these amendments,[74] it believes that any additional burden on issuers and obligated persons[75] with respect to demand securities is, on balance, justified by the enhancements to investor protection that should result from the improved availability of information with respect to these securities as a result of the amendments.[76] As noted above, a number of commenters supported this view.[77]

Regarding the concern that any new disclosure burdens may induce some obligated persons to withdraw from the tax-exempt municipal market because they do not prepare annual filings in the ordinary course of their business, the Commission notes that, for purposes of the Rule, annual filings are required only to the extent provided in the final official statements. Specifically, annual filings are composed of: (1) Audited financial statements, when and if available; and (2) other financial and operating data of the type included in the official statement. Pursuant to the undertaking contemplated by the Rule, annual financial information must be submitted for "each obligated person for whom financial information or operating data is presented in the final official statement. * * *"[78] Annual financial information is defined as "financial information or operating data * * * of the type included in the final official statement with respect to an obligated person. * * *"[79] As the Commission previously stated, the definition of annual financial information specifies both the timing of the information—that is, once a year—and, by referring to the final official statement, the type of financial information and operating data that is to be provided.[80] If financial information or operating data concerning an obligated person is included in the final official statement, then annual financial information would consist of the same type of financial information or operating data.[81]

---

[61] *See* CHEFA Letter at 2.

[62] *See* Connecticut Letter at 1 and NFMA Letter at 1.

[63] *See* NFMA Letter at 1.

[64] *See* California Letter at 1 and Connecticut Letter at 1.

[65] *See* CRRC Letter at 3–5 and NABL Letter at A–10.

[66] A "conduit borrower" is an obligated person for whose benefit a state, political subdivision, municipality, or governmental agency or authority may issue tax-exempt municipal bonds. The security for this type of issue is customarily the credit of the conduit borrower or pledged revenues from the project financed, rather than the credit of the issuer. *See, e.g.,* definitions of "conduit financing," "conduit borrower," and "issuer" in Glossary of Municipal Securities Terms (Second Edition—January 2004) of the MSRB, available at *http://www.msrb.org/msrb1/glossary/glossary_db.asp?sel=c.*

[67] *See* NABL Letter at A–2, n. 1.

[68] *See* CRRC Letter at 5 and NABL Letter at A–2.

[69] *See* CRRC Letter at 5 and NABL Letter at A–10. Two commenters also expressed concern that, in complying with the revised Rule, smaller and not-for-profit obligated persons could encounter similar costs and burdens. *See* NABL Letter at A–2 (noting that many small businesses and non-profit organizations utilize LOC-backed demand securities in accessing the tax-exempt debt markets) and SIFMA Letter at 2–3. *See also* Section VI.B.2(c).

[70] *See* Proposing Release, *supra* note 2, 74 FR at 36837.

[71] *Id.*

[72] *See* Proposing Release, *supra* note 2, 74 FR at 36837.

[73] *See infra* Section V.D. for a discussion regarding burden on issuers and obligated persons that do not currently provide annual filings, event notices, or failure to file notices.

[74] *See* Proposing Release, *supra* note 2, 74 FR at 36837.

[75] The Commission estimates that the amendment to modify the exemption from the Rule for a primary offering of demand securities would increase the number of issuers with municipal securities offerings that are subject to the Rule annually by 20%. *See infra* Section V.D.

[76] For discussion of the burdens associated with the modification of the Rule as it relates to demand securities, *see supra* Section V.D.

[77] *See, e.g.,* CHEFA Letter at 2, Connecticut Letter at 1, e-certus Letter I at 11, Folts Letter at 1, ICI Letter at 5, NFMA Letter at 1, RBDA Letter at 2, and SIFMA Letter at 2.

[78] 17 CFR 240.15c2–12(b)(5)(i)(A).

[79] 17 CFR 240.15c2–12(f)(9).

[80] *See* 1994 Amendments Adopting Release, *supra* note 8, 59 FR at 59598.

[81] *Id. See* paragraph (f)(3) of the Rule for the definition of "final official statement." 17 CFR 240.15c2–12(f)(3).

Further, pursuant to paragraph (b)(5)(i)(B) of the Rule, audited financial statements need to be submitted, pursuant to the issuer's and obligated person's undertaking in a continuing disclosure agreement, only "when and if available."[82] This limitation, which is consistent with the Commission's position in the 1994 Amendments Adopting Release, should mitigate some concerns of those obligated persons that do not prepare audited financial statements in the ordinary course of their business.[83] Further, although not all issuers or obligated persons, in the ordinary course of their business, prepare audited financial statements or other financial and operating information of the type included in annual filings, a number of issuers and obligated persons do.[84]

The Commission acknowledges that issuers or obligated persons of demand obligations that assemble financial and operating data for the first time in response to their undertakings in a continuing disclosure agreement may incur incremental costs beyond those costs incurred by those issuers or obligated persons that already assemble this information. Also, smaller issuers or obligated persons may have relatively greater burdens than larger issuers or obligated persons. However, the overall burdens for these demand securities issuers or obligated persons in preparing financial information are expected to be commensurate with those of issuers or obligated persons that already are preparing financial information as part of their continuing disclosure undertakings.[85] The Commission believes that the burdens that will be incurred in the aggregate by issuers or obligated persons, as a result of the amendments with respect to demand securities, may not be significant and, in any event, are justified by the benefits to investors of enhanced disclosure.[86] The Commission further believes that the operations of an issuer or obligated person generally entail the preparation and maintenance of at least some financial and operating data.

The Commission also stated in the Proposing Release, and reiterates herein, its belief that the application of paragraph (b)(5) to demand securities will not significantly burden Participating Underwriters in connection with the initial issuance and remarketing of demand securities. Any primary offering, including a remarketing of demand securities that is a primary offering (other than those subject to the limited grandfather provision), that occurs on or after the compliance date of the Rule will require a Participating Underwriter (including a Participating Underwriter serving as a remarketing agent)[87] to make a determination that an issuer or an obligated person has entered into a continuing disclosure agreement. Subsequent determinations for remarketings of the same issue of demand securities should not be burdensome because, once the Participating Underwriter has made such a determination for a particular issue of demand securities, at the time of a subsequent remarketing, the Participating Underwriter will be aware of the existence of the continuing disclosure agreement. Furthermore, remarketing agents that did not previously participate in an offering of such securities could confirm that an issuer or an obligated person has entered into an undertaking by obtaining an official statement from the issuer, the MSRB,[88] or from a variety of vendors. Such an official statement by definition must include a description of the issuer's undertakings.[89] In addition, a remarketing agent could obtain a copy of the actual continuing disclosure agreement from the issuer or obligated person at the time that it enters into a contract to act as a remarketing agent.[90]

Some commenters argued that the amendment is too broad.[91] Specifically, these commenters stated that the amendment should not apply to conduit borrowers of LOC-backed demand securities, but rather to the letter of credit providers.[92] They stated that, for

[82] 17 CFR 240.15c2–12(b)(5)(i)(B).

[83] As discussed in the 1994 Amendments Adopting Release, the 1994 Amendments "[do] not adopt the proposal to mandate audited financial statements on an annual basis with respect to each issuer and significant obligor. Instead, the amendments require annual financial information, which may be unaudited, and may, where appropriate and consistent with the presentation in the final official statement, be other than full financial statements. * * * However, if audited financial statements are prepared, then when and if available, such audited financial statements will be subject to the undertaking and must be submitted to the repositories. Thus * * * the undertaking must include audited financial statements only in those cases where they otherwise are prepared." *See* 1994 Amendments Adopting Release, *supra* note 8, 59 FR at 59599.

[84] *See http://www.emma.msrb.org* for audited financial statements or other financial and operating information submitted to EMMA.

[85] Further, issuers or obligated persons that assemble financial and operating data for the first time may face a greater burden than those issuers or obligated persons that already assemble this information. The amendments therefore initially may have a disparate impact on those issuers or obligated persons, including small entities, entering into a continuing disclosure agreement for the first time, as compared with those that already have outstanding continuing disclosure agreements.

[86] *See infra* Section V.D. As discussed therein, some commenters believed that the amendment could force some small entities to withdraw from the tax-exempt market because: (1) Disclosure of small issuers' or obligated persons' financial information would provide their large, national competitors with information about these small issuers or obligated persons, which they believed could result in a competitive disadvantage to them; and (2) small issuers or obligated persons would have to prepare costly audited financial statements. *See, e.g.,* CRRC Letter at 3–4 and WCRRC Letter at 1. As discussed above, the undertakings contemplated by the amendments (and Rule 15c2–12 in general) require annual financial information only to the extent provided in the final official statement, and audited financial statements only when and if available.

[87] A remarketing agent is a broker-dealer responsible for reselling to new investors securities (such as VRDOs) that have been tendered for purchase by their owner. The remarketing agent also typically is responsible for resetting the interest rate for a variable rate issue and also may act as tender agent. *See* Proposing Release, *supra* note 2, 74 FR at 36836, n. 53. Further, a remarketing agent often serves as the Participating Underwriter in the initial issuance of the demand security.

[88] The MSRB makes official statements for public offerings of municipal securities available on the Internet through its EMMA system for free. *See* Securities Exchange Act Release No. 59061 (December 5, 2008), 73 FR 75778 (December 12, 2008) (File No. SR–MSRB–2008–05) (order approving the MSRB's proposed rule change to make permanent a pilot program for an Internet-based public access portal for the consolidated availability of primary offering information about municipal securities). *See also supra* note 5 and MSRB Rule G–32.

[89] 17 CFR 240.15c2–12(f)(3).

[90] One commenter believed the elimination of the exemption for LOC-backed demand securities would substantially increase a Participating Underwriter's burden in offering and remarketing these securities because the Participating Underwriter must: (1) Determine whether information concerning the obligated person is material and (2) if material, review the offering document to assure that it includes financial or operating data about the obligated person. In addition, this commenter stated that a Participating Underwriter would be required by the antifraud provisions of the Securities Act of 1933 and the Exchange Act to reasonably investigate key representations about the obligated person in the offering document before passing the securities along to investors and periodically repeat its "due diligence" of the obligated person before acting as a remarketing agent for primary offerings of such demand securities. *See* NABL Letter at A–11. However, such obligations of a Participating Underwriter already exist under the antifraud provisions of the federal securities laws.

[91] *See* CRRC Letter at 2, NABL Letter at 2, and WCRRC Letter at 1 (endorsing CRRC Letter in its entirety). One of these commenters maintained that the Commission should not adopt the amendment relating to demand securities without Congressional authority. The commenter stated that the Commission does not have the "statutory authority to regulate the content of prospectuses used to offer exempt securities, except possibly under the authority of the antifraud provisions of the federal securities laws." *See* NABL Letter at A–7. The Commission notes that the amendments do not address the contents of prospectuses used to offer exempt securities and, instead, are being adopted, among other things, pursuant to its authority under Section 15(c)(2)(D) of the Exchange Act, 15 U.S.C. 78*o*(c)(2)(D), which grants the Commission authority to define, and to prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive or manipulative.

[92] *See* CRRC Letter at 2 and NABL Letter at 2.

Separately, another commenter remarked about the responsibilities of an issuer with respect to the

these securities, a bond trustee draws on the letters of credit issued by banks or financial institutions, rather than the underlying borrowers, for all payments of interest and principal, and to repurchase the securities if and when they are tendered.[93] Consequently, information in disclosure documents for some LOC-backed demand securities relates to the entities issuing the letters of credit, and not the conduit borrowers.[94] These commenters argued that, if the Commission applies paragraph (b)(5) of the Rule to LOC-backed demand securities,[95] the obligation to provide continuing disclosures should be imposed on the banks and financial institutions that provide credit enhancements, and not on the conduit borrowers.[96]

As noted in the Proposing Release, the Commission believes that information regarding conduit borrowers is material to investors in credit enhanced offerings and therefore should be included in the official statements.[97] As the Commission has stated before in the context of municipal securities offerings as well as other types of securities offerings, the existence of credit enhancement is not a substitute for information about the underlying obligor or other obligated entity.[98] For example, Regulation AB, relating to disclosures in offerings of asset-backed securities, requires disclosure about the underlying pool of assets in addition to disclosures about credit enhancement and credit enhancement providers.[99] Furthermore, for VRDOs, as well as fixed rate securities, many governmental issuers and conduit borrowers routinely provide full disclosure about themselves in official statements, suggesting that they consider this information to be useful to investors.[100] The Commission also notes that it is possible for the issuers of credit enhancements, including letters of credit providers, to default on their obligations[101] or to have their ratings downgraded.[102] The possibility of such occurrences supports the likelihood that investors would consider information concerning the underlying obligor important to making investment decisions.

With respect to demand securities, one commenter stated that the Rule should not be amended to apply continuing disclosure requirements to demand securities, because owners of demand securities can choose to terminate their investment by exercising the option to put such securities for repurchase at face value or more, at least as frequently as every nine months.[103] The commenter argued that these investors can therefore sufficiently protect their investments.[104] Further, the commenter noted that when investors need financial and operating data to evaluate their investments, they are able to get such information from conduit borrowers, who typically provide the information voluntarily in order to support pricing and remarketing.[105] The commenter also questioned the need for the amendment when investors, as a condition to purchasing or maintaining an investment in demand securities, are free to demand undertakings to provide notices of certain events.[106]

The Commission does not believe that an investor's ability to tender a demand security for repurchase obviates the need for continuing disclosures. While a holder of demand obligations, such as VRDOs, may tender these securities for repurchase at par value,[107] when the investor is unable to obtain necessary information to make an informed decision as to whether to continue to hold demand securities, the investor may have no other option but to tender. However, the Commission does not believe that such outcome is in the interest of the investing public or the municipal securities market. Without adequate information about the issuer or obligated person, including annual financial information and audited annual financial statements, it would be difficult for an investor to evaluate whether to buy, hold, sell, or put the security. Moreover, most holders of VRDOs are money market funds[108] subject to the requirements of Rule 2a–7 under Investment Company Act of 1940 ("Investment Company Act"),[109] with an obligation to monitor the securities in their funds.[110] The availability of continuing disclosure information should facilitate the fulfillment of these obligations. The Commission also notes that one commenter, whose membership includes many money market funds, stated that "the availability of continuing disclosure information regarding VRDOs would greatly benefit investors by enhancing their ability to make and monitor their investment decisions and protect themselves from misrepresentations and questionable

underlying obligor of a demand security. The commenter stated that, "if it is the SEC's intention to have issuers disclose information either in the official statement or on a continuing basis regarding the underlying obligor," issuers would be significantly burdened because they do not have such information first-hand. *See* GFOA Letter at 2. The Commission notes that its rulemaking does not amend provisions of Rule 15c2–12 relating to official statements. The Commission notes that, as with other conduit borrowings, issuers may require an obligated person of demand obligations to execute a continuing disclosure agreement as a condition of issuance, such that the underlying obligor bears the responsibility of providing continuing disclosures to the MSRB.

[93] *Id. See also* NABL Letter at A–1.

[94] *See* CRRC Letter at 2 and NABL Letter at A–2 and A–6.

[95] *See* CRRC Letter at 2–3 and NABL Letter at 1–2.

[96] *See* CRRC Letter at 3.

[97] *See* Proposing Release, *supra* note 2, 74 FR at 36844, n. 113, citing 1989 Adopting Release, *supra* note 8, 54 FR at 28812.

[98] *See* 1989 Adopting Release, *supra* note 8, 54 FR at 28812 ("The presence of credit enhancements generally would not be a substitute for material disclosure concerning the primary obligor on municipal bonds.")

[99] 17 CFR 229.1100–1123.

[100] For example, governmental obligors, non-profit health care facilities, colleges, and universities routinely provide disclosures about themselves in official statements. *See, e.g.,* Connecticut Letter at 1; Official Statement dated November 4, 2009 for VRDOs issued by the Arizona Health Facilities Authority for the benefit of Catholic Healthcare West (available at *http://emma.msrb.org/EP346945-EP47480-EP669523.pdf*); Official Statement dated August 22, 2008 for VRDOs issued by the Health and Educational Authority of the State of Missouri for the benefit of Saint Louis University (available at *http://emma.msrb.org/OSPreview/OSPreview.aspx?documentId=MS271933&transactionId=MS274477*); Official Statement dated October 12, 1994 for VRDOs of the City of Akron Ohio for its Sanitary Sewer System (available at *http://emma.msrb.org/OSPreview/OSPreview.aspx?documentId=MS80311&transactionId=MS105003*); and Official Statement dated April 15, 2005 for VRDOs of the Redevelopment Agency of the City and County of San Francisco Community Facilities District No. 7 for Hunters Point Shipyard Phase One Improvements (available at *http://emma.msrb.org/MS233193-MS208501-MD405363.pdf*).

[101] Since 1995, the Federal Deposit Insurance Corporation ("FDIC") has taken the position that it may not honor unsecured letters of credit issued by financial institutions that are placed in FDIC receivership. *See* FDIC Statement of Policy regarding Treatment of Collateralized Letters of Credit after Appointment of the FDIC as Conservator or Receiver, 60 FR 27976, May 26, 1995, effective May 19, 1995.

[102] *See* Proposing Release, *supra* note 2, 74 FR at 36839. In addition to the ratings downgrades of almost all issuers of municipal bond insurance over the past two years, the ratings of many issuers of letters of credit on municipal bonds were downgraded by one or more credit rating agencies. *See, e.g.,* Jack Herman, *S&P Downgrades Ratings or Revises Outlooks on 22 Banks,* The Bond Buyer, June 19, 2009 ("Standard & Poor's Wednesday downgraded its ratings or revised its outlooks on 22 U.S. banks—more than half of which have provided letters of credit on municipal securities—to reflect the ongoing change in the banking industry."); Dan Seymour, *1st-Half Credit Enhancers See a Topsy-Turvy World,* The Bond Buyer, July 16, 2009.

[103] *See* NABL Letter at A–4—A–6.

[104] *Id.*

[105] *See* NABL Letter at A–8.

[106] *See* NABL Letter at A–8 and A–9.

[107] *See* 17 CFR 240.15c2–12(d)(1)(iii).

[108] *See, e.g.,* Standard & Poor's, *Variable Rate Demand Obligations—A Primer: A Short Guide to Variable Rate Demand Obligations and the S&P National AMT-Free Municipal VRDO Index,* November 1, 2009 (available at *http://www2.standardandpoors.com/spf/pdf/index/VRDO_Primer.pdf*).

[109] 17 CFR 270.2a–7.

[110] 17 CFR 270.2a–7(c)(3)(iv).

conduct in this segment of the municipal securities market."[111]

Some commenters sought clarification with respect to the proposed amendment relating to demand securities. Specifically, some commenters asked the Commission to clarify the meaning of "primary offering" with respect demand securities[112] and asked for guidance to distinguish remarketings that are primary offerings requiring continuing disclosure agreements from those that are not primary offerings.[113] These comments appear to be based upon the concern that the amendments could require a broker, dealer, or municipal securities dealer to obtain continuing disclosure documents for demand securities that were issued prior to the compliance date of the amendments.

The Commission acknowledges that, although there may be beneficial effects from subjecting outstanding demand obligations to paragraphs (b)(5) and (c) of the Rule, regardless of their date of initial issuance, doing so may be unduly burdensome and costly for certain market participants. For example, if all outstanding issuances of demand securities, such as VRDOs which generally are long-term securities,[114] became subject to paragraph (b)(5)(i)(C) of the Rule, it would be necessary for a Participating Underwriter, in the first remarketing of each issue of demand securities following the compliance date of the amendments, to reasonably determine that an issuer or obligated person has executed a continuing disclosure agreement. For such an agreement to be consistent with the Rule, a Participating Underwriter must reasonably determine that the issuer or obligated person has agreed to provide "[a]nnual financial information for each obligated person for whom financial information or operating data is presented in the final official statement, or, for each obligated person meeting the objective criteria specified in the undertaking and used to select the obligated persons for whom financial information or operating data is presented in the final official statement."[115] However, for outstanding issues of demand securities, referring back to information included in the final official statement may be problematic because that document may be many years old. Without the limited grandfather provision, issuers and obligated persons would be required under continuing disclosure agreements to update annual financial information that may no longer be prepared or available. In addition, application of the amendments to remarketings of demand securities occurring on or after the compliance date could necessitate a large number of issuers and obligated persons of demand securities to enter into continuing disclosure agreements in a very short time period, which could delay remarketings and temporarily negatively impact the market for demand securities.

The Commission has considered the potentially significant difficulties and costs associated with implementing the amendment with respect to outstanding demand securities and the potential negative implications this may have on the demand securities market and investors.[116] As a result, the Commission has revised its original proposal to include a limited grandfather provision so that paragraphs (b)(5) and (c) of the Rule are not applicable to demand obligations outstanding in the form of demand securities immediately prior to the compliance date of these amendments, and that have remained continuously outstanding in the form of demand securities.[117] The Commission believes that the adoption of the limited grandfather provision strikes an appropriate balance between the need to improve disclosure available to investors and the recognition that the practical effects of applying paragraphs (b)(5) and (c) of the Rule to outstanding issues of demand securities could unduly burden certain issuers and obligated persons and thus may adversely impact the market. Although the Commission recognizes that the amendment to demand securities now is narrower than what was originally proposed, the Commission does not believe that the change detracts from the benefits of greater information about new issuances of demand obligations that the amendment will foster. The Commission believes that the burdens of continuing disclosure obligations, noted above, with respect to these securities justify the benefits, and the grandfather provision is consistent with other amendments that have been applied on a prospective basis.[118] Further, the Commission notes that some issuers and obligated persons of demand securities also have issued fixed rate municipal securities, and thus are subject to existing continuing disclosure obligations.

In conclusion, the Commission continues to believe that any additional burden imposed on Participating Underwriters, issuers, obligated persons, the MSRB, or others as a result of the amendment to the Rule relating to demand securities is justified by the benefits to investors of enhanced disclosure with respect to this important and widely-held type of security. Eliminating the exemption for demand securities, subject to the limited grandfather provision regarding demand securities outstanding as of the day prior to the amendments' compliance date, will improve the availability of information about these securities and should reduce the likelihood that investors will be subject to fraud facilitated by inadequate disclosure. Further, access to more information will assist money market funds[119] in complying with their obligations under Rule 2a–7 of the Investment Company Act.[120] The Commission also believes that the amendment will assist a broker, dealer, or municipal securities dealer in fulfilling its responsibilities to its customers,[121] specifically by facilitating the disclosure of important facts and complying with suitability and other sales practice obligations.[122]

[111] *See* ICI Letter at 6. *See also* Fidelity Letter at 2.

[112] *See* Kutak Letter at 2, NABL Letter at 4–5 and A–11, and SIFMA Letter at 2.

[113] *Id.*

[114] *See supra* Section II. for statistics on the amount of outstanding VRDOs.

[115] 17 CFR 240.15c2–12(b)(5)(i)(A).

[116] *See infra* Section VI.B. for a detailed description of costs associated with implementing this change.

[117] Two commenters also expressed confusion regarding the application of paragraph (b)(5)(i)(A) of the Rule to demand securities. Paragraph (b)(5)(i)(A) requires that continuing disclosure agreements include annual financial information for each obligated person for whom financial information or operating data is presented in the final official statement. These commenters specifically questioned how Participating Underwriters would comply with the requirement in the limited instances where no final official statement was or is produced with respect to a demand security or when the final official statement that is produced contains no information regarding the underlying obligor. *See* NABL Letter at 2–3 and A–9 and SIFMA Letter at 2. The Commission believes that demand securities are purchased primarily by tax-exempt money market funds and that money market funds typically require official statements. *See, e.g.,* Kutak Letter at 2 (commenting that VRDOs are typically targeted to money market funds) and NABL Letter at A–1 (acknowledging that demand securities are an important part of the investment portfolio of most tax-exempt money market funds).

[118] *See also infra* Section VI.B.4.

[119] *See supra* note 47.

[120] 17 CFR 270.2a–7.

[121] For example, a broker, dealer, or municipal securities dealer with access to annual filings and event notices submitted to the MSRB will be able to use information disclosed in these filings and notices when deciding to recommend the purchase or sale of a particular demand security. *See, e.g.,* MSRB Rule G–17.

[122] *See, e.g.,* the MSRB, *Reminder of Customer Protection Obligations in Connection with Sales of Municipal Securities,* Interpretative Notice of Rule G–17, dated May 30, 2007 (available at *http://www.msrb.org/msrb1/rules/notg17.htm*).

B. Time Frame for Submitting Event Notices Under a Continuing Disclosure Agreement

The Commission is adopting the amendment to paragraph (b)(5)(i)(C) of the Rule [123] to require a Participating Underwriter to reasonably determine that the issuer or obligated person has agreed in its continuing disclosure agreement to submit event notices to the MSRB "in a timely manner not in excess of ten business days after the occurrence of the event," rather than "in a timely manner" as the Rule currently provides. The Commission also is adopting a substantially similar revision to the limited undertaking in paragraph (d)(2)(ii)(B) of the Rule.[124]

Eighteen commenters provided their views on the proposed ten business day time period for the submission of event notices pursuant to a continuing disclosure agreement.[125] The majority of commenters opposed the proposal. Some commenters opposed establishing any outside time frame,[126] while others specifically objected to the proposed ten business day time period, particularly in the context of certain events.[127] One commenter cited the 1994 Amendments Adopting Release, in which the Commission stated that, at that time, it had not established a specific time frame with respect to submission of event notices because of the wide variety of events and circumstances the issuer could face.[128] This commenter believed that this rationale "was sound logic in 1994, and that it should still apply in 2009." [129] Another commenter stated that it disagreed "with the SEC that there is systemic abuse with material events not being filed in a timely manner" [130] and argued that the Commission "should not mandate a specific time frame for submissions." [131]

Four commenters expressed support for the ten business day time frame.[132] Two of these commenters stated that the proposal "would replace the imprecise 'timely manner' language in the current Rule." [133] These commenters also noted that "the absence of a specific time period with respect to 'timely' has resulted in event notices being submitted months after the events have occurred," [134] which has been detrimental "to investors who need this information to make informed investment decisions about when, and which, municipal securities to buy and sell." [135] Further, they emphasized that they "strongly support the establishment of a definitive timeframe by which event notices must be filed, and have repeatedly called for improvements to the timeliness of municipal securities disclosure." [136]

These commenters noted that timely submission of event notices directly impacts the pricing of a municipal bond. They posited that "reducing the time between the event and the required notice better informs the market that an event occurred, which is essential to evaluating a bond's credit quality and pricing." [137] They further noted that a definitive time frame provides more timely information to pricing evaluation services and relieves them of dependence on bondholders to disclose the required information to them.[138] These commenters asserted that "without the proper notification, bonds could be priced incorrectly until the disclosure had been made." [139]

As discussed in detail below, the Commission has considered the commenters' views and suggestions on this issue and continues to believe that the benefits of enabling investors to receive promptly information about important events affecting the issuer justify the incremental costs imposed on issuers and obligated persons as a result of the amendments. It has come to the Commission's attention,[140] as supported by some commenters,[141] that some event notices currently are not submitted until months after the events have occurred. Market participants, on the other hand, have emphasized the importance of the prompt availability of such information.[142]

The Commission believes that delays in providing notice of the events set forth in paragraph (b)(5)(i)(C) of the Rule undermine the effectiveness of the Rule. Delays can, among other things, deny investors important information that they need to make informed decisions regarding whether to buy, sell or hold municipal securities. As noted above, two commenters echoed this sentiment by noting the importance of having timely submission of event notices to maintain the transparency of a municipal security's credit quality and pricing.[143] The Commission anticipates that, in providing for a maximum time frame, the amendments should foster the availability of more current information about municipal securities, and thereby help promote greater transparency and further enhance investor confidence in the municipal securities market. Furthermore, more up-to-date information about municipal securities is likely to improve the transparency in the market, should increase the efficiency of markets in allocating capital at appropriate prices

[123] 17 CFR 240.15c2–12(b)(5)(i)(C).

[124] 17 CFR 240.15c2–12(d)(2)(ii)(B). *See supra* note 16 for a description of Rule 15c2–12(d)(2).

[125] *See* Halgren Letter, Los Angeles Letter, Portland Letter, CRRC Letter, WCRRC Letter, NFMA Letter, CHEFA Letter, NAHEFFA Letter, SIFMA Letter, Connecticut Letter, Kutak Letter, ICI Letter, Fidelity Letter, California Letter, San Diego Letter, NABL Letter, GFOA Letter, and Metro Water Letter. *See also* 1994 Amendments Adopting Release, *supra* note 8, 59 FR at 59601.

[126] *See* NABL Letter at 5–6, GFOA Letter at 2–3, and Metro Water Letter at 1–2.

[127] *See* Halgren Letter, Los Angeles Letter, Portland Letter, CRRC Letter, WCRRC Letter, NFMA Letter, CHEFA Letter, NAHEFFA Letter, SIFMA Letter, Connecticut Letter, Kutak Letter, California Letter, and San Diego Letter. *See also* the discussion below in this section regarding commenters' concerns about becoming aware of and submitting notices for events such as rating changes and trustee changes.

[128] *See* NABL Letter at 5–6.

[129] *Id.*

[130] *See* GFOA Letter at 2.

[131] *Id.*

[132] *See* NFMA Letter at 1–2, SIFMA Letter at 3, ICI Letter at 6–7, and Fidelity Letter at 2. Fidelity indicated in its letter that it assisted in the preparation of the ICI Letter II and expressed support for all of the statements made in the ICI Letter. *See* Fidelity Letter at 2.

[133] *See* ICI Letter at 6 and Fidelity Letter at 2.

[134] *Id.*

[135] *Id.*

[136] *Id.*

[137] *Id.*

[138] *Id.*

[139] *Id.*

[140] *See* Proposing Release, *supra* note 2, 74 FR at 36837, n. 69. *See, e.g.,* Elizabeth Carvlin, *Trustee for Vigo County, Ind., Agency Taps Reserve Fund for Debt Service,* The Bond Buyer, April 2, 2004, at 3 (reporting the filing of a material event notice regarding a draw on debt service reserve fund that occurred in February); Alison L. McConnell, *Two More Deals Under Audit By TEB Office,* The Bond Buyer, April 5, 2006 (event notice of tax audit filed nine months after audit was opened); Susanna Duff Barnett, *IRS Answers Toxic Query; Post 1986 Radioactive Waste Debt Not Exempt,* The Bond Buyer, November 2, 2004 (material event notice filed October 29, 2004 regarding IRS technical advice memorandum dated August 27, 2004 that bonds issued to finance certain radioactive solid waste facilities were taxable; related preliminary adverse determination letter was issued in January, 2002); and Michael Stanton, *IRS: Utah Pool Bonds Taxable; Issuer Disputes Facts of Case,* The Bond Buyer, December 8, 1997 (issuer's receipt of August, 1997 IRS technical advice memorandum concluding certain bonds were taxable was disclosed on December 5, 1997). *See also* Peter J. Schmitt, *Estimating Municipal Securities Continuing Disclosure Compliance: A Litmus Test Approach* (available at *http://www.dpcdata.com/html/about-researchpapers.html).*

[141] *See supra* note 134 and accompanying text.

[142] *See* Proposing Release, *supra* note 2, 74 FR 36838, n. 70. *See, e.g.,* National Federation of Municipal Analysts, *Recommended Best Practices in Disclosure for General Obligation and Tax-Supported Debt* (December 2001) ("Any material event notices, including those required under SEC Rule 15c2–12, should be released as soon as practicable after the information becomes available.") (available at *http://www.nfma.org/disclosure.php*); Peter J. Schmitt, Letter to the Editor, *To the Editor: MuniFilings.com: The Once and Future Edgar?,* The Bond Buyer, October 9, 2007, Commentary, Vol. 362, No. 32732, at 36 ("[F]iling issues are the sole cause of lack of transparency and disclosure availability in the industry. These filing issues include * * * late filing. * * *").

[143] *See* ICI Letter at 6 and Fidelity Letter at 2.

that reflect the creditworthiness of issuers, which benefits issuers and investors alike, and should reduce the likelihood that investors will be subject to fraud facilitated by inadequate disclosure.

The Commission further believes that more timely information will aid brokers, dealers, and municipal securities dealers in satisfying their obligation to have a reasonable basis to recommend the purchase or sale of municipal securities. The Commission notes that the amendment requires Participating Underwriters to reasonably determine that issuers and obligated persons have contractually agreed to submit event notices in timely manner no later than "ten business days after the occurrence of the event," rather than simply in a "timely manner." On the other hand, there will be a significant benefit to investors and municipal market participants, because they will have a greater assurance that information about municipal securities will be available within a specific time frame of an event's occurrence. Indeed, while issuers and obligated persons under continuing disclosure agreements entered into prior to the compliance date of these amendments would have committed to submit event notices in a timely manner, this amendment will help to make the timing of such submissions more certain in the case of issuers and obligated persons that enter into continuing disclosure agreements on or after the compliance date of these amendments.[144]

One commenter suggested that the Commission leave the current "timely" language in the Rule but provide examples of instances that it considers to be "timely."[145] The Commission believes that the suggestion solely to provide guidance would not effectively accomplish the Commission's goal of improving the timeliness of submissions. Moreover, as the Commission noted in the Proposing Release, there have been significant delays in the submission of event notices.[146] As expressed by two commenters, "the absence of a specific time period" with respect to what constitutes timely submission of event notices has been a contributing factor to delays in submitting notices.[147] While one commenter cautioned the Commission against "trying to create a uniform standard for various events that are very different from each other,"[148] it is the Commission's view that providing a specified time frame will provide clarity regarding the standard to be included in continuing disclosure agreements for timely submission of event notices in all circumstances. In some cases, however, particularly when issuers or obligated persons know about events well in advance, investors may view timely disclosure as occurring within a day or a few days of the event.

Although a number of commenters did not oppose a specified time frame for submission of event notices, they also did not support the ten business day proposal. Some of their concerns were: (i) The impracticability of meeting the time frame because of limited staff and resources, especially for smaller issuers;[149] (ii) the increased burdens and costs in connection with the additional monitoring and compliance necessary to submit notices within ten business days;[150] (iii) the difficulty in reporting events within ten business days when the issuer does not control the information (*e.g.,* rating changes, changes to the trustee, and changes to the tax status of bonds as a result of an IRS audit);[151] and (iv) the use of the "occurrence of the event" as the trigger for the obligation to submit a notice.[152]

Many of these commenters focused their comments on their concerns about the difficulties associated with providing notice of specified events, particularly rating changes and trustee changes, within ten business days of their occurrence.[153] These commenters noted that rating changes and trustee changes are not within the issuer's control and that, with respect to rating changes, rating organizations do not directly notify issuers of rating changes.[154] As a result, these commenters believed that it would be difficult for most issuers to submit an event notice for a rating change within ten business days of its occurrence without incurring substantial costs associated with monitoring for rating changes.

Some commenters, who expressed concern about the ability of an issuer to learn of the event and then submit an event notice within the ten business day time frame, proposed alternative time periods ranging from 30 to 45 days from the event's occurrence.[155] Others, however, recommended that the Commission reduce the time frame.[156] Two of these commenters advocated a time frame of five business days from the occurrence of the event, which they noted is the amount of time permitted for submitting similar notices in the taxable debt market.[157] Another commenter recommended a time frame of four business days from the occurrence of the event."[158]

Several commenters who opposed the ten business day time frame suggested a number of modifications. Some of these commenters proposed changing the trigger for submission of an event notice from the occurrence of the event to the issuer's actual knowledge of the event.[159] A number of commenters recommended removing "rating changes" from the list of disclosure events and requiring rating organizations to submit their rating changes directly to the MSRB's EMMA system.[160] Finally, one commenter suggested that, instead of specifying a time period, the Commission should modify the Rule to: (1) State that "issuers should disclose material events in a timely manner which in the normal course of business would be 10 business days;" (2) allow the ten business days to run from the time the issuer learned of the event, or 30 calendar days from the event itself; and (3) ensure that in the instances where issuers do not have control of the information (*e.g.,* a rating change due to the rating change of the credit enhancer), the issuer should not be responsible for submitting the information.[161]

---

[144] The Commission notes that the ten business day time frame will not apply to continuing disclosure agreements entered into with respect to primary offerings that occurred prior to the compliance date of these amendments or to remarketings of demand securities that qualify for the limited grandfather provision. *See infra* Section III.G.

[145] *See* NABL Letter at 6.

[146] *See supra* note 140.

[147] *See* ICI Letter at 6 and Fidelity Letter at 3.

[148] *See* GFOA Letter at 2.

[149] *See* CRRC Letter, WCRRC Letter, Portland Letter at 2, NAHEFFA Letter at 2–4, Metro Water Letter at 1–2, CHEFA Letter at 2, and NABL Letter at 5–6.

[150] *See* Halgren Letter, Los Angeles Letter at 1, CRRC Letter, WCRRC Letter, NAHEFFA Letter at 2–4, CHEFA Letter at 2, and NABL Letter at 5–6.

[151] *See* Connecticut Letter at 1–2, California Letter at 1–2, San Diego Letter at 1–2, NAHEFFA Letter at 2–4, CHEFA Letter at 2, Kutak Letter at 2, and GFOA Letter at 2–3.

[152] *See* California Letter at 1–2, NAHEFFA Letter at 2–4, CHEFA Letter at 2, San Diego Letter at 1–2, GFOA Letter at 3, Kutak Letter at 2, and NABL Letter at 5–6.

[153] *See* Halgren Letter, Los Angeles Letter at 1–2, NAHEFFA Letter at 2–4, San Diego Letter at 1–2, CHEFA Letter at 2, Kutak Letter at 2, California Letter at 1–2, NABL Letter at 8, and GFOA Letter at 3–4.

[154] *Id.*

[155] *See* Halgren Letter, Portland Letter at 2, NAHEFFA Letter at 4, and CHEFA Letter at 2.

[156] *See* ICI Letter at 7, Fidelity Letter at 2, and e-certus Letter at 8.

[157] *See* ICI Letter at 7 and Fidelity Letter at 3.

[158] *See* e-certus Letter I at 8.

[159] *See* Kutak Letter at 2, California Letter at 1–2, San Diego Letter at 1–2, and CHEFA Letter at 2.

[160] *See* Halgren Letter, Portland Letter at 2, Los Angeles Letter at 1–2, California Letter at 3, CHEFA Letter at 2, GFOA Letter at 3–4, and NABL Letter at 8.

[161] *See* GFOA Letter at 3.

The Commission has considered commenters' concerns about the potential costs and burdens associated with the ten business day time period for submission of event notices. The Commission also has considered commenters' suggestion that the triggering event should be actual knowledge of the event rather than the event's occurrence. As the Commission noted in the Proposing Release, however, the events currently specified in paragraph (b)(5)(i)(C) of the Rule, and the additional event items included in the amendments, are significant and should become known to the issuer or obligated person expeditiously.[162] For example, events such as payment defaults, tender offers, and bankruptcy filings generally involve the issuer's or obligated person's participation.[163] Other events (*e.g.,* failure of a credit or liquidity provider to perform) are of such importance that an issuer or obligated person likely will become aware of such events,[164] or will expect an indenture trustee, paying agent, or other transaction participant to bring them to the issuer's or obligated person's attention, within a very short period of time.[165] Indeed, issuers and obligated persons could seek to obtain contractual agreements to be advised of the occurrence of such events by those persons or entities that may be expected to have direct knowledge of the occurrence.

Consistent with the Commission's discussion in the Proposing Release, rating changes may affect the market price of the security, and thus bondholders and prospective investors should have access to this information.[166] While the Commission recognizes that an event such as a rating change is not directly within the issuer's control, Participating Underwriters today must reasonably determine that the issuer or obligated person has undertaken in a continuing disclosure agreement to provide notice of rating changes, if material.[167] While the Commission notes that the obligation to provide notice of rating changes is not new for those issuers that have issued municipal securities subject to a continuing disclosure agreement, the ten business day time frame may cause some issuers to monitor more actively for rating changes than they do today. The amendments revise the Rule to require the Participating Underwriter to reasonably determine that the continuing disclosure agreement provide for submission of event notices, including rating changes and trustee changes (if material), within ten business days after the event's occurrence.

Several commenters raised concerns about meeting the ten business day time frame because of limited resources and staff, particularly with respect to smaller issuers,[168] and the increased burdens and costs associated with monitoring such events within the specified time frame. The Commission recognizes that some issuers, particularly smaller issuers, may require a greater effort initially to comply with their undertakings in continuing disclosure agreements that reflect the revised Rule.[169] The Commission notes that information about rating changes by organizations that rate municipal securities is readily accessible by issuers through the rating agencies' Internet Web sites. In addition, issuers may be able to subscribe to a service that provides them with prompt rating updates for their securities. For other events that may be outside of the issuer's control, such as a trustee change, issuers can contractually arrange to be notified of such an event immediately.[170] Accordingly, the Commission continues to expect that issuers and obligated persons generally will become aware of the Rule's disclosure events (or can make arrangements to ensure that they become aware) within ten business days after the event's occurrence and accordingly should be able to comply with their undertakings to submit event notices to the MSRB within the ten business day time frame.[171]

The Commission believes that, on balance, the ten business day time frame is appropriate. By specifying a ten business day time frame, the Commission intends to strike a balance between the need for event notices to be disseminated promptly and the need to allow adequate time for an issuer or obligated person to become aware of the event and to prepare and file the notice. The Commission believes that the ten business day time frame provides a reasonable amount of time for issuers to comply with their undertakings, while also allowing event notices to be made available to investors, underwriters, and other market participants in a timely manner.

C. Materiality Determinations Regarding Event Notices

1. Deletion of the Materiality Condition Generally

The Commission proposed to delete in certain instances the materiality condition found in paragraph (b)(5)(i)(C) of the Rule. Based on the Commission's experience with paragraph (b)(5)(i)(C), the Commission believes that notice of certain events currently listed therein need not be preceded by a materiality determination. These events include: (1) Principal and interest payment delinquencies with respect to the

[162] *See supra* note 16 for a description of events currently contained in Rule 15c2–12(b)(5)(i)(C). *See infra* Section III.E. for a description of events added to the Rule by these amendments.

[163] In addition, as the Commission noted in the Proposing Release, involvement of the issuer or obligated person is often required for substitution of credit or liquidity providers; modifications to rights of security holders; release, substitution, or sale of property securing repayment of the securities; and optional redemptions. *See* Proposing Release, *supra* note 2, 74 FR at 36838, n. 73. The Commission received no comments on this statement. *See also* Form Indenture and Commentary, National Association of Bond Lawyers, 2000.

[164] For example, as the Commission noted in the Proposing Release, issuers or obligated persons should have direct knowledge of principal and interest payment delinquencies, determinations of taxability from the IRS, tender offers that they initiate, and bankruptcy petitions that they file. The Commission received no comments on this statement.

[165] The Commission believes, as noted in the Proposing Release, that indenture trustees generally would be aware of principal and interest payment delinquencies; material non-payment related defaults; unscheduled draws on credit enhancements reflecting financial difficulties; the failure of credit or liquidity providers to perform; and adverse tax opinions. The Commission received no comments on this statement. The Commission notes that issuers and obligated persons may wish to consider negotiating a provision to include in indentures to which they are a party to require a trustee promptly to notify the issuer or obligated person in the event the trustee knows or has reason to believe that an event specified in paragraph (b)(5) of the Rule has or may have occurred.

[166] *See* Proposing Release, *supra* note 2, 74 FR at 36840.

[167] *See* infra Section IV., discussing the obligations of underwriters of municipal securities under the antifraud provisions of the federal securities laws.

[168] *See* CRRC Letter, WCRRC Letter, Portland Letter at 2, NAHEFFA Letter at 2–4, Metro Water Letter at 1–2, CHEFA Letter at 2, and NABL Letter at 5–6.

[169] The Commission recognizes that issuers that enter into continuing disclosure agreements for the first time, particularly smaller issuers, initially may need to become familiar with the steps necessary to ascertain whether there has been a rating change, and that there are burdens associated with this.

[170] For example, under a trust indenture, the trustee may be obligated to notify an issuer before the trustee changes its name. *See infra* Section IV., discussing the obligations of underwriters of municipal securities under the antifraud provisions of the federal securities laws.

[171] As noted in the Proposing Release, those issuers or obligated persons required by Section 13(a) or Section 15(d) of the Exchange Act to report certain events on Form 8–K (17 CFR 249.308) would already make such information public in a Form 8–K. *See* Proposing Release, *supra* note 2, 74 FR at 36838, n. 76. The Commission believes that such persons should be able to file material event notices, pursuant to the issuer's or obligated person's undertakings, within a short time after the Form 8–K filing. *See* 15 U.S.C. 78m and 78*o*(d). The Commission received no comments on these statements.

securities being offered; (2) unscheduled draws on debt service reserves reflecting financial difficulties; (3) unscheduled draws on credit enhancements reflecting financial difficulties; (4) substitution of credit or liquidity providers, or their failure to perform; (5) defeasances; and (6) rating changes.

A number of commenters expressed support for deletion of the materiality condition.[172] Two of these commenters stated that "these disclosure events are of such high consequence and relevance to investors in informing their investment decisions that they should be disclosed as a matter of course."[173] Another commenter noted that "these events should always be provided to investors because their occurrence is always important to investors and other market participants."[174] One commenter stated that the proposal "to delete a materiality qualifier is not useful, but also would not unduly burden issuers or obligated persons except in three circumstances.[175]

Three commenters opposed the proposed change.[176] One commenter stated that the elimination of the materiality condition for all the events included in paragraph (b)(5)(i)(C) of the Rule would "increase issuers' administrative burden for monitoring the possible occurrence of these events."[177] This commenter also believed that removal of the general materiality provision may result in the disclosure of non-material events.[178] Another commenter, while acknowledging the importance of these six events, argued that the materiality condition should be retained because "there is a risk that dividing event notices into two categories may introduce confusion where none now exists."[179] Further, one commenter remarked that "establishing materiality is important in order to ensure that relevant information is passed to investors" and is "best made on a case by case basis, along with advice of counsel."[180]

The Commission believes that a materiality determination remains appropriate for specific events, as discussed below.[181] However, under the amendments, for each event that no longer is subject to a materiality condition, a Participating Underwriter must reasonably determine that the issuer or obligated person has agreed to submit a notice to the MSRB within ten business days of the event's occurrence, without regard to its materiality. The Commission believes that each of these events by its nature is of such importance to investors that it should always be disclosed. In particular, these events are likely to have a significant impact on the value of the underlying securities. Moreover, the Commission believes that notice of these events should reduce the likelihood that investors will be subject to fraud facilitated by inadequate disclosure.[182]

Further, the Commission continues to believe that the removal of the materiality condition for the aforementioned events is not expected to significantly increase the burden on issuers and obligated persons. Because of the significant nature of these events and their importance to investors in the marketplace, the Commission believes that issuers and obligated persons generally are already providing notice of most of these events pursuant to existing continuing disclosure agreements. It is the Commission's view that removing the materiality condition for these six disclosure events will help ensure that important information about significant events regarding municipal securities is promptly provided to investors and other market participants in all instances. The availability of this information to investors will enable them to make informed investment decisions and should reduce the likelihood that investors will be subject to fraud facilitated by inadequate disclosure. Furthermore, this information will assist brokers, dealers and municipal securities dealers in satisfying their obligation to have a reasonable basis to recommend municipal securities to investors. Deletion of the materiality condition also could simplify a determination by an issuer or obligated person with respect to whether a notice must be filed and facilitate their providing such notice promptly. Accordingly, the Commission is adopting the amendment as proposed.

2. Deletion of Materiality Condition for Specific Events

As noted above, some commenters generally supported the proposed revision to the Rule eliminating the general materiality condition from all events, but expressed concerns regarding its elimination for specific events. The Commission discusses these comments below but, for the reasons discussed, is adopting the amendment, as proposed.

a. Principal and Interest Payment Delinquencies

One commenter suggested that, in light of the Commission's proposed amendment to delete the materiality condition from specified events, the definition of "principal and interest payment delinquency" should be clarified to take into account contractual grace periods and similar operational considerations, so that "minor operational variances" would not require event disclosure.[183] Other commenters opposed the deletion of the materiality condition from the principal and interest payment delinquency event because otherwise it may include reporting of certain delays in payment that are the result of circumstances outside of the issuer's control or are very limited in time (*e.g.,* technological glitches; a short-term disruption of the Federal Reserve Wire system; an error or lapse by the trustee or paying agent that is quickly corrected; or clerical error at the Depository Trust Company that is quickly corrected).[184] Two of these commenters noted that these circumstances may result in a "very short-term delay in crediting payments to bondholders" and that "in the past [they] would have treated such an event as not material."[185] Further, these two commenters argued that requiring submission of notices in these circumstances "would create an

[172] *See* NFMA Letter at 2, SIFMA Letter at 3, e-certus Letter at 8, ICI Letter at 7–8, and Fidelity Letter at 3. *See also* California Letter at 2 and San Diego Letter at 2 (each of these commenters support elimination of the materiality qualifier for each of the six events set forth in the Proposing Release except for the event relating to rating changes); *see infra* Section III.C.2.e. for a discussion of rating changes.

[173] *See* ICI Letter at 7–8 and Fidelity Letter at 3.

[174] *See* SIFMA Letter at 8.

[175] *See* NABL Letter at 6–7. The three circumstances for which this commenter suggested retaining a materiality condition are: (i) Unscheduled draws of debt service reserves that reflect financial difficulties for LOC-backed demand securities; (ii) failed remarketings of LOC-backed demand securities; and (iii) defeasances. The Commission addresses each of these three circumstances later in this release. *See infra* Section III.C.2.

[176] *See* Metro Water Letter at 2, Connecticut Letter at 2, and GFOA Letter at 4.

[177] *See* Metro Water Letter at 2.

[178] *Id.*

[179] *See* Connecticut Letter at 2.

[180] *See* GFOA Letter at 4.

[181] The discussion in this section pertains to materiality determinations for events currently specified in paragraph (b)(5)(i)(C) of the Rule. For events to be added to the Rule by these amendments, the Commission discusses in Section III.E. below whether the materiality determination has been included for each such event.

[182] The Commission applied the same rationale discussed in this paragraph to determine which of the new event items that are being added to the Rule by these amendments should contain a materiality condition.

[183] *See* Kutak Letter at 3.

[184] *See* California Letter at 2, San Diego Letter at 2, and GFOA Letter at 4.

[185] *See* California Letter at 2 and San Diego Letter at 2.

unwarranted implication that the issuer has suffered financial adversity." [186]

The Commission notes that a payment default often negatively affects the market value of a municipal security and may have adverse consequences for an investor who has an immediate need for such funds. The Commission therefore believes that notice of any payment default with respect to securities covered by the Rule, including those defaults that are quickly remedied or that result from a technological glitch or similar error, is important information for investors. The Commission notes that issuers and obligated persons may include the reason for a payment default in the event notice submitted to the MSRB. Delayed payment—even for a short period of time—may impact investors' investment decisions by inhibiting their ability to promptly reinvest such payment or by leaving them unsure whether to buy, hold, or sell municipal securities. Accordingly, the Commission believes that notice of principal and interest payment delinquencies on municipal securities should always be provided to aid investors in making investment decisions and help protect them from fraud, as well as to assist brokers, dealers, and municipal securities dealers in satisfying their obligation to have a reasonable basis to recommend a municipal security.

b. Unscheduled Draws on Debt Service Reserves or Credit Enhancements Reflecting Financial Difficulties

Unscheduled draws on debt service reserves and credit enhancements often adversely impact the market value of a municipal security and, in the Commission's view, should always be made available to investors and other market participants.[187] These events likely indicate that the financial condition of a municipal securities issuer or obligated person has deteriorated and that there is, potentially, an increased risk of a payment default or, in some cases, premature redemption. Bondholders and other market participants also would be concerned with the sufficiency of the amount of debt service and other reserves available to support an issuer or obligor through a period of temporary difficulty, as well as the present financial condition of the provider of any credit enhancement.

One commenter suggested that a materiality condition should be retained for unscheduled draws on debt-service reserves for LOC-backed demand securities.[188] This commenter argued that materiality is necessary in this limited instance because the proposed amendment "would require notice of unscheduled draws on debt service reserves that reflect financial difficulties of the obligated person, even when not material to an investment in the securities because they are traded on the strength of a bank letter of credit." [189]

The Commission notes that notice is needed only when an unscheduled draw on debt-service reserves or credit enhancement indicates financial difficulties "with respect to the securities." Thus, an issuer or obligor must consider, under the facts and circumstances of a particular municipal security and its relevant governing documents, whether or not such unscheduled draw reflects financial difficulties with respect to that security—a limitation that should help address some concerns about removal of the materiality condition.

The same commenter also suggested retaining the "if material" condition for LOC-backed demand securities because the deletion of this condition, coupled with the modification to the exemption for demand securities, "would require notice of each failure to remarket securities when they are put, even though not material to an investor due to the existence of a letter of credit or other liquidity facility." [190]

The Commission does not agree with this commenter's conclusion. One purpose of a letter of credit or other liquidity facility for demand securities is to provide liquidity in the event that a new investor is not found at the time the securities are tendered for repurchase. A draw in such a situation does not necessarily reflect financial difficulties "with respect to the securities" of the credit enhancement provider or the obligated person, but may reflect underlying market conditions, as evidenced by failed remarketings during 2008 and 2009.[191] In the event of a draw that does not reflect financial difficulties with respect to the securities, a notice would not be provided. A determination regarding the existence of financial difficulties must be made on a case-by-case basis, depending on the facts and circumstances surrounding such draws and failed remarketings.

Finally, one commenter, who supported the deletion of the materiality condition, recommended deleting the phrase "reflecting financial difficulties" for events relating to unscheduled draws on debt-service reserves or credit enhancements.[192] This commenter suggested that, even with the removal of the materiality condition from these event items, the phrase "reflecting financial difficulties" may allow an issuer, in certain circumstances, to make a judgment regarding whether the occurrence of such an event would require disclosure.[193]

Although the Commission continues to believe that the disclosure of unscheduled draws is important to investors and other market participants, the Commission also recognizes that, in some circumstances, such draws are not the result of financial difficulties that would impact the creditworthiness of an issuer or obligated person, or the price of a municipal security. Accordingly, the Commission believes that the phrase "reflecting financial difficulties" should be retained in the Rule at this time.

c. Substitution of Credit or Liquidity Providers, or Their Failure to Perform

One commenter opposed eliminating the materiality condition from this event, in light of the proposed ten business day frame for submitting event notices to the MSRB.[194] This commenter acknowledged the importance of disclosing this information, but believed that as a result of the recent market turmoil, determining whether the occurrence of this event is material as a condition to providing notice remains important.[195]

The Commission believes that the identity of credit or liquidity providers and their ability to perform is important

[186] *Id.*

[187] *See* Proposing Release, *supra* note 2, 74 FR at 36839.

[188] *See* NABL Letter at 6–7.

[189] *Id.*

[190] *Id.*

[191] *See, e.g.,* Richard Williamson, *HOUSING: HFAs Still Facing VR Debt Woes; No Relief Till 2011 Even With U.S. Aid,* The Bond Buyer, October 7, 2009; Frank Sulzberger and Andrew Flynn, *Lessons From Tough Times: Understanding VRDO Failures,* The Bond Buyer, July 21, 2008 ("Until the recent credit crisis, few bonds had ever experienced a remarketing failure and when they did, liquidity providers were able to step in with little risk to their balance sheet. * * * In a normal market, the remarketing agent might step in and buy the tendered bonds, in order to prevent an actual draw on an LOC or credit facility. But this time around, the volume of the tenders and restrictions on their own liquidity made this choice difficult, if not impossible, for many remarketing agents.")

[192] *See* Fidelity Letter at 2.

[193] *See* Fidelity Letter at 2.

[194] *See* GFOA Letter at 4. The commenter expressed concern about the removal of materiality condition in the context of the ten business day time frame. As the Commission noted earlier in this release, the events contained in paragraph (b)(5)(i)(C) of the Rule, which includes the substitution of credit or liquidity providers, or their failure to perform, are significant events that an issuer should become aware of within a very short period of time. *See supra* Section III.B.

[195] *See* GFOA Letter at 4.

information for investors.[196] The Commission understands that credit ratings of municipal securities are typically based on the higher of the obligor's rating or the rating of the credit provider[197] and that, with occasional exceptions, credit enhancement is obtained from a credit provider with a higher rating than that of the obligor. When a credit enhancer such as a bond insurer is downgraded, the market value and the liquidity of the securities that it has enhanced generally decline.[198] Similarly, the identity and ability of a liquidity provider to perform typically is critical to investors. Investors in demand securities, for example, depend on liquidity providers to satisfy holders' right to tender their securities for repurchase in a timely manner. Furthermore, substitution of credit or liquidity providers requires direct involvement of an issuer or obligated person.[199] Thus, an issuer or obligated person would be aware of the impending occurrence of such an event and should be able to provide notice of the event within the ten business day time frame. As a result, the Commission believes that notice of substitution of credit or liquidity providers, or their failure to perform, should always be provided to aid investors in making investment decisions and protecting themselves from fraud and to assist brokers, dealers and municipal securities dealers in satisfying their obligation to have a reasonable basis to recommend municipal securities.

d. Defeasances

One commenter expressly favored maintaining the materiality condition for notice of defeasances.[200] This commenter believed that removal of the materiality condition "would require notice of defeasances of securities regardless of how short the remaining term of the securities, and therefore would require an issuer to give notice whenever it creates a thirty-day or shorter escrow for refunded bonds in order to avoid giving notice of redemption before an issue of refunding bonds is closed."[201]

Typically, because defeased municipal securities are secured by escrows of cash, or Treasury securities, sufficient to pay principal and interest to maturity or the appropriate call date, the value of municipal securities increases significantly when they are defeased. Information about such changes in the value of municipal securities—positive as well as negative—is important to investors in making investment decisions, such as whether to sell their securities prior to the defeasance date and, if so, whether the sale price is appropriate. Also, notice of a defeasance should reduce the likelihood that investors will be subject to fraud facilitated by inadequate disclosure, by providing them with information concerning the defeasance so that they can better assess the value of their defeased municipal securities. Further, the Commission is of the view that, regardless of the length of the escrow period, notice of defeasance is justified, because of the significance of the event and because investors should be provided sufficient time to plan the re-investment of their funds. Consequently, the Commission believes that notice of defeasance should not be subject to a materiality condition and should be provided to the MSRB in each instance.

e. Rating Changes[202]

One commenter recommended that the term "rating change" should be defined if the materiality condition is removed from this event item.[203] The commenter suggested that the Rule should be limited to those changes, for which the issuer or obligated person has actual knowledge, in the highest published rating relating to a given security, whether the underlying rating or the credit-enhanced rating.[204] The commenter also stated that the term "rating change" should exclude changes in outlook, as well as changes in credit ratings of parties other than the issuer or obligated person, unless the issuer or obligated person has received specific notice of the change in such other party's rating.[205] Some commenters argued that the proposed deletion of the materiality condition for this event item, together with the ten business day time frame to submit event notices to the MSRB, would create a substantially larger burden for issuers.[206] The same commenters believed that rating changes should be removed from the list of disclosure events in the Rule entirely, and that rating organizations should be responsible for providing this information directly to the MSRB.[207]

The Commission notes that, as a practical matter, changes in credit ratings today are likely to impact the price of municipal securities, and thus investors in these securities, as well as market professionals, analysts, and others, should have access to this information.[208] As discussed earlier, the continuing disclosure agreements that issuers have entered into pursuant to Participating Underwriters' obligations under the Rule already require them to submit event notices to the MSRB for rating changes, if material. The Commission acknowledges that removal of the materiality condition may increase the number of event notices submitted in connection with rating changes.[209] However, the removal of the materiality condition from this event item will simplify the submission of event notices for ratings changes by removing the burden on issuers to make a determination as to whether or not such a change is material and thus requires submission of a event notice. The Commission notes that rating agencies typically indicate a rating change by changing the widely understood symbols used to indicate

[196] Two commenters recommended that the event notice pertaining to substitution of credit or liquidity providers or their failure to perform should be expanded to include any renewal, or modification, of any credit or liquidity facility or other agreements supporting or otherwise material to a municipal security. *See* ICI Letter at 8 and Fidelity Letter at 3. These commenters noted that changes to, or violations of, any of the credit or liquidity agreements pertaining to a municipal security can modify the security, thereby causing a mandatory tender event or impacting the prospects for its remarketing. In their view, these events can have significant implications for investors. The Commission, in this rulemaking, is taking a targeted approach at this time. The Commission will take these comments into account should it consider further improvements that could be made to the Rule.

[197] *See, e.g.,* Proposing Release, *supra* note 2, 74 FR at 36839, n. 80.

[198] *See, e.g.,* Proposing Release, *supra* note 2, 74 FR at 36839, n. 81.

[199] *See, e.g.,* Richard Williamson, *Houston Metro Seeks LOC for Light Rail,* The Bond Buyer, April 16, 2008; and Elizabeth Carvlin, *Trends in the Region: Bond Contracts Stand at Center of Detroit Airport Dispute,* The Bond Buyer, September 11, 2002.

[200] *See* NABL Letter at 7. A defeasance typically is understood as the termination of the rights and interests of the bondholders and of their lien on the pledged revenues or other security in accordance with the terms of the bond contract for an issue of securities. *See, e.g.,* the MSRB's definition of defeasance at *http://www.msrb.org/msrb1/glossary/glossary_db.asp?sel=d.*

[201] *See* NABL Letter at 7.

[202] *See also supra* Section III.B. for a discussion of rating changes in the context of the ten business day time frame.

[203] *See* Kutak Letter at 3–4.

[204] *Id.*

[205] *Id.*

[206] *See* Halgren Letter, Los Angeles Letter at 1–2, NAHEFFA Letter at 2–4, San Diego Letter at 1–2, California Letter at 1–2, NABL Letter at 8, and GFOA Letter at 3–4.

[207] *See supra* note 153 and accompanying text.

[208] The Commision recently adopted amendments to its rules and forms, and is considering other amendments, to remove certain references to credit ratings by nationally recognized statistical rating organizations, in order to discourage undue investor reliance on them. *See, e.g.,* Securities Exchange Act Release Nos. 58070 (July 1, 2008), 73 FR 40088 (July 11, 2008), and 60789 (October 5, 2009), 74 FR 52358 (October 9, 2009).

[209] *See infra* Section V.D. for discussion of the paperwork burden in connection with deletion of materiality condition.

rating categories, which should make a determination of the occurrence of a rating change very straightforward.[210] Under the amendments, a notice of a rating change by any rating agency would be included even if another rating agency has not revised its rating of the municipal security.

Three commenters argued that information about rating changes is already accessible to investors through the media or Internet.[211] In the Commission's view, investors would benefit from being able to access a central source to determine whether there has been a rating change with respect to a particular municipal security, rather than relying on the media or accessing each rating organization's Internet Web site. Two of these commenters suggested a limited exemption from the Rule for rating changes involving municipal securities that are the result of rating changes involving the bond insurer or credit enhancer.[212] The Commission does not believe that an exemption for bond insurers and credit enhancers from the Rule is appropriate. As discussed above, ratings for particular securities generally reflect the rating of the provider of credit enhancement, if any, in addition to the obligated person (or other source of payment).[213] If a credit-enhanced municipal bond is downgraded because of a rating change involving the bond insurer or credit enhancer, that is likely to impact the price of the security and is important information that should be disclosed to investors.

3. Retention of Materiality Condition for Specified Events

Finally, the Commission is adopting, as proposed, amendments to paragraph (b)(5)(i)(C) and subparagraphs (2), (7), (8), and (10) thereunder with regard to the Participating Underwriter's obligations by specifying that a materiality determination is retained for event notices regarding (1) non-payment related defaults; (2) modifications to rights of security holders; (3) bond calls; and (4) the release, substitution, or sale of property securing repayment of the securities.

Two commenters opposed retaining the materiality condition for notice of non-payment related defaults and for bond calls, which currently are set forth in paragraphs (b)(5)(i)(C)(2) and (8) of the Rule, respectively.[214] These commenters remarked that violation of a legal covenant is an important component of an investor's analysis of a bond; disclosure of such events should not be discretionary; and bond calls are always material to investors.[215]

The Commission believes that a materiality condition should be retained for notice of non-payment related defaults and bond calls, respectively. Regularly scheduled sinking fund redemptions (a type of bond call) that occur when scheduled, for example, are ordinary course events that typically are known to bondholders.[216] For such redemptions, the specific amounts to be redeemed and dates for such redemptions generally are included in official statements and usually this information will not be material to investors as they are already apprised of the occurrence of such redemptions in advance. The occurrence of other kinds of calls, such as optional calls and extraordinary calls, however, generally is not known to bondholders in advance. These typically are important events for investors because they may directly affect the value of the municipal security. Thus, such calls may be material and would need to be disclosed.

With respect to non-payment related defaults, under some circumstances, the occurrence of such defaults may not rise to the level of importance that they would need always to be disclosed to investors. For example, failure to comply with loan covenants to deliver updated insurance binders to the trustee or to take other ministerial actions by an annual deadline, if not cured within the period provided for in the loan documents, may constitute events of default, but such defaults may not be material to investors. On the other hand, failure to comply with covenants to maintain certain financial ratios or cash on hand, for example, may be of great importance to investors as they may be early warnings of a decline in the operations or financial condition of the issuer or obligated person. The Commission believes that this materiality determination is similarly appropriate in the context of modifications of rights of security holders and the release, substitution, or sale of property securing repayment of the securities. Accordingly, the Commission continues to believe that information about the four events for which the materiality conditions are retained is not necessarily important to investors and other market participants in all instances, and thus the Commission is retaining the materiality condition for these events.

D. Amendment Relating to Event Notices Regarding Adverse Tax Events Under a Continuing Disclosure Agreement

Currently, paragraph (b)(5)(i)(C)(6) of the Rule pertains to "adverse tax opinions or events affecting the tax-exempt status of the security." The Commission is adopting, with certain modifications from that proposed, an amendment to paragraph (b)(5)(i)(C)(6) of the Rule to require that Participating Underwriters reasonably determine that the issuer or obligated person has entered into a continuing disclosure agreement to submit a notice for "[a]dverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701–TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security." As discussed below, in adopting this amendment, the Commission is making certain changes to the text of the amendment from that which was proposed[217] to clarify the use of the word "material" in this event item and to replace the phrase "tax-exempt status" with "tax status" to focus the disclosure on information relevant to investors, whether the municipal security is taxable or tax-exempt.

Four commenters expressed support for the proposed modifications to the list of adverse tax events included in the

[210] Ratings are expressed as letter grades that range, for example, from 'AAA' to 'D', and may include modifiers such as +, −, or numbers (*e.g.,* 1, 2, 3) to communicate the agency's opinion of relative level of credit risk. *See, e.g., http://www.moodys.com/, http://www.standardandpoors.com/* and *http://www.fitchratings.com/*. For purposes of Rule 15c2–12, "ratings change" does not include indicators of an increased likelihood of an impending ratings change, such as "negative credit watch."

[211] *See* Portland Letter at 2, San Diego Letter at 2, and California Letter at 3.

[212] *See* Portland Letter at 2 and California Letter at 3.

[213] *See supra* Section III.C.2.b.

[214] *See* ICI Letter at 8 and Fidelity Letter at 3.

[215] *Id.*

[216] The fact that a security may be redeemed prior to maturity in whole, in part, or in extraordinary circumstances is essential to an investor's investment decision about the security and is one of the facts a broker-dealer must disclose at the time of trade. *See MSRB Interpretative Notice Concerning Disclosure of Call Information to Customers of Municipal Securities,* MSRB, March 4, 1986.

[217] In the Proposing Release, the Commission proposed modifying paragraph (b)(5)(i)(C)(6) of the Rule so that continuing disclosure agreements would provide for the submission of a notice for "[a]dverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701–TEB) or other material notices or determinations with respect to the tax-exempt status of the securities, or other events affecting the tax-exempt status of the security." *See* Proposing Release, *supra* note 2, 74 FR at 36868.

Proposing Release.[218] One of these commenters noted that investors have a strong interest in being informed of actions taken by the IRS that present a material risk to the tax-exempt status of their holdings.[219] Several other commenters expressed concerns regarding the proposed items to be added to the disclosure for adverse tax events, particularly in light of the proposed removal of the materiality condition from this provision.[220] One commenter recommended that the materiality condition be retained for all items in paragraph (b)(5)(i)(C)(6) of the Rule, other than a final determination of taxability.[221] Other commenters, however, stated that the materiality condition should be retained for notice of all tax-related events.[222] One commenter noted that the municipal market may be flooded with notices due to the generality and vagueness of the proposed tax disclosure items.[223] This commenter further remarked that this provision will result in a "flood of notices" that could confuse and mislead investors, result in liquidations of municipal securities by multiple sellers simultaneously, or desensitize the market to such notices.[224]

In addition, three commenters expressed concerns about the impact of the disclosure of event notices during the IRS's audit process.[225] One commenter believed that an issuer's disclosure of event notices during the audit process could cause its bonds to be viewed unfavorably in the market and thus could result in higher borrowing costs for the issuer.[226] Another commenter noted that disclosure of a pending audit "would have adverse consequences to the issuer long before the IRS finally determines whether any tax code violations actually have occurred," [227] while a third commenter indicated that disclosure of an audit would "confuse investors who may not be well versed in the IRS audit process." [228]

The Commission previously has noted that "an 'event' affecting the tax-exempt status of a security may include the commencement of litigation and other legal proceedings, including an audit by the Internal Revenue Service * * *." [229] While the Commission continues to believe that "an event affecting the tax-exempt status of the security" can include an audit (and thus an audit should be the subject of an event notice when it is material), it agrees with the comment that not all audits indicate a risk to the security's tax status. At times, IRS staff conducts audits as part of project initiatives where it is not examining a specific problem or bond issue.[230] On the other hand, some audits are targeted to examining specific bonds when, for example, IRS staff has received information from the public that has raised IRS staff concern.[231] Thus, a determination by the issuer or obligated person in possession of the facts concerning the audit of a particular bond issue regarding whether a particular audit is material (and, thus, is an "other material event affecting the tax status of the security") is appropriate. In contrast, proposed and final determinations of taxability and Notices of Proposed Issue, which are determinations by the IRS that the IRS believes that a security is or may be taxable and has begun a formal administrative process in that regard, suggests that there could be a significant risk to the tax status of that security.[232] Accordingly, the Commission believes that proposed and final determinations of taxability and Notices of Proposed Issue are of such importance to investors that they always should be disclosed pursuant to a continuing disclosure agreement.

Retail and institutional investors consider the tax status of a municipal security, specifically the issuance of IRS notices, to be of great importance when making the decision to invest in tax-exempt bonds as opposed to other fixed-income securities.[233] This is a view supported by several commenters.[234] The financial significance of the municipal security's tax-exempt status is reflected directly in the interest rate on a tax-exempt municipal bond, which generally is significantly lower than the interest rate on a comparable taxable bond.[235] Accordingly, investors are particularly sensitive to factors that could affect the tax-exempt status of interest earned on their municipal securities, because that status goes directly to the value of their investment.[236] Further, a determination by the IRS staff that interest on a security purchased as tax-exempt may, in fact, be taxable may not only reduce the security's market value, but also may adversely affect each investor's federal and, in some cases, state income tax liability.[237] A security's tax-exempt status is also important to many mutual funds whose governing documents, with certain exceptions, limit their investment to tax-exempt municipal securities.[238] Mutual funds may liquidate securities that become taxable, which could have adverse consequences for the fund and its holders and could cause adverse effects if many holders attempt at the same time to liquidate similar securities, which at times could be illiquid. Therefore, retail and institutional investors alike are very interested in events that could adversely affect the tax status of the bonds that they own or may wish to purchase.

Moreover, as the Commission noted in the Proposing Release, despite the possibility that the issuance of proposed and final determinations of taxability and Notices of Proposed Issue could adversely affect the tax-exempt status of a bond and thus could significantly affect the pricing of such municipal security,[239] it has been reported that notices regarding such tax events are not always submitted.[240] The Commission

[218] *See* SIFMA Letter at 3, NFMA Letter at 2, San Diego Letter at 2, and California Letter at 2.

[219] *See* SIFMA Letter at 3.

[220] *See* NABL Letter, Metro Water Letter, Connecticut Letter, Kutak Letter, and GFOA Letter.

[221] *See* NABL Letter at 7.

[222] *See* Metro Water Letter at 3, Connecticut Letter at 2, Kutak Letter at 4–7, and GFOA Letter at 4.

[223] *See* Kutak Letter at 4–7.

[224] *Id.*

[225] *See* Kutak Letter at 5, GFOA Letter at 4, and Metro Water Letter at 3.

[226] *See* Kutak Letter at 5.

[227] *See* Metro Water Letter at 3.

[228] *See* GFOA Letter at 4.

[229] *See* 1994 Amendments Adopting Release, *supra* note 8, 59 FR at 59600. *See also* Proposing Release, *supra* note 2 74 FR at 36840.

[230] *See, e.g., IRS FY 2010 Tax-Exempt Bonds Work Plan,* IRS (available at *https://www.irs.gov/pub/irs-tege/fy_2010_teb_workplan.pdf*).

[231] *Id.*

[232] *See* Proposing Release, *supra* note 2, 74 FR at 36841.

[233] *See* Proposing Release, *supra* note 2, 74 FR at 36841, n. 89.

[234] *See* NFMA Letter at 2 and SIFMA Letter at 3. *See also* California Letter at 2, and San Diego Letter at 2.

[235] *See, e.g.,* SIFMA, "About Municipal Bonds—The Advantages of Tax Exemption," available at: *http://www.investinginbonds.com/learnmore.asp?catid=8&subcatid=53&id=233;* Morgan Stanley Smith Barney, "Tax-Free Municipal Bonds—Frequently Asked Questions," (question 4. Why is it better for me to own municipals when municipal bond rates are lower than taxable bond (Treasury bonds, corporate bonds) rates?), available at: *http://www.morganstanleyindividual.com/markets/bondcenter/school/faq/default.asp#4.*

[236] *See* Proposing Release, *supra* note 2, 74 FR at 36841, n. 90.

[237] For example, investors in such a circumstance may have to include interest on such a security as income when computing their federal income taxes for current and future tax years and may have to pay additional taxes for prior tax years. *See* Proposing Release, *supra* note 2, 74 FR at 36841.

[238] *See* Proposing Release, *supra* note 2, 74 FR at 36841, n. 92.

[239] *See* Proposing Release, *supra* note 2, 74 FR at 36842, n. 100.

[240] *See* Proposing Release, *supra* note 2, 74 FR at 36842, n. 101. *See, e.g.,* Susanna Duff Barnett, *IRS Answers Toxic Query; Post 1986 Radioactive Waste Debt Not Exempt,* The Bond Buyer, November 2, 2004 (material event notice filed October 29, 2004 regarding IRS technical advice memorandum dated August 27, 2004 that bonds issued to finance certain radioactive solid waste facilities were taxable; related preliminary adverse determination

believes that the issuance of proposed and final determinations of taxability and Notices of Proposed Issue by the IRS are important information that should be made available to investors and, accordingly, should be part of the continuing disclosure agreement obtained by a Participating Underwriter. The Commission believes that the IRS has issued a relatively small number of such determinations with respect to municipal securities when considered in light of the size of this market sector.[241] As a result, few issuers or obligated persons should be affected by adding proposed and final determinations of taxability and Notices of Proposed Issue to this event item. One commenter noted that disclosure of the issuance of proposed or final determinations of taxability and of material audits often results in a higher interest rate for VRDOs, resulting in an increased cost to the issuer.[242] That change in the interest rate supports the view that investors place a high degree of importance on events that may impact the tax status of their bonds. Thus, the Commission believes that disclosure in all instances of proposed and final determinations of taxability, Notices of Proposed Issue, and other material events affecting the tax status of a security, such as material audits, would help apprise investors of important information with respect to these securities.

Two commenters expressed specific concerns regarding the deletion of the materiality condition for submission of notices relating to adverse tax events.[243] One commenter believed that submitting a notice for all proposed tax determinations could limit the issuer's ability to negotiate with the IRS.[244] Another commenter remarked that without a materiality condition, disclosure of adverse tax events may mislead and confuse investors and could affect perceptions with respect to all of the issuer's securities, imposing interest and other costs that could limit future market access.[245] Other commenters, however, supported the proposed deletion of the materiality condition.[246]

As noted above, the Commission disagrees that disclosure of adverse tax events would "unnecessarily alarm investors," as one commenter argued.[247] Because investors place a high degree of importance on the tax status of their municipal securities, and the tax status of a security significantly affects the market price of a security, the Commission believes that disclosing a potential threat to that status is necessary and that investors have a keen interest in being informed of such events. Furthermore, the Commission believes that the failure to disclose adverse tax events potentially could mislead investors who would have no reason to know or other means to discover that the tax status of their bonds may be in doubt and the market value of those securities may be at risk.

One commenter noted that the text of the amendment in the Proposing Release included a materiality condition for one provision that impliedly applies to other provisions of paragraph (b)(5)(i)(C)(6) of the Rule.[248] This commenter suggested that the Commission clarify that the materiality condition applies to all tax events, except for a final determination of taxability.[249] As discussed above, the Commission does not believe that it is appropriate to provide for a materiality condition in the case of proposed or final IRS determinations of taxability. In the Commission's view, these IRS determinations are of such importance to investors that they always should be disclosed. However, in response to this commenter's recommendation, the Commission is revising the amendment to paragraph (b)(5)(i)(C)(6) from that proposed to clarify its original intention that the event item pertains to "other *material* events affecting the tax status of the security" (emphasis added). The Commission agrees with the commenter that it would be appropriate to clarify this phrase so that notices of events not specified in the Rule that affect the tax status of a security are required only if these events are material to investors.

Finally, in February 2009, Congress enacted the American Recovery and Reinvestment Act of 2009 ("ARRA"),[250] which authorized the issuance of Build America Bonds and other taxable municipal bonds with associated tax credits or direct federal payments to the issuer (collectively, "ARRA Bonds").[251] Because ARRA Bonds are municipal securities, Participating Underwriters would need to comply with the Rule's provisions, including paragraph (b)(5)(i)(C), when these bonds are the subject of a primary offering. Thus, a Participating Underwriter will be required to reasonably determine that an issuer or an obligated person has entered into a continuing disclosure agreement to submit continuing disclosure documents to the MSRB. ARRA Bonds are required to comply with many of the same provisions of the Internal Revenue Code as are tax-exempt bonds, such as restrictions on arbitrage.[252] The benefits granted to ARRA Bonds (*e.g.,* tax credits and related federal payments to issuers) are only authorized for bonds that comply with the provisions of the Internal Revenue Code that grant these benefits.[253] Furthermore, like tax-exempt municipal bonds, adverse tax opinions, proposed or final determinations of taxability, Notices of Proposed Issue, or other material notices or determinations by the IRS with respect to the tax status of the securities, or other material events affecting the tax status of the security, may be applicable to ARRA Bonds. To clarify the applicability of paragraph (b)(5)(i)(C)(6) of the Rule, as amended, to ARRA Bonds, the Commission is adopting, for purposes of this paragraph, the phrase "tax status," rather than "tax-exempt status," of the security. The Commission believes that this limited change will clarify that Participating Underwriters

letter was issued in January, 2002). *See also supra* note 140.

[241] *See* Proposing Release, *supra* note 2, 74 FR at 36853, which notes that for Paperwork Reduction Act purposes, 130 event notices relating adverse tax events, including IRS determinations, are estimated to be submitted to the MSRB.

[242] *See* Kutak Letter at 5.

[243] *See* Metro Water Letter at 3 and Kutak Letter at 4–7.

[244] *See* Metro Water Letter at 3.

[245] *See* Kutak Rock Letter at 4–7.

[246] *See* ICI Letter at 2, NFMA Letter at 2 and SIFMA Letter at 3.

[247] *See* Connecticut Letter at 2.

[248] *See* SIFMA Letter at 3.

[249] *Id.*

[250] Public Law 111–5, 123 Stat. 115 (2009).

[251] The American Recovery and Reinvestment Act of 2009 introduced three new categories of tax-advantaged *taxable* bonds—Build America Bonds (I.R.C. § 54AA), Qualified School Construction Bonds (I.R.C. § 54F), and Recovery Zone Economic Development Bonds (I.R.C. §§ 1400U–2). In addition, the ARRA expanded the authority to issue *taxable* New Clean Renewable Energy Bonds (I.R.C. § 54C), Qualified Energy Conservation Bonds (I.R.C. § 54D) and Qualified Zone Academy Bonds (I.R.C. § 54E). This followed the introduction of taxable Qualified Forestry Conservation Bonds (I.R.C. § 54B) in the Heartland, Habitat, Harvest, and Horticulture Act of 2008. Taxpayers who hold such bonds on a "credit allowance date" generally are allowed a specified credit against their federal income tax liability (with the notable exceptions being Build America Bonds for which the issuer has elected to receive payments from the U.S. Treasury under I.R.C. § 54AA(g)(1), referred to herein as "Direct-Pay BABs," and Recovery Zone Economic Development Bonds). In addition, the tax credits may be "stripped" from the underlying taxable bonds (*see* I.R.C. §§ 54A(i), 54AA(f)(2)), either by the issuer or by a holder in the secondary market, and sold to different investors pursuant to Treasury Department regulations to be issued.

[252] *See, e.g.,* Section 54AA of ARRA (Build America Bonds); I.R.C. § 1400U–2(b) (Recovery Zone Economic Development Bonds); I.R.C. §§ 54A and 54C (New Clean Renewable Energy Bonds); IRC sections 54A and 54C (Qualified Energy Conservation Bonds); I.R.C. §§ 54A and 54E (Qualified Zone Academy Bonds); I.R.C. §§ 54A and 54F (Qualified School Construction Bonds). *See also,* IRS Notice 2009–26—Build America Bonds and Direct Payment Subsidy Implementation.

[253] *See* Public Law 111–5, 123 Stat. 115 (2009).

of ARRA Bonds are required to reasonably determine that issuers or obligated persons of such bonds have entered into a continuing disclosure agreement to submit to the MSRB, among other things, the tax-related disclosure events included in paragraph (b)(5)(i)(C)(6) of the Rule. For investors who hold ARRA Bonds with associated tax credits, the consequence of an issuer's failure to comply with the applicable requirements of the Internal Revenue Code is the loss of the benefit of a tax credit.[254] For investors who hold tax-exempt municipal securities, the consequence of an issuer's failure to comply with federal tax provisions is the loss of the benefit of tax-exempt interest income. In the Commission's view, the consequences to investors who hold either ARRA bonds or tax-exempt municipal securities are comparable. Therefore, the Commission believes that this minor revision to this disclosure event will allow investors in ARRA Bonds, like investors in tax-exempt bonds, to have timely access to important information concerning risks that may affect the tax status of their securities.

E. Addition of Events To Be Disclosed Under a Continuing Disclosure Agreement

The Commission is adopting, as proposed, the amendments adding four new events to paragraph (b)(5)(i)(C) of the Rule. These additional events are: (1) Tender offers; (2) bankruptcy, insolvency, receivership, or similar proceeding of the obligated person; (3) the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and (4) appointment of a successor or additional trustee, or the change of name of a trustee, if material. The Commission believes that the amendments relating to submission of events that are added to the Rule are justified by the transparency benefits that will result to investors, broker-dealers, analysts, and others.

1. Tender Offers

The Commission is adopting, as proposed, the amendment to add tender offers to the list of events in paragraph (b)(5)(i)(C)(8) of the Rule.[255] Under the amendment, a Participating Underwriter must reasonably determine that the issuer or obligated person has agreed in its continuing disclosure agreement to provide notice of tender offers to the MSRB. A number of commenters supported the addition of this event item.[256] Two commenters stated that notice of a tender offer will provide meaningful information regarding a particular bond.[257]

Some commenters, while supporting the amendment to add tender offers, recommended modifying this disclosure event. One commenter noted that it is not uncommon for tender offers to be made only to select municipal security holders.[258] This commenter stated that, in this instance, there is no reason to inform other security holders of a limited tender offer, unless the offer would have a material impact on those holders.[259] Accordingly, the commenter recommended restricting notice to only those tender offers made to all holders.[260] Further, this commenter and three other commenters suggested that the Commission add a materiality qualifier to the provision.[261]

The Commission continues to believe that notice of the occurrence of any tender offer should be made available to all bondholders because this information is important to an investor's ability to make an informed and timely decision regarding the security that is the subject of the tender offer. Even when tender offers are made to a limited number of bondholders, they may be material to other bondholders' evaluation of their investment. For example, a tender offer may be made to fewer than all bondholders by an obligated person facing financial difficulties. In such instance, those holders who are not invited to participate in the tender offer would have the option to consider and react (*i.e.,* buying, selling, or holding such securities) to the information contained in the notice about such a tender offer.[262]

Further, during a tender offer, some investors presently may be left in doubt as to whether their securities are subject to the offer because information about the tender offer is not readily available to them.[263] To determine the facts about a tender offer, it often is necessary for investors to seek pertinent information directly from the issuer or other obligated person. Currently, some investors may not be able to learn of the existence of a tender offer in a timely fashion, which may impair such investors' ability to react to the offer (*i.e.,* buying, selling, holding, and if the offer is available to them, tendering securities).[264] Consequently, the Commission believes that notice of the existence of a tender offer in a timely manner and in any event within ten business days of its occurrence would help to improve the timely availability of tender offer information so that investors would be offered the opportunity to make informed, timely decisions about whether to buy, sell, hold or tender their securities.[265] Furthermore, the Commission believes that such communication provides market participants with relevant

[254] *See, e.g.,* I.R.C. §§ 54A and 54AA.

[255] In passing the Williams Act, Public Law 90–439, in 1968, Congress recognized that regulation of tender offers was necessary for the purposes of disclosure of material information and substantive protection to investors. *See* Rep. No. 550, 90th Cong., 1st Sess. 3 (1967) at 1. Municipal securities, however, generally are not subject to Commission rules governing tender offers, including rules that set forth disclosure, time periods, and other requirements governing tender offers by issuers.

[256] *See* ICI Letter at 8, Fidelity Letter at 2, NFMA Letter at 2, and SIFMA Letter at 4.

[257] *See* ICI Letter at 8 and Fidelity Letter at 2.

[258] *See* NABL Letter at 7.

[259] *Id.*

[260] *Id.*

[261] *See* Connecticut Letter at 2, GFOA Letter at 4, Metro Water Letter at 2, and NABL Letter at 7.

[262] In addition, two commenters recommended that the Commission provide a definition of "tender offer" for purposes of the Rule. *See* Kutak Letter at 4 and GFOA Letter at 4. Although the term "tender offer" has not been defined, the Commission notes that the meaning of "tender offer" for municipal securities purposes is no different from the meaning of "tender offer" for other securities subject to the tender offer provisions of the Exchange Act and related rules. *See generally* Rule 14d–1(g) under the Exchange Act. 17 CFR 240.14d–1(g). One of these commenters also suggested that the tender agent, rather than issuer, should submit the notice to the MSRB. *See* GFOA Letter at 4. The Commission notes, however, that an issuer already may negotiate to designate a tender agent to submit a tender offer notice to the MSRB on its behalf. *See* 17 CFR 240.15c2–12(b)(5)(i).

[263] *See* Proposing Release, *supra* note 2, 74 FR at 36843.

[264] Tender offers typically require an investor to respond within a limited time frame. *See* Proposing Release, *supra* note 2, 74 FR at 36843, n. 104.

[265] The amendment retains in Rule 15c2–12(b)(5)(i)(C)(8) the requirement that Participating Underwriters reasonably determine that the issuer or obligated person has agreed in a continuing disclosure agreement to provide to the MSRB notice of bond calls, if material. *See supra* Section III.C.3. Thus, unlike with respect to tender offers, the issuer will be able to make a materiality determination with respect to submitting a notice regarding a bond call. The Commission believes that this distinction is appropriate in light of the various types of bond calls (*e.g.,* sinking fund redemptions, extraordinary redemptions, and optional redemptions) that can occur. In addition, the specific amounts to be redeemed and dates for some redemptions (*e.g.,* sinking fund redemptions) are generally included in official statements. Therefore, information about such events should already be available to investors. Similar information regarding tender offers is not currently as readily available to investors.

information about the offer and should reduce the likelihood that investors will be subject to fraud facilitated by inadequate disclosure.[266]

2. The Occurrence of Bankruptcy, Insolvency, Receivership, or Similar Events Regarding an Issuer or an Obligated Person

The Commission is adopting, as proposed, the amendment to add new paragraph (b)(5)(i)(C)(12) to the Rule, which requires a Participating Underwriter to reasonably determine that an issuer or obligated person has agreed in its continuing disclosure agreement to provide notice about bankruptcy, insolvency, receivership or a similar event with respect to the issuer or an obligated person. The Commission also is adopting, as proposed,[267] the Note to new paragraph (b)(5)(i)(C)(12), which explains that such an event will be considered to have occurred in the following instances: the appointment of a receiver, fiscal agent or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the issuer or obligated person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person.[268] Most commenters supported the addition of bankruptcy to the list of disclosure events.[269]

As the Commission noted in the Proposing Release, although municipal issuers and obligated persons are rarely involved in bankruptcy, insolvency, receivership, or similar events, the occurrence of these events can significantly impact the value of the municipal securities.[270] Thus, information about these events is important to investors and other market participants.[271] Being informed about the occurrence of these events will allow investors to make informed decisions about whether to buy, sell, or hold the municipal security.[272]

Some commenters, however, opposed the addition of bankruptcy to the list of disclosure events if it was not limited by a materiality condition.[273] One of these commenters also stated that the bankruptcy provision should apply only to those obligated persons covered by paragraph (b)(5)(i)(A) of the Rule (*i.e.,* those obligated persons for whom annual financial information or operating data is presented in the final official statement).[274] This commenter believed that, without such a revision, this disclosure event could result in an obligation to provide a notice with respect to events that are largely irrelevant to the decision to buy, hold, or sell a particular issue of municipal securities.[275] In addition, this commenter believed that issuers or other obligated persons may be required to undertake perpetual due diligence of all obligated persons to determine whether any such events have occurred, including those obligated persons for whom financial or operating data is not included in the final official statement.[276]

The Commission believes that it is unnecessary to include a materiality condition for this event item. Bankruptcies and similar events involving municipal issuers or obligated persons are significant occurrences that are likely to affect the value of a particular security. Investors should be informed about such events so that they can make their own evaluation about the event's importance under the particular facts and circumstances. Moreover, since such bankruptcies and similar events are relatively rare,[277] the Commission believes that the burden on issuers or obligated persons to provide notice will be modest and is justified by the potential significance of these events to investors.

The Commission also does not believe that it is necessary to limit paragraph (b)(5)(i)(C)(12) to obligated persons for whom annual financial information and operating data is included in the final official statement. The Commission believes that there are a variety of methods by which issuers or obligated persons could avoid having to monitor directly the activities of other obligated persons, such as obtaining, at the time of a primary offering, an agreement from obligated persons for whom annual financial information and operating data are not included in the final official statement that they will provide information pertaining to a bankruptcy, insolvency, receivership or similar event to the party responsible for filing event notices.

[266] The recent events in the market for ARS illustrate the need to provide timely notice (*i.e.,* within ten business days) of the occurrence of a tender offer. Since approximately mid-February of 2008, the market for ARS has experienced severe illiquidity, with adverse consequences to investors who purchased what they may have believed to be liquid, cash equivalent investments. In response, some issuers and obligated persons offered to purchase some or all of their outstanding ARS from investors. *See* Proposing Release, *supra* note 2, 74 FR at 36843, n. 107. Notices about these tender offers, however, may not always be widely disseminated. *See* Proposing Release, *supra* note 2, 74 FR at 36843, n. 107.

[267] The Commission is correcting a typographical error in the Note to state "plan of reorganization" rather than "plan or reorganization."

[268] *See* Form 8–K, Item 1.03 for provisions relating to bankruptcy or receivership that are applicable to entities subject to Exchange Act reporting requirements. 17 CFR 249.308. Item 1.03 of Form 8–K requires the registrant to provide specified items of disclosure on Form 8–K if a receiver, fiscal agent, or similar officer has been appointed for a registrant or its parent, in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state and federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the registrant or its parent, or if such jurisdiction has been assumed by leaving the existing directors and officers in possession but subject to the supervision and orders of a court or governmental authority. The proposed Rule 15c2–12 event item is intended to be consistent with the Form 8–K, Item 1.03 provisions applicable to entities subject to the reporting requirements of the Exchange Act. *See also* Proposing Release, *supra* note 2, 74 FR at 36844.

[269] *See* GFOA Letter at 4, NFMA Letter at 2, Connecticut Letter at 2, ICI Letter at 8, Fidelity Letter at 2, NABL Letter at 8, California Letter at 2, and San Diego Letter at 2.

[270] *See* Proposing Release, *supra* note 2, 74 FR at 36844. Under paragraph (b)(5)(i)(C)(2) of the Rule, notice of a material "non-payment related default" is to be provided to the MSRB pursuant to a continuing disclosure agreement. The Commission understands that the governing documents for some municipal securities include bankruptcy, insolvency, receivership, or similar events involving an issuer or obligated person as a "non-payment related default." *See* National Association of Bond Lawyers ("NABL") Form Indenture, dated June 1, 2002 ("NABL Form Indenture"). However, this may not uniformly be the case. This amendment, therefore, will help improve the availability of notice of these events to all investors and market participants.

[271] *See* Proposing Release, *supra* note 2, 74 FR at 36844, n. 112.

[272] As the Commission noted in the Proposing Release, it is aware that bonds are often secured by letters of credit, bond insurance, and other forms of credit enhancement that some have argued could reduce the importance of the creditworthiness of an issuer or obligated person. However, the Commission has long been of the view that information regarding obligated persons generally is material to investors in credit-enhanced offerings. *See* 1989 Adopting Release, *supra* note 8, 54 FR at 28812 ("The presence of credit enhancements generally would not be a substitute for material disclosure concerning the primary obligor on municipal bonds."). *See also* Regulation AB, 17 CFR 229.1100 *et seq.* The Commission received no comments on these statements.

[273] *See* Connecticut Letter at 2, GFOA Letter at 4, Metro Water Letter at 2, and NABL Letter at 8.

[274] *See* NABL Letter at 8–9.

[275] *Id.*

[276] *Id.*

[277] To illustrate, it has been reported that there were 183 municipal bankruptcies from 1980 to early 2007. *See* Sylvan G. Feldstein, *The Handbook of Municipal Bonds,* April 25, 2008 (Wiley).

3. Merger, Consolidation, Acquisition, and Sale of All or Substantially All Assets

The Commission is adopting, as proposed, the amendment to add new paragraph (b)(5)(i)(C)(13) to the Rule, which requires a Participating Underwriter to reasonably determine that the continuing disclosure agreement provides for the submission of notice of any of the following events with respect to the securities being offered: The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.[278]

A number of commenters supported adding mergers, consolidations, acquisitions and substantial asset sales to the list of disclosure events in paragraph (b)(5)(i)(C) of the Rule.[279] In addition, one of these commenters recommended deleting the "ordinary course" and "if material" qualifiers from the proposed rule text, because these transactions "are rarely, if ever, in the "ordinary course of business" or "immaterial."[280]

The Commission believes that notice of the events specified in this new Rule provision is important information for investors and market participants.[281] While these corporate-type events are believed to be rare among governmental issuers,[282] they are not uncommon for obligated persons, such as health care institutions, other non-profit entities, and for-profit businesses.[283] As the Commission noted in the Proposing Release, these events may signal that a significant change in the obligated person's corporate structure could occur or has occurred.[284] In such cases, investors reasonably expect to be informed about the identity and financial condition of the obligated person who would be responsible, following the event, for the payment of the subject security.

In addition, the Commission believes that it is appropriate to retain the "ordinary course" and "if material" conditions because some events, such as small acquisitions, may occur occasionally, but have little or no effect on the value of the municipal security or on an investor's decision whether to buy, sell or hold the security. Similarly, some obligated persons, such as large health care or senior living organizations may be permitted under their loan documents to sell small parcels of real estate that are not necessary to their operations or to change the legal structure of one or more of their component entities (such as a single nursing home), if certain covenants are met. Requiring notices to be filed in the case of all such actions or events that occur would impose a burden on such obligated persons, while providing little useful information to investors.

Two commenters opposed adding mergers and acquisitions to the list of disclosure events.[285] They argued that providing notice of a merger or acquisition, particularly for closely-held companies, upon signing of the relevant agreement would be "anti-competitive," because such agreements often are signed prior to public announcement and are contingent on approval of the municipality and the lender. In their view, such notice could allow competitors to interfere with the transaction's consummation prior to its closing.[286] However, the Commission believes that competition in the market for corporate control could be enhanced, not reduced, by the possibility of disclosure, creating more open conditions for the sale of privately-held companies. The Commission further notes that parties to mergers and acquisition agreements generally may, subject to legal obligations, include remedies in such agreements that are designed to balance the conflicting interests of the buyer and the seller. As noted in the Proposing Release, the Commission believes that notice of such mergers, consolidations, acquisitions and substantial asset sales, if material, is important to investors in assessing the value of their investments.[287] These transactions may have an impact on the issuer's or obligated person's financial condition, which, in turn, would have an impact on the price of the municipal securities issued by such parties and could change the identity of the obligor itself. Accordingly, the Commission believes that these disclosures are justified in light of the importance of this information to investors.

One commenter noted that the disclosure item pertaining to mergers, consolidations, acquisitions and substantial asset sales should be revised so that it only applies with respect to those obligated persons covered by paragraph (b)(5)(i)(A) of the Rule (*i.e.,* those obligated persons for whom annual financial information or operating data is presented in the final official statement).[288] This commenter

[278] The Commission also notes that reporting companies are required to make disclosures upon the occurrence of similar events. *See* Items 1.01 and 2.01 of Form 8–K relating to entry into a material definitive agreement and completion of the acquisition or disposition of assets, respectively, which require entities subject to Exchange Act reporting requirements to disclose specified information within four business days of the occurrence of such events. 17 CFR 249.308. Item 1.01 of Form 8–K requires the registrant to provide specified items of disclosure on Form 8–K if the registrant has entered into a material definitive agreement not made in the ordinary course of business of the registrant, or into any amendment of such agreement that is material to the registrant. For purposes of Item 1.01, a "material definitive agreement" means an agreement that provides for obligations that are material to and enforceable against the registrant, or rights that are material to the registrant and enforceable by the registrant against one or more parties to the agreement, in each case whether or not subject to conditions. Item 2.01 of Form 8–K requires the registrant to provide specified items of disclosure on Form 8–K if the registrant or any of its majority-owned subsidiaries has completed the acquisition or disposition of a significant amount of assets, other than in the ordinary course of business.

[279] *See* Kutak Letter at 4, NFMA Letter at 2, SIFMA Letter at 4, Connecticut Letter, GFOA Letter at 4, ICI Letter at 8–9, and Fidelity Letter at 3. Two of these commenters recommended that this provision also provide for the submission of additional information pertaining to such transactions, including offer prices, changes in offer prices, withdrawal rights, identity of the offeror, the ability of the offeror to finance the offer, conditions of the offer, time frame of the transaction, and manner of tendering securities and method of acceptance. *See* ICI Letter at 8–9 and Fidelity Letter at 3. The Commission is taking a targeted approach at this time. These suggested modifications would require more detailed disclosures than the Commission intended for purposes of this rulemaking. Nevertheless, some issuers may voluntarily decide to incorporate some or all of this information in an event notice that is submitted pursuant to a continuing disclosure agreement.

[280] *See* Fidelity Letter at 2.

[281] *See supra* note 271 (suggesting that disclosure information should include information relating to material acquisitions and dispositions).

[282] *See* Proposing Release, *supra* note 2, 74 FR at 36845, n. 117.

[283] *See* Proposing Release, *supra* note 2, 74 FR at 36845, n. 118.

[284] *See* Proposing Release, *supra* note 2, 74 FR at 36845.

[285] *See* CRRC Letter at 5 and WCRRC Letter.

[286] *Id.*

[287] *See also* Proposing Release, *supra* note 2, 74 FR at 36845.

[288] *See* NABL Letter at 8. This commenter and several other commenters suggested that the Commission add the "if material" qualifier to this event item. *See* Connecticut Letter at 2, GFOA Letter at 4, Metro Water Letter at 2, and NABL Letter at 7. The Commission points out, however, that new paragraph (b)(5)(i)(C)(13) contains a materiality condition. As the Commission noted in the Proposing Release, it does not believe that all mergers, consolidations, acquisitions, and substantial asset sales are necessarily of sufficient importance that information pertaining to them needs to be made available in every instance. For example, a merger could involve the combination of a shell corporation or a small entity into a very large health care organization that is a conduit borrower. Such mergers generally would not have a significant impact on the business or financial condition of the larger corporation and, under all of the applicable facts and circumstances, generally would not be important to investors. *See* Proposing

believed that issuers or other obligated persons may be required to undertake perpetual due diligence on all obligated persons to determine whether any such events occurred, including those for whom financial or operating data is not included in the final official statement.[289]

Similar to the Commission's discussion in the context of the bankruptcy and insolvency disclosure event, the Commission does not believe that it is appropriate to limit paragraph (b)(5)(i)(C)(13) to obligated persons for whom annual financial information and operating data is presented in the final official statement. The Commission believes that there are a variety of methods by which issuers or obligated persons could avoid having to monitor directly the activities of other obligated persons, such as obtaining, at the time of a primary offering, an agreement from obligated persons for whom annual financial information and operating data are not included in the final official statement that they will provide information pertaining to a merger, consolidation, acquisition or substantial asset sale to the party responsible for filing event notices. The Commission also notes that a merger, consolidation, acquisition or substantial asset sale involving an obligated person would not trigger an event notice if such transaction by an obligated person does not meet the materiality standard.

4. Successor, Additional, or Change in Trustee

Finally, the Commission is adopting, as proposed, the amendment to add new paragraph (b)(5)(i)(C)(14) to the Rule, which requires that a Participating Underwriter must reasonably determine that the continuing disclosure agreement provides for the submission of notice of an appointment of a successor or additional trustee, or a change of name of a trustee, if material. Most commenters expressed general support for the addition of this event item to the Rule.[290]

Two commenters, however, expressed concern regarding the increased costs and burdens that some issuers would incur to report changes pertaining to trustees within the Rule's ten business day time frame.[291] One of these commenters noted that, "in the case of the small less sophisticated borrower * * * obligors do not have the resources available to track and report on changes in the trustee on a timely basis or to determine the materiality of a name change."[292] The other commenter noted that "turmoil in the banking sector has meant frequent cha[n]ges in trustees," and that "many issuers and obligated persons are not informed of these changes within the proposed ten-day time frame, much less in sufficient time to identify the need to file a notice and prepare the relevant notice within such time period."[293] These commenters recommended either that knowledge of the event rather than the occurrence of the event trigger the time period to disclose the event, or that the trustee disclose the changes directly to the MSRB.[294]

The Commission continues to believe in the importance of an investor's ability to be informed about material changes in a trustee's identity, given the significance of trustees for bondholders.[295] A trustee makes critical decisions that impact investors and is under a duty to represent the interests of bondholders. For example, a trustee often must determine whether: Proposed amendments to the governing documents of the municipal security are permissible without bondholder consent; parity obligations may be issued; security may be released; or a default event has occurred.[296] In addition, a trustee is responsible for sending payments to investors and computing applicable interest rates. In some cases, a trustee may be responsible for taking certain actions at the direction of a designated percentage of bondholders.[297] A trustee also may be responsible for providing information requested by investors. Often, the trustee serves as the issuer's dissemination agent for continuing disclosures. Although under normal circumstances the identity of the trustee may have little or no influence on a decision to buy or sell a security, bondholders would need to know who to contact, particularly when an issuer or other obligated person may be experiencing financial difficulty. The Commission is currently unaware of any method by which investors, particularly individual investors, have a consistent means of obtaining up-to-date information about changes to the identity of the trustee. In the Commission's view, these factors support the need for investors to know the identity of the trustee.

The Commission believes that issuers and other obligated persons could take steps to become aware promptly of any change of trustee or in the name of a trustee by obtaining an agreement from the trustee to provide advance notice of such an event to them, *e.g.,* by having the indenture specify that the trustee will immediately provide this information to the issuer or obligated person.[298] Furthermore, the addition of a substitute or additional trustee generally involves the participation of the issuer.[299] In such an event, the issuer would likely have adequate time to comply with its undertaking to submit notice of a change in trustee event within the requisite ten business day time frame in order for investors to become aware of the identity of the new trustee. Finally, an issuer or other obligated person could elect to designate the trustee as its agent to provide notice of such an event directly to the MSRB.[300]

A few commenters expressed concerns about the inclusion of a materiality condition in this provision.[301] Two commenters noted that small or less sophisticated issuers may have difficulty determining the materiality of a trustee's name change.[302] Another commenter suggested not including the materiality condition because it believed that all trustee changes are material and "it is critical that investors are informed of such changes as their rights are generally exercised through the actions of the trustee."[303] One commenter suggested that the Commission also should require that the event notice include the trustee's new contact information.[304]

As noted in the Proposing Release, the Commission believes that whether a change involving a trustee is material

Release, *supra* note 2, 74 FR at 36845. The Commission received no comments on this statement.

[289] *See* NABL Letter at 8.

[290] *See* Connecticut Letter at 2, NFMA Letter at 2, SIFMA Letter at 4, ICI Letter at 8, Fidelity Letter at 3, and GFOA Letter at 4.

[291] *See* CHEFA Letter at 3 and NAHEFFA Letter at 4.

[292] *See* CHEFA Letter at 3.

[293] *See* NAHEFFA Letter at 4.

[294] *Id.*

[295] *See* Proposing Release, *supra* note 2, 74 FR at 36845–46.

[296] *See* NABL Form Indenture, *supra* note 270.

[297] *Id.*

[298] *See infra* Section IV., discussing the obligations of underwriters of municipal securities under the antifraud provisions of the federal securities laws, and note 351.

[299] *See, e.g.,* NABL Form Indenture, *supra* note 270.

[300] Rule 15c2–12(b)(5)(i) permits an issuer or obligated person to provide documents to the MSRB either directly or indirectly through an indenture trustee or a designated agent. *See* 17 CFR 240.15c2–12(b)(5)(i).

[301] *See* CHEFA Letter at 3, NAHEFFA Letter at 4, and Fidelity Letter at 3.

[302] *See* CHEFA Letter at 3 and NAHEFFA Letter at 4.

[303] *See* Fidelity Letter at 3.

[304] *See* NFMA Letter at 2. Issuers should consider including the trustee's updated contact and identification information in any notice regarding a change in the trustee.

must be determined through a review of the particular facts and circumstances surrounding such an event.[305] It is possible that a change is so minor that it would not be material. For example, a name change such as "ABC National Bank and Trust Company of XYZ," to "ABC National Bank and Trust Company" may not be material in the absence of other factors, such as a change of the location at which the trustee can be reached.[306] On the other hand, when a trustee transfers all or part of its trust operations to a different organization, on account of a merger or otherwise, the Commission believes that it is important for a bondholder to be able to determine the identity of the new trustee.

F. Other Comments

Several commenters advocated additional changes to the Rule. Two commenters suggested that the Commission establish a definitive time period within which the delivery of required ongoing financial information should be provided.[307] Some commenters also suggested that the Commission add other disclosure events to the Rule. These events included: (i) Long-term funding commitments for payments; [308] (ii) potential termination liabilities for an issuer's interest rate swaps; [309] (iii) the creation of any material financial obligation (including contingent obligations); [310] (iv) a "catch all" event subject to a materiality determination; [311] (v) clarification of the tax-exempt status of a bond; [312] (vi) modifications to escrow agreements or escrows; [313] (vii) various events related to swap transactions; [314] (viii) the conversion of bank bonds to a loan or term note; [315] and (ix) the termination of a conditional liquidity facility.[316] Two commenters requested that the Commission provide interpretative guidance clarifying that climate risk disclosure is material information that should be disclosed to bondholders.[317] Finally, one commenter recommended that the Rule should require every continuing disclosure agreement to include language that successor parties will be bound by the terms of the agreement.[318]

Other commenters proffered additional recommendations to improve the municipal securities market in general and its transparency. In this regard, three commenters suggested that the Commission petition Congress to repeal the Tower Amendment, which restricts the Commission from directly imposing disclosure requirements on municipal issuers.[319] One commenter recommended that the Commission establish specific "listing" and "de-listing" conditions for the MSRB's EMMA system.[320] Another commenter suggested creating a 48-hour right of rescission for retail bond buyers to rescind a transaction if the seller has misrepresented information about a particular bond offering.[321] Finally, one commenter suggested the creation of an on-line marketplace for bond dealers and individuals to buy or sell municipal securities.[322]

The Commission welcomes the foregoing views and suggestions to revise Rule 15c2–12 and improve the transparency and other aspects of the market for municipal securities. As evidenced by its adoption of the 2008 Amendments and today's amendments, the Commission is committed to considering proposals to further enhance the scope of municipal market disclosures and their dissemination to investors. Although the Commission, in this rulemaking, is taking a targeted approach at this time, it will consider commenters' views as it continues its efforts to bring greater transparency and other improvements to the municipal securities market.

G. Compliance Date and Transition

The amendments to Rule 15c2–12 will impact only those continuing disclosure agreements that are entered into in connection with primary offerings of municipal securities that are subject to the Rule and that occur on or after the December 1, 2010 compliance date of these amendments. The Commission understands that existing undertakings by issuers and obligated persons that were entered into prior to the compliance date of these amendments do not require a broker, dealer, or municipal securities dealer to reasonably determine that the issuer or other obligated person had agreed to provide notice of specified events in a timely manner not in excess of ten business days of the event's occurrence or include the additional items discussed above that the amendments added to paragraph (b)(5)(i)(C) of the Rule. In addition, such existing undertakings provide for the submission of the events specified in paragraph (b)(5)(i)(C) of the Rule, "if material." Further, a Participating Underwriter in remarketings of demand securities that are outstanding in the form of demand securities on the day preceding the compliance date of these amendments, and that continuously have remained outstanding in the form of demand securities, is not required to reasonably determine that the issuer or other obligated person has entered into a continuing disclosure agreement, as prescribed by the amended Rule. Likewise, in the case of municipal securities subject to a continuing disclosure agreement entered into prior to the compliance date of these amendments, the recommending broker, dealer, or municipal securities dealer will receive notice solely of those events covered by that continuing disclosure agreement, namely, the eleven events specified in the Rule prior to today's amendments. These continuing disclosure agreements do not cover any of the items to be added to the Rule by the amendments. Thus, in the case of continuing disclosure agreements entered into prior to the compliance date of these amendments, it is not necessary for the recommending broker, dealer, or municipal securities dealer to have procedures in place that provide reasonable assurance that it receive prompt notice of the events added to the Rule by these amendments.

The Commission requested comment on the impact of the amendments with respect to brokers, dealers, and municipal securities dealers that recommend the purchase or sale of municipal securities. The Commission received one comment [323] in response to its inquiry regarding the potential effects and implications of existing continuing disclosure agreements having different terms (*e.g.,* lacking the proposed additional events for which notices would be sent to the MSRB and the specified ten business day deadline as discussed above) than continuing disclosure agreements entered into on or after the compliance date of these amendments. This commenter recommended that the Commission require that each continuing disclosure agreement entered into by an issuer after

[305] *See* Proposing Release, *supra* note 2, 74 FR at 36845, n. 122.

[306] The Commission received no comments on this example.

[307] *See* e-certus Letter I at 9 and Fidelity Letter at 3–4.

[308] *See* Shalanca Letter at 1.

[309] *See* Folts Letter at 1.

[310] *See* ICI Letter at 9 and Fidelity Letter at 3.

[311] *Id.*

[312] *Id.*

[313] *Id.*

[314] *See* NFMA Letter at 3.

[315] *Id.*

[316] *Id.*

[317] *See* T.R. Rose and Sierra Letter and NRDC Letter.

[318] *See* Fidelity Letter at 4.

[319] *See* e-certus Letter I at 3, ICI Letter at 10–11, and Fidelity Letter at 3.

[320] *See* e-certus Letter I at 10.

[321] *See* Becker Letter.

[322] *See* Boatwright Letter.

[323] *See* Fidelity Letter at 5.

the compliance date of these amendments should, by its terms, amend all prior continuing disclosure agreements entered into by the issuer to incorporate the new requirements of the amended Rule.[324] The Commission observes that, under the commenter's suggestion, the effect would be to mandate the amendment of existing contracts. The Commission believes that the better course is to apply the amendments to continuing disclosure agreements entered into on or after the compliance date. While the Commission is mindful of the implications of differing disclosure obligations that will occur over time as a result of this decision, this difference should diminish as existing municipal securities mature or are redeemed.

Four commenters concurred with the Commission's proposed compliance date of no earlier than three months after adoption of the amendments.[325] The Commission also received comments suggesting various time frames for the compliance date of the amendments. One commenter recommended a compliance date no later than three months after Commission approval,[326] and another commenter recommended no later than nine months after Commission approval.[327] Two commenters suggested a time frame of no earlier than six months after the adoption of the amendments by the Commission.[328] These two commenters believed that this suggested time frame is necessary to provide issuers, brokers and dealers with sufficient time to familiarize themselves with new amendments to the Rule and to establish processes to comply with the new amendments.[329] In addition, one of these commenters suggested an even further unspecified delay for implementation of the amendments pertaining to demand securities.[330]

The Commission has considered commenters' various recommendations and believes that a compliance date of approximately six months from the date of the Commission's approval of the amendments is appropriate. The Commission believes that this six month period should be sufficient time for the MSRB to make the necessary modifications to its EMMA system, for Participating Underwriters to revise their procedures to comply with the Rule, as revised, and for issuers and obligated persons to become aware of the amendments and plan for their implementation. Accordingly, the Commission is establishing December 1, 2010 as the compliance date of these amendments.

IV. Interpretive Guidance With Respect to Obligations of Participating Underwriters

The Commission is aware that municipal securities industry participants have expressed concern that some municipal issuers and other obligated persons may not consistently submit continuing disclosure documents, particularly event notices and failure to file notices, in accordance with their undertakings in continuing disclosure agreements.[331] Municipal security holders' access to meaningful information promotes informed investment decision-making about whether to buy, sell, or hold municipal securities [332] and better protection against misrepresentation and fraud. Availability of that information also will aid brokers, dealers, and municipal securities dealers in complying with their obligations to have a reasonable basis for recommending municipal securities. In the Commission's view, the flow of municipal securities disclosure to investors and other market participants depends on issuers and obligated persons abiding by their undertakings in continuing disclosure agreements.[333] Accordingly, the Commission emphasizes that it is important for an underwriter in a municipal offering to evaluate carefully the likelihood that the issuer or obligated person will comply on a timely basis with the undertakings it has made.[334]

In prior releases, the Commission set forth its interpretations of the obligations of municipal underwriters under the antifraud provisions of the federal securities laws.[335] The Commission discussed the duty of underwriters to the investing public to have a reasonable basis for recommending any municipal securities and, in fulfilling that obligation, their responsibility to review the issuer's or obligated person's disclosure documents in a professional manner with respect to the accuracy and completeness of statements made in connection with the offering.[336] The Commission today reaffirms its previous interpretations and provides additional guidance with respect to underwriters' responsibilities under the antifraud provisions of the federal securities laws.[337]

The provisions of paragraph (b) of Rule 15c2–12 are intended to assist a municipal underwriter in meeting its "reasonable basis" obligations, including the requirement that an underwriter receive and review a nearly complete final official statement prior to bidding for or purchasing securities in connection with the offering.[338] Under paragraph (b)(5)(i)(C) of the Rule, the underwriter is obligated to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of the bondholders, to provide continuing disclosure documents to the MSRB.[339] Further, the Rule's definition of "final official statement" provides for the disclosure of any instances in the previous five years in which any person identified in the continuing disclosure agreement has failed to comply, in all material respects, with any previous

[324] *Id.*

[325] *See* Kutak Letter, CHEFA Letter, Fidelity Letter at 2, and ICI Letter at 10.

[326] *See* NFMA Letter at 3.

[327] *See* MSRB Letter at 2.

[328] *See* NABL Letter at 10 and GFOA Letter at 5.

[329] *Id.*

[330] *See* NABL Letter at 10.

[331] *See* Proposing Release, *supra* note 2, 74 FR at 36847. *See also* the comments of participants at the *2001 SEC Municipal Market Roundtable—Secondary Market Disclosure for the 21st Century,* (available at *http://www.sec.gov/info/municipal/roundtables/thirdmuniround.htm*), E-mail from Peter J. Schmitt, CEO, DPC Data Inc., to the Commission, Rule—Comments, dated September 19, 2008, regarding the 2008 Proposed Amendments, and Peter J. Schmitt, *Estimating Municipal Securities Continuing Disclosure Compliance: A Litmus Test Approach* (available at *http://www.dpcdata.com/html/about-researchpapers.html*).

[332] *See, e.g.,* 2008 Amendments Adopting Release, *supra* note 8, 73 FR at 76129.

[333] *See* 1994 Amendments Adopting Release, *supra* note 8, 59 FR at 59594–5. The Commission notes that demand securities are subject to paragraph (b)(5), as well as paragraph (c), of the Rule as a result of the amendments being adopted today.

[334] The Commission received no comments on this statement.

[335] *See* 1988 Proposing Release, *supra* note 58; the 1989 Adopting Release, *supra* note 8, 54 FR at 28811–12; and Securities Exchange Act Release No. 33741 (March 9, 1994), 59 FR 12748 (March 17, 1994) ("1994 Interpretive Release") (reaffirming the Commission's interpretation of the obligations of municipal underwriters under the antifraud provisions of the federal securities laws).

[336] *See* 1989 Adopting Release, *supra* note 8, 54 FR at 28811. *See also* 1988 Proposing Release, *supra* note 128, 53 FR at 37787.

[337] In light of the underwriters' obligation, as discussed in the 1988 Proposing Release, *supra* note 335, 53 FR at 37787–91, the 1989 Adopting Release, *supra* note 8, 54 FR 28811–12, and in the 1994 Interpretive Release, *supra* note 335, 59 FR 12757–58, to review the official statement and to have a reasonable basis for its belief in the accuracy and completeness of the official statement's key representations, the Commission noted that a disclaimer by an underwriter of responsibility for the information provided by the issuer or other parties without further clarification regarding the underwriter's belief as to accuracy, and the basis therefor, is misleading and should not be included in official statements. *See* 1994 Interpretive Release, *supra* note 335, 59 FR 12758 n. 103.

[338] *See* 1988 Proposing Release, *supra* note 335, 53 FR at 37790.

[339] Pursuant to the 2008 Amendments, the MSRB is the sole information repository.

informational undertakings in the continuing disclosure agreement.[340] When the Commission in 1994 adopted these provisions of the Rule, it stated its belief that the failure of the issuer or other obligated person to comply in all material respects with prior informational undertakings is information that is important to the market and, therefore, should be disclosed in the final official statement.[341] As the Commission noted at that time, the provision in the Rule regarding disclosure of a prior history of material non-compliance by issuers or other obligated persons with their undertakings was specifically intended to serve as an incentive to comply with their undertakings to provide secondary market disclosure.[342] Moreover, such disclosure would assist underwriters and others in assessing the reliability of issuers' or obligated persons' disclosure representations.[343] The Commission continues to believe in the importance of these Rule provisions and would like to remind underwriters of their obligations under Rule 15c2–12.

The Commission previously has stated that, in its view, the reasonableness of a belief in the accuracy and completeness of the key representations in the final official statement, and the extent of a review of the issuer's or other obligated person's situation necessary to arrive at that belief, will depend upon all the circumstances.[344] In both negotiated and competitively bid municipal offerings, the Commission expects, at a minimum, that underwriters will review the issuer's disclosure documents in a professional manner for possible inaccuracies and omissions. The Commission previously has provided a non-exclusive list of factors that it believes generally would be relevant in determining the reasonableness of an underwriter's basis for assessing the truthfulness of key representations in final official statements.[345] These factors include: (1) The extent to which the underwriter relied upon municipal officials, employees, experts, and other persons whose duties have given them knowledge of particular facts; (2) the role of the underwriter (manager, syndicate member, or selected dealer); (3) the type of bonds being offered (general obligation, revenue, or private activity); (4) the past familiarity of the underwriter with the issuer; (5) the length of time to maturity of the bonds; and (6) whether the bonds are competitively bid or are distributed in a negotiated offering.[346] Sole reliance on the representations of the issuer will not suffice.[347]

The Commission has determined further to expound upon its prior interpretations regarding municipal underwriters' responsibilities. As articulated in a prior interpretation, the Commission believes that it is doubtful that an underwriter could form a reasonable basis for relying on the accuracy or completeness of an issuer's or obligated person's ongoing disclosure representations, if such issuer or obligated person has a history of persistent and material breaches or has not remedied such past failures by the time the offering commences.[348] The Commission believes that if the underwriter finds that the issuer or obligated person has on multiple occasions during the previous five years [349] failed to provide on a timely basis continuing disclosure documents, including event notices and failure to file notices, as required in a continuing disclosure agreement for a prior offering, it would be very difficult for the underwriter to make a reasonable determination that the issuer or obligated person would provide such information under a continuing disclosure agreement in connection with a subsequent offering. In the Commission's view, it also is doubtful that an underwriter could meet the reasonable belief standard without the underwriter affirmatively inquiring as to that filing history.[350] The underwriter's reasonable belief should be based on its independent judgment, not solely on representations of the issuer or obligated person as to the materiality of any failure to comply with any prior undertaking. If the underwriter finds that the issuer or obligated person has failed to provide such information, the underwriter should take that failure into account in forming its reasonable belief in the accuracy and completeness of representations made by the issuer or obligated person.[351]

In the Proposing Release, the Commission solicited comment regarding alternative or additional ways in which an underwriter could satisfy its obligations, including obligations to ascertain if issuers or obligated persons are abiding by their municipal disclosure commitments.[352] The Commission specifically requested that commenters address the current practices used by underwriters to satisfy their "reasonable basis" obligation and any aspects of such practices that could be addressed through further Commission interpretation or rulemaking.

The Commission received comments expressing concern that it can be labor intensive and costly,[353] and even impossible,[354] for an underwriter to make a reasonable determination that an issuer or an obligated person would provide continuing disclosure information pursuant to the Commission's interpretation. These commenters particularly pointed to the difficulties underwriters face in examining event disclosures for sufficiency.[355] The commenters also

[340] Rule 15c2–12(f)(3), 17 CFR 15c2–12(f)(3).

[341] *See* 1994 Amendments Adopting Release, *supra* note 8, 59 FR at 59594–5.

[342] *Id.* at 59595.

[343] *Id.*

[344] *See* 1988 Proposing Release, *supra* note 58, 53 FR at 37789, and 1989 Adopting Release, *supra* note 8, 54 FR 28811–12.

[345] *Id.*

[346] *Id.*

[347] *See* 1988 Proposing Release, *supra* note 58, 53 FR at 37789.

[348] *See* 1994 Amendments Adopting Release, *supra* note 8, 59 FR at 59595.

[349] 17 CFR 240.15c2–12(f)(3).

[350] The Commission notes that, in light of the adoption of the 2008 Amendments and their effective date of July 1, 2009, for disclosures made on or after July 1, 2009, an underwriter could verify that the information has been submitted electronically to the MSRB.

[351] In connection with event notices concerning the appointment of a successor or additional trustee or the name change of a trustee, if an issuer or obligated person obtains a contractual commitment from the trustee specifying that the trustee will provide notice of a change in the trustee's name to the MSRB or the issuer or obligated person, the trustee fails to provide such notice, and the issuer or obligated person otherwise is unaware of the trustee's name change, the Commission believes that the underwriter may take the trustee's failure to notify into account as a substantial mitigating factor in forming a reasonable belief as to the accuracy and completeness of the issuer's or obligated person's representation regarding compliance with its undertakings.

Moreover, for so long as an issuer or obligated person establishes and maintains policies and procedures reasonably designed in light of the relevant facts and circumstances to ensure compliance with its undertaking to provide notice of a rating change with respect to its municipal security to the MSRB in a timely manner, not in excess of ten business days after the occurrence of the rating change, and the issuer or obligated person regularly reviews the effectiveness of its policies and procedures and takes prompt action to remedy any deficiencies, the Commission believes that an underwriter, in forming a reasonable belief as to the accuracy and completeness of the issuer's or obligated person's representations regarding compliance with its undertakings, may take into account the issuer's or obligated person's policies and procedures, regular reviews, and prompt remedial action as a substantial mitigating factor in the event of the issuer's or obligated person's unintentional failure to provide such notice in the prescribed manner.

[352] *See* Proposing Release, *supra* note 2, 74 FR at 36848.

[353] *See* RBDA Letter at 2.

[354] *See* NABL Letter at 11–12 and SIFMA Letter at 4.

[355] *See* NABL Letter at 11–12, RBDA Letter at 2–3, and SIFMA Letter at 4.

noted that, because underwriters are expected to examine disclosures over a five-year period preceding new offerings, they need to continue to depend on the Nationally Recognized Municipal Securities Information Repository ("NRMSIR") network for such information, which entails searching for various filings in each of the NRMSIRs.[356] Consequently, the commenters suggested that underwriters be permitted to rely on representations by issuers or obligated persons that they are in compliance with previous disclosure commitments as a basis for forming a reasonable determination that such persons would comply going forward.[357]

The Commission believes that the interpretation included in the Proposing Release is warranted, and it reiterates that interpretation in this Adopting Release. The Commission continues to believe that the benefits to investors from its interpretation justify the effort required of underwriters to determine whether an issuer has a history of repeatedly and materially breaching its undertakings.[358] The Commission has considered the comments described above and believes that it is appropriate to add to its interpretation to address the circumstances and extent of underwriter reliance on information provided by issuers and obligated persons concerning event disclosures, as raised by these comments.

The Commission acknowledges that it may not be possible in some cases for an underwriter independently to determine whether some events, for which an event notice is necessary, have occurred.[359] In order to obtain this information, an underwriter may take steps, such as asking questions of an issuer and, where appropriate, obtaining certifications from an issuer, obligated person or other appropriate party about facts, such as the occurrence of specific events listed in paragraph (b)(5)(i)(C) of the Rule (without regard to materiality), that the underwriter may need to know in order to form a reasonable belief in the accuracy and completeness of an issuer's or obligated person's ongoing disclosure representations. However, as discussed above, the underwriter may not rely solely upon the representations of an issuer or obligated person concerning the materiality of such events or that it has, in fact, provided annual filings or event notices to the parties identified in its continuing disclosure agreements (*i.e.,* NRMSIRs, MSRB, and State Information Depositories).[360] Instead, an underwriter should obtain evidence reasonably sufficient to determine whether and when such annual filings and event notices were, in fact, provided.[361] The underwriter therefore must rely upon its own judgment, not solely on the representation of the issuer or obligated person, as to the materiality of any failure by the issuer or obligated person to comply with a prior undertaking.[362]

The Commission notes that the obligation of a Participating Underwriter to determine whether an issuer or an obligated person has filed continuing disclosure documents is not new but dates back to when paragraph (b)(5) of the Rule was adopted in 1994.[363] Moreover, the Commission notes that the launch of the MSRB's EMMA system should assist underwriters in complying with their obligations. To the extent underwriters must rely on NRMSIRs for disclosures made prior to the creation of EMMA,[364] the Commission notes that such reliance is time-limited. Since final official statements of offerings subject to the Rule must disclose the failures of an issuer or obligated person to comply with continuing disclosure undertakings only for the previous five years, underwriters presumably will no longer need to rely on various NRMSIRs within approximately four years.[365]

V. Paperwork Reduction Act

The Rule, as amended, contains "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[366] In accordance with 44 U.S.C. 3507 and 5 CFR 1320.11, the Commission submitted revisions to the currently approved collection of information titled "Municipal Securities Disclosure" (17 CFR 240.15c2–12) (OMB Control No. 3235–0372) to OMB. 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.

In the Proposing Release, the Commission solicited comments on the collection of information requirements. The Commission noted that the estimates of the effect that the amendments will have on the collection of information were based on data from various sources, including the most recent PRA submission for Rule 15c2–12. As discussed above, the Commission received twenty-nine comment letters on the proposed rulemaking. Of the comment letters the Commission received, some commenters addressed the collection of information aspects of the proposal.[367] The Commission recently received data from the MSRB reflecting the number of submissions to its EMMA system's continuing disclosure service for the eight-month period from July 1, 2009, through February 28, 2010.[368] This data includes

[356] *See* RBDA Letter at 2 and SIFMA Letter at 4.

[357] *See* NABL Letter at 12, RBDA Letter at 3, and SIFMA Letter at 4. Further, one commenter asked the Commission to clarify that underwriters may take into account the significance, materiality, and extenuating circumstances of an issuer's or obligated person's non-compliance with event disclosure provisions of continuing disclosure agreements. *See* NAHEFA Letter at 4. As the Commission has stated above, an underwriter's determination to recommend any municipal security must be on a "reasonable basis." Therefore, the underwriter may consider such factors.

[358] Since the Commission has not applied the primary market provisions of the Rule to demand securities, the definition of "final official statement" does not apply to demand securities. The Commission notes, however, that investors may have an expectation that official statements for demand securities will contain comparable information (such as a failure to comply, in all material respects, with any previous continuing disclosure undertakings) to that referred in the definition of "final official statement" under the Rule.

[359] Some of such information, such as the receipt of proposed or final determinations of taxability, may be known solely to the issuer or obligated person.

[360] Therefore, the underwriter may not likewise rely solely on a written certification from an issuer or obligated person that it has provided all filings or notices.

[361] For example, for annual filings and event notices due prior to July 1, 2009, an underwriter could reasonably rely upon information obtained from NRMSIRs and SIDs. In addition, an underwriter could rely upon other evidence that such information was provided, such as a certified copy of the annual filing or an event notice from a responsible issuer official, representative of an obligated person, or a designated agent and a receipt from a delivery service or other evidence that the information had, in fact, been sent. For filings made on or after July 1, 2009, however, an underwriter should examine the filings available on the MSRB's EMMA system. If the underwriter finds that some annual filings or event notices appear to be missing, it may request the issuer official or representative of an obligated person to provide a written certification and evidence showing whether and when such information was provided to the MSRB.

[362] The Commission notes that the definition of "final official statement" in the Rule provides for the inclusion of any instances in the previous five years in which each person specified pursuant to Rule 15c2–12(b)(5)(ii) failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in Rule 15c2–12(b)(5)(i).

[363] *See* 1994 Amendments Adopting Release, *supra* note 8.

[364] *See* 2008 Amendments Adopting Release, *supra* note 8.

[365] Since EMMA became effective as of July 1, 2009, continuing disclosure documents for approximately the past year can be found centrally within that system. *Id.*

[366] 44 U.S.C. 3501 *et seq.*

[367] *See* NABL Letter, e-certus Letter I, SIFMA Letter, GFOA Letter, Connecticut Letter, California Letter, San Diego Letter, NAHEFFA Letter, CHEFA Letter, Kutak Letter, Halgren Letter, Los Angeles Letter, ICI Letter, Fidelity Letter, Metro Water Letter, NFMA Letter, CRRC Letter, and WCRRC Letter.

[368] *See* e-mail from Ernesto A. Lanza, General Counsel, MSRB, to Martha M. Haines, Assistant

Continued

the number of annual filings, event notices, and failure to file notices that were submitted to EMMA during this period. Because the EMMA system is now in operation and issuers or their agents are submitting continuing disclosure documents to it, the MSRB is able to provide the Commission with numbers for continuing disclosure documents for an eight-month period, based on its actual experience with the new system. When the eight months of EMMA data is annualized, the resulting estimate corresponds closely with the Commission's collection of information for estimates of continuing disclosure submissions in the Proposing Release.[369] The Commission is revising its estimates contained in the Proposing Release slightly, however, to provide estimates based on eight months of actual data provided by the MSRB for annual filings, event notices, and failure to file notices.[370]

A. Summary of Collection of Information

Pursuant to paragraph (b) of Rule 15c2–12, a Participating Underwriter is required: (1) To obtain and review an official statement "deemed final" by an issuer of the securities, except for the omission of specified information, prior to making a bid, purchase, offer, or sale of municipal securities; (2) in non-competitively bid offerings, to send, upon request, a copy of the most recent preliminary official statement (if one exists) to potential customers; (3) to send, upon request, a copy of the final official statement to potential customers for a specified period of time; (4) to contract with the issuer to receive, within a specified time, sufficient copies of the final official statement to comply with the Rule's delivery requirement, and the requirements of the rules of the MSRB; and (5) before purchasing or selling municipal securities in connection with an offering, to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract for the benefit of holders of such municipal securities, to provide annual filings, event notices, and failure to file notices (*i.e.,* continuing disclosure documents) to the MSRB in an electronic format as prescribed by the MSRB. Under paragraph (c) of the Rule, a broker-dealer that recommends the purchase or sale of a municipal security is required to have procedures in place that provide reasonable assurance that it will receive prompt notice of any event specified in paragraph (b)(5)(i)(C) of the Rule and any failure to file annual financial information regarding the security.

Under the amendments, the Commission is modifying paragraph (d)(1)(iii) of the Rule by adopting changes to paragraph (d)(5) to the Rule, thereby applying paragraphs (b)(5) and (c) of the Rule to a primary offering of demand securities in authorized denominations of $100,000 or more (*i.e.,* demand securities). This change applies to any initial offering and remarketing that is a primary offering of demand securities occurring on or after the compliance date of the amendments. However, to address commenters' concerns about the impact of the proposal on existing demand securities, the amendment does not apply to remarketings of demand securities that are outstanding in the form of demand securities on the day preceding the amendments' compliance date and that continuously have remained outstanding in the form of demand securities (*i.e.,* such securities can qualify for a limited grandfather provision).[371]

Under paragraph (b)(5)(i)(C) of Rule 15c2–12, a Participating Underwriter is required to reasonably determine that the issuer or obligated person has undertaken in a continuing disclosure agreement to provide an event notice to the MSRB upon any of the following events: (1) Principal and interest payment delinquencies with respect to the securities being offered; (2) unscheduled draws on debt service reserves reflecting financial difficulties; (3) unscheduled draws on credit enhancements reflecting financial difficulties; (4) substitution of credit or liquidity providers, or their failure to perform; (5) defeasances; and (6) rating changes.[372] Under the amendments, the Commission is deleting the "if material" condition that existed in the Rule with respect to these events.

The Commission, however, is retaining the "if material" condition regarding certain other events listed in paragraph (b)(5)(i)(C) of the Rule. A Participating Underwriter will continue to be required to reasonably determine that the issuer or obligated person has undertaken in a continuing disclosure agreement to provide notice to the MSRB with respect to the following events, if material: (1) Non-payment related defaults; (2) modifications to rights of security holders; (3) bond calls; and (4) release, substitution, or sale of property securing repayment of the securities.

In addition, under the amendments, the Commission is adding the following event items to paragraph (b)(5)(i)(C) of the Rule: (1) The issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701–TEB) or other material notices or determinations with respect to the tax status of the securities, or other material events affecting the tax status of the security; (2) tender offers; (3) bankruptcy, insolvency, receivership or similar event of the obligated person; (4) the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and (5) appointment of a successor or additional trustee, or the change of name of a trustee, if material.

Further, under the amendments, Participating Underwriters will be required to reasonably determine that the issuer or obligated person has undertaken in a continuing disclosure agreement to provide event notices to the MSRB, in an electronic format as prescribed by the MSRB, in a timely manner not in excess of ten business days, rather than simply in "a timely manner."

B. Use of Information

By specifying the time period for submission of event notices, expanding the Rule's current categories of events, and modifying an exemption in the Rule for demand securities, the amendments are intended to promptly make available to broker-dealers, institutional and retail investors, and others important information about significant events relating to municipal securities and their issuers or obligated persons. The amendments should assist investors and other municipal securities market participants to obtain information about municipal securities, including demand securities, and thus facilitate their investment decisions and reduce the likelihood of fraud facilitated by inadequate disclosure. In addition, the amendments should provide brokers, dealers, and municipal securities dealers with access to important information about municipal securities

Director and Chief, Office of Municipal Securities, Division, Commission, dated March 3, 2010 (providing statistics relating to the number of submissions to the MSRB's EMMA continuing disclosure service). The MSRB commenced operating the continuing disclosure service of the EMMA system on July 1, 2009.

[369] *See infra* notes 417, 418, and 421.

[370] *See id. See also infra* Section V.D.

[371] *See supra* Section III.A.

[372] 17 CFR 240.15c2–12(b)(5)(i)(C).

that they can use to carry out their obligations under the securities laws. This information may be used by individual and institutional investors, underwriters of municipal securities, other market participants, including broker-dealers and municipal securities dealers, analysts, municipal securities issuers, the MSRB, vendors of information regarding municipal securities, the Commission and its staff, and the public generally.

C. Respondents

The paperwork collection associated with the Commission's amendments to Rule 15c2–12 applies to broker-dealers, issuers of municipal securities, and the MSRB. Although in the Proposing Release the Commission estimated that its proposed amendments would not change the number of broker-dealer respondents, the Commission estimated that there would be an increase in the number of issuer respondents. Because the proposed amendments would have expanded the types of securities covered under subparagraphs (b)(5) and (c) of the Rule, there would have been an increase in the number of issuers having a paperwork burden. As discussed below, the Commission estimated that the proposed revision of the Rule's exemption for demand securities would increase the number of issuers with a paperwork burden by 2,000 issuers, for a total of 12,000 issuer respondents.[373] In the Proposing Release, the Commission estimated that the number of respondents impacted by the paperwork collection associated with the Rule would consist of 250 broker-dealers,[374] 12,000 issuers,[375] and the MSRB.[376] The Commission included these estimates of the number of respondents in the Proposing Release and received no comments on them. The Commission continues to believe that they are appropriate.

As discussed above, the Commission is revising its amendment to the Rule's exemption for demand securities to include a limited grandfather provision for remarketings of currently outstanding demand securities.[377] The Commission believes that fewer issuers initially will be affected by the amendments than estimated in the Proposing Release as a result of the limited grandfather provision, which could result in a somewhat lower number of issuer respondents that are subject to the collection of information under the Rule than estimated in the Proposing Release. However, the Commission notes that the effects of the limited grandfather provision will diminish over time as demand securities mature or are redeemed and new demand securities that are subject to the Rule amendments are issued. In addition, the Commission has no reason to believe the overall number of issuers of demand securities will change materially going forward as a result of these amendments. Because of the effects of the limited grandfather provision will diminish over time, the Commission continues to believe that 12,000 issuer respondents is an appropriate estimate.

D. Total Annual Reporting and Recordkeeping Burden

The Commission estimates the aggregate information collection burden for the amended Rule to consist of the following:

1. Broker-Dealers

As discussed in the Proposing Release, the Commission estimated that approximately 250 broker-dealers potentially could serve as Participating Underwriters in an offering of municipal securities.[378] The Commission received no comments on this estimate. The Commission has reviewed this estimate and continues to believe that, under the amendments, the maximum number of broker-dealers subject to a paperwork burden will be 250.

a. Amendment To Modify the Exemption for Demand Securities

As discussed in the Proposing Release, the Commission estimated that the total annual burden on all 250 broker-dealers under the Rule is 250 hours (1 hour annually per broker-dealer).[379] In the Proposing Release, the Commission estimated that the amendment to modify the exemption from the Rule for a primary offering of demand securities would increase the number of issuers with municipal securities offerings that are subject to the Rule annually by 20%.[380] This percentage was based on the Commission's estimate of the ratio of demand securities outstanding to the municipal securities market generally.[381]

As noted above, the Commission is adopting a limited grandfather provision with respect to currently outstanding demand securities. Although the Commission believes that the limited grandfather provision initially could result in a somewhat lower number of issuer respondents, for the reasons noted above, it continues to believe that a 20% increase in the number of issuers with offerings subject to the Rule is appropriate.[382]

As discussed in the Proposing Release, the Commission estimated that this 20% increase in the number of issuers with offerings subject to the Rule also would increase the estimated average annual burden for each broker-

[373] *See* Proposing Release, supra note 2, 74 FR at 36849–50. *See also infra* note 402 and accompanying text.

[374] As discussed in the Proposing Release and below, the Commission estimates that 250 broker-dealers will serve as Participating Underwriters in offerings of municipal securities and will have a paperwork collection burden as a result of the amendments. This estimate is based on the Commission's 2008 PRA submission (defined below) that included the estimated number of broker-dealers that would serve as Participating Underwriters in offerings of municipal securities in any given year and would therefore be subject to a collection of information burden under Rule 15c2–12. Although this estimate of 250 broker-dealers was included in the 2008 PRA submission, the estimated number of broker-dealers that could serve as Participating Underwriters in offerings of municipal securities is not expected to change from the 2008 PRA submission or as a result of the amendments. *See* Proposing Release, *supra* note 2, 74 FR at 36849–50. *See also* PRA–2008-revised 15c2–12 Justification, Municipal Securities Disclosure (OMB Control No. 3235–0372), OMB, available at *http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=200812–3235–013* ("2008 PRA submission").

[375] As discussed in the Proposing Release and below, the Commission estimates that 12,000 issuers will have a paperwork collection burden as a result of the amendments. This estimate is based on the Commission's 2008 PRA submission that included the estimate of 10,000 issuers that would have a paperwork burden under Rule 15c2–12 in any given year and is not expected to change from the 2008 PRA submission. *See* 2008 PRA submission, *supra* note 374. In the Proposing Release, this estimate of 10,000 issuers was estimated to increase by 20%, to 12,000 issuers, as described below, to account for the proposed amendment to the Rule relating to demand securities. As described below, the final amendments will not change the estimated number of issuers that will submit annual financial information, material event notices, and failure to file notices to the MSRB. *See* Proposing Release, *supra* note 2, 74 FR at 36850, n. 151 and accompanying text, for a discussion of how the Commission arrived at its estimate of a 20% increase in the number of issuers as a result of the proposed amendment relating to demand securities. *See also infra* note 402.

[376] *See* Proposing Release, *supra* note 2, 74 FR at 36849–50. *See also* 2008 PRA submission, *supra* note 374.

[377] *See infra* Section III.A.

[378] *See* Proposing Release, *supra* note 2, 74 FR at 36850.

[379] *Id.*

[380] *See also infra* note 402 and accompanying text for a description of how the Commission arrived at its estimate of a 20% increase in the number of issuers as a result of the amendment relating to demand securities.

[381] *Id.*

[382] As discussed in Section V.D.2., *infra,* the Commission in the Proposing Release solicited comment on the estimated 20% increase in the number of issuers affected by a paperwork burden and received no comments on this estimate. As discussed below, the Commission continues to believe that this estimate is appropriate.

dealer by 20%, or .20 hours,[383] and the total estimated annual paperwork burden for all broker-dealers by 20%, or 50 hours.[384] This increased burden represents the additional time broker-dealers would need annually to review the continuing disclosure agreements associated with the offerings of demand securities subject to the amended Rule. As discussed in the Proposing Release and below,[385] the Commission notes that the continuing disclosure agreements that are reviewed by broker-dealers as part of their obligation under the Rule tend to be form agreements. The amendments to the Rule that the Commission is adopting will result in minor changes to certain provisions of these agreements. However, because these continuing disclosure agreements tend to be standard form agreements, the Commission does not believe that there will be a substantial increase in the annual hourly burden for broker-dealers under the amendments.

In the Proposing Release, the Commission solicited comments on broker-dealers' collection of information burdens, including those relating to the amendment to modify the exemption for demand securities. One commenter believed that the proposal failed to assess the "substantial additional time and expense" required by Participating Underwriters and remarketing agents to review and verify disclosure about obligated persons in offerings of demand securities, unless the amendments to the Rule were clarified to exclude offerings of LOC-backed demand securities without primary or continuing disclosure about the underlying obligor.[386] This comment appears to relate to a Participating Underwriter's review of issuers' primary offering disclosure. As discussed in Section III above, the amendments are not eliminating the exemption for demand securities from paragraphs (b)(1)–(4) of the Rule, which relate to primary offering disclosure. As a result, Participating Underwriters in offerings of demand securities will continue to be exempt from the primary offering provisions of the Rule. For this reason, the Commission does not believe that a Participating Underwriter will incur "substantial additional time and expense" in connection with the amendments, as suggested by the commenter. The Commission has considered this comment, reviewed its estimate in the Proposing Release in light of the comment, and believes that it is unnecessary to revise the total hourly burden for broker-dealers from its estimate in the Proposing Release.

Therefore, the Commission continues to believe that its estimate that 250 broker-dealers will incur an estimated average burden of 300 hours per year to comply with the Rule, as amended, is appropriate.[387]

b. Amendments to Events To Be Disclosed Under a Continuing Disclosure Agreement

As described above, the amendments to paragraph (b)(5)(i)(C) of the Rule add four new disclosure events to the Rule, as well as amend an existing disclosure event, and modify the number of events that are subject to a materiality determination. In addition, the amendments to paragraphs (b)(5)(i)(C) and (d)(2)(ii)(B) of the Rule change the timing for filing event notices from "in a timely manner" to "in a timely manner not to exceed ten business days." The amendments do not change a broker-dealer's obligation under the Rule to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide annual filings, event notices, and failure to file notices to the MSRB.[388] Accordingly, because the broker-dealer already is under an obligation to reasonably determine that an appropriate undertaking has been made, the Commission does not believe that the amendments relating to the timing and scope of event notices will affect the annual paperwork burden for broker-dealers. In the Proposing Release, the Commission solicited comments on broker-dealers' collection of information requirements, including this estimate relating to the amendments to events to be disclosed under a continuing disclosure agreement. The Commission received no comments on this estimate and continues to believe that it is appropriate.

c. One-Time Paperwork Burden

The Commission estimates that a broker-dealer will incur a one-time paperwork burden to have its internal compliance attorney prepare and issue a notice advising its employees about the final revisions to Rule 15c2–12. In the Proposing Release, the Commission estimated that it would take a broker-dealer's internal compliance attorney approximately 30 minutes to prepare and issue such a notice.[389] The Commission believes that the task of preparing and issuing a notice advising the broker-dealer's employees about the amendments is consistent with the type of compliance work that a broker-dealer typically handles internally. In the Proposing Release, the Commission solicited comments on broker-dealers' collection of information requirements, including this estimate relating to broker-dealers' one-time paperwork burden. The Commission received no comments on this estimate. Consistent with its estimate in the Proposing Release, the Commission estimates that 250 broker-dealers will each incur a one-time, first-year burden of 30 minutes to prepare and issue this notice.

d. Total Annual Burden for Broker-Dealers

Under the amendments, the total burden on broker-dealers is estimated to be 425 hours for the first year[390] and 300 hours for each subsequent year.[391] The Commission included these estimates in the Proposing Release and solicited comments on them. In addition to the comment discussed above relating to broker-dealers' obligations with respect to demand securities, one commenter stated generally that its "review of [the Proposing Release] does not suggest any unnecessary burden on municipal underwriters."[392] This commenter observed that, "[b]y contrast, [the Proposing Release] suggests that past practices have been too lax, and the Commission is simply making underwriters' due diligence burden reasonable."[393] This commenter supported the proposal and suggested

[383] 20% or .20 hours (12 minutes = 60 minutes × .20 (20%). *See* Proposing Release, *supra* note 2, 74 FR at 36850.

[384] 250 hours (total annual burden for all broker-dealers under the Rule prior to the amendments) × .20 (20% increase in total hourly burden) = 50 hours. This estimated increase in the annual burden for broker-dealers also accounts for their review of continuing disclosure agreements in connection with those remarketings of demand securities that are now subject to the Rule. *See* Proposing Release, *supra* note 2, 74 FR at 36850.

[385] *See infra* Section V.E.2.a. *See also* Proposing Release, *supra* note 2, 74 FR at 36850.

[386] *See* NABL Letter at 12–13.

[387] 250 hours (total estimated annual hourly burden for all broker-dealers under the Rule prior to the amendments) + 50 hours (total estimated additional annual hourly burden for all broker-dealers under the amendments) = 300 hours.

[388] The Commission notes that, while the amendments do not change this obligation, broker-dealers will need to reasonably determine that the written agreement or contract entered into by an issuer or obligated person contains the change to the timing for filing event notices (*i.e.,* not in excess of ten business days of the occurrence of the event), as well as the new and revised disclosure events.

[389] *See* Proposing Release, *supra* note 2, 74 FR at 36850–51.

[390] (250 (broker-dealers impacted by the amendments) × 1.20 hours) + (250 (broker-dealers impacted by the amendments) × .5 hour (estimate for one-time burden to issue notice regarding broker-dealer's obligations under the amendments)) = 425 hours.

[391] 250 (broker-dealers impacted by the amendments) × 1.20 hours = 300 hours.

[392] *See* e-certus Letter I at 9.

[393] *Id.*

additional changes to strengthen Participating Underwriters' obligations under the Rule.[394] The Commission has considered all of the comments relating to the paperwork collection burden applicable to broker-dealers and, for the reasons discussed above, continues to believe that its estimates are appropriate.[395]

2. Issuers

Issuers' undertakings regarding the submission of annual filings, event notices, and failure to file notices that are set forth in continuing disclosure agreements impose a paperwork burden on issuers of municipal securities.[396] In the Proposing Release, the Commission provided estimates regarding the number of annual filings, event notices, and failure to file notices that issuers would submit under the proposed amendments. These estimates were based on the best estimates of the MSRB staff at that time, which were made prior to the MSRB's experience with its new EMMA system. The Commission recently received data from the MSRB reflecting the number of submissions to the EMMA system's continuing disclosure service for the eight-month period from July 1, 2009, through February 28, 2010 ("Sample Period").[397] This data includes the number of annual filings, event notices, and failure to file notices that were submitted during this Sample Period. To provide PRA estimates that are based on the MSRB's actual experience with respect to submissions of annual filings, event notices, and failure to file notices to its EMMA system, the Commission has elected to use the data obtained for the Sample Period to revise its estimates in the Proposing Release.[398] Because the Sample Period is less than a full year,[399] the Commission has annualized these numbers for the purpose of revising its PRA estimates below.[400]

a. Amendment To Modify the Exemption for Demand Securities

The Commission believes that the amendment to delete paragraph (d)(1)(iii) from the Rule, which contains an exemption from the Rule for a primary offering of demand securities, and add new paragraph (d)(5) to the Rule to apply paragraphs (b)(5) and (c) of the Rule to demand securities, will increase the number of issuers with a paperwork burden under the Rule. In the Proposing Release, the Commission estimated that the Rule affected approximately 10,000 issuers.[401] Using the estimate of 10,000 issuers, the Commission estimated in the Proposing Release, and estimates again now, that the number of issuers with paperwork burden as a result of the amendments will increase by approximately 20% [402] to 12,000 issuers.[403] These additional issuers will increase the aggregate number of annual filings, event notices, and failure to file notices submitted each year. As noted above, the Commission is revising its amendment to the exemption for demand securities in the Rule to include a limited grandfather provision for remarketings of currently outstanding demand securities.[404] Also as noted above, the Commission believes that initially the limited grandfather provision could result in a somewhat lower number of issuer respondents that are subject to the collection of information under the Rule than was estimated in the Proposing Release. However, the Commission notes that the effects of the limited grandfather provision will diminish over time as demand securities mature or are redeemed. In addition, the Commission has no reason to believe that the overall number of issuers of demand securities will change materially going forward as a result of these amendments. Because of this factor, the Commission continues to believe that 12,000 issuer respondents is an appropriate estimate.

In the Proposing Release, the Commission stated that the revision to the Rule's exemption for demand securities would not alter the Commission's previous PRA estimates of the hourly burdens for an issuer to prepare and submit an annual filing (45 minutes), an event notice (45 minutes), and a failure to file notice (30 minutes).[405] Thus, the Commission estimated that the aggregate number of annual filings, event notices, and failure to file notices submitted by issuers also would increase by 20% from the previous estimates.[406] In the Proposing

[394] *See* e-certus Letter I at 9–11.

[395] In the Proposing Release, the Commission provided interpretive guidance with respect to the obligations of Participating Underwriters under the federal securities laws. In connection with this interpretation, the Commission solicited comment regarding alternative or additional ways in which an underwriter could satisfy its obligations, including obligations to ascertain if issuers or obligated persons are abiding by their municipal disclosure commitments. *See* Proposing Release, *supra* note 2, 74 FR at 36848. The Commission received comments in response to this solicitation, which are discussed in Section IV of this release.

[396] For purposes of this section, the term "issuers" refers to issuers and obligated persons.

[397] *See supra* note 368.

[398] The Commission's estimates in the Proposing Release are somewhat lower than those derived from the Sample Period for annual filings and event notices and somewhat higher for failure to file notices, *see infra* notes 417, 418, and 421.

[399] The Commission notes that, although the MSRB is able to provide actual numbers of continuing disclosure documents that it has received for the Sample Period, it is unable to provide any actual or estimated number of issuers that have submitted continuing disclosure documents to the EMMA system. This is because issuers submit their filings using the CUSIP number for the security. Because issuers could have several issuances of outstanding bonds, they could submit documents under more than one CUSIP number. Because of the potential for over-counting the number of issuers with a paperwork burden if the Commission were to rely on CUSIP numbers as a proxy for the number of affected issuers, it has elected to base its estimates for the number of issuers with a paperwork burden on estimates included in the Proposing Release.

[400] The Commission notes that annualizing the data provided by the MSRB for the Sample Period could have some limitations, particularly since the Sample Period covered the period of implementation of the EMMA system. Notwithstanding these limitations, the Commission has reviewed the eight months of data provided by the MSRB during the Sample Period and did not identify any particular trends in the data that would suggest that annualizing these numbers would result in an underestimate of number of filings that the MSRB would receive during a twelve-month period. Therefore, the Commission believes that annualizing this data provides a reasonable basis for revising its PRA estimates.

[401] *See* Proposing Release, *supra* note 2, 74 FR at 36851. *See also supra* note 375 for an explanation of the estimate of 10,000 issuers.

[402] *Id.* As described in the Proposing Release, in 2008, there were approximately 2,000 offerings of demand securities. *See also* Two Decades of Bond Finance: 1989–2008, The Bond Buyer/Thomson Reuters 2009 Yearbook 7 (Matthew Kreps ed., SourceMedia, Inc.) (2009). To provide conservative estimates, the Commission elected to assume that all 2,000 offerings of demand securities were issued by separate issuers and that each of those issuers currently is not a party to a continuing disclosure agreement that provides for the submission of continuing disclosure documents to the MSRB. Thus, the Commission estimated that approximately 2,000 additional issuers would be affected by the proposed amendments to the Rule. These 2,000 additional issuers represent a 20% increase in the total number of issuers that would have a burden under Rule 15c2–12 (10,000 (number of issuers affected by the Rule prior to the amendments)/2,000 (number of additional issuers under the amendments to the Rule) × 100 = 20%).

[403] 10,000 (number of issuers affected by the Rule prior to the amendments) × 1.20 (20% increase) = 12,000. The Commission acknowledges that greater precision in determining the number of issuers that will have a burden under the amendment is not possible. For purposes of this analysis, the Commission assumes that all issuers of demand securities currently are not a party to a continuing disclosure agreement that provides for the submission of continuing disclosure documents to the MSRB. The Commission realizes that this assumption may result in an overestimate of the number of issuers with a burden.

[404] *See supra* Section III.A.

[405] *See* Proposing Release, *supra* note 2, 74 FR at 36851.

[406] The Commission believes that this estimated 20% increase in the number of each type of continuing disclosure document filed is appropriate since it maintains a corresponding relationship between the number of issuers and the number of each type of document submitted by these issuers,

Continued

The Commission notes that the above-referenced publication has not been updated and, accordingly believes that this estimate, which is predicated on 2,000 offerings of demand securities, continues to be based on the most recent information available.

Release, the Commission solicited comments on issuers' collection of information requirements. The Commission received comments relating to the hourly burdens associated with this amendment. These comments are addressed in Section V.D.2.a.i, below.

i. Comments Relating to Paperwork Burdens in Connection With the Amendment Relating to Demand Securities

Several commenters offered their views on the impact of the proposal to modify the exemption for demand securities.[407] Of these commenters, one expressed concern that the revision of the exemption for demand securities could have an "insurmountable administrative burden" on smaller issuers and non-profit obligated persons that issued securities before the compliance date of the proposed amendments.[408] This commenter believed that the proposal could be difficult for these entities to comply with, if they were required to enter into continuing disclosure agreements years after the original issuance of the bonds.[409] Although this commenter did not specifically define what it meant by "administrative burden," this commenter may be concerned about the paperwork collection hourly burden on smaller issuers and obligated persons resulting from this amendment.

As proposed by the Commission, the amendment would have applied to any initial offering and remarketing that is a primary offering of demand securities occurring on or after the compliance date of the amendments. However, to address commenters' concerns about the impact of the proposal on outstanding demand securities, the Commission is adopting a limited grandfather provision that provides that the amendments will not apply to a remarketing of demand securities that were issued prior to the amendments' compliance date and that continuously have remained outstanding as demand securities. While the Commission continues to acknowledge that the amendment will place some additional burden on issuers of demand securities issued on or after the compliance date of the amendments,[410] the amendment as adopted is forward-looking and generally will not apply to securities issued before the compliance date of the proposed amendments. Therefore, the Commission does not believe that the amendments will create an "insurmountable administrative burden" for issuers, including smaller issuers and obligated persons, as expressed by the above commenter. The Commission believes that the limited grandfather provision should largely alleviate the concerns expressed by this commenter with respect to demand securities that are currently outstanding.

As the Commission stated in the Proposing Release, and reiterates here, it does not anticipate a significant increase in disclosure burdens with respect to demand securities.[411] The Commission acknowledges that, if issuers or obligated persons with respect to demand securities have not previously issued securities subject to continuing disclosure agreements, they will be entering into such agreements for the first time and thereby will incur some time and expense to provide continuing disclosure documents to the MSRB.[412] The Commission believes that its estimate of a 20% increase in the number of issuers or obligated persons that may be affected by the Rule appropriately reflects the increase in the number of issuers that will have a paperwork burden. The commenter did not dispute this estimate. In addition, as the Commission noted in proposing these amendments, many issuers and obligated persons with respect to demand securities are likely to have outstanding fixed rate securities and already have entered into continuing disclosure agreements consistent with the Rule.[413] Because any existing continuing disclosure agreement would obligate an issuer or an obligated person to provide annual filings, event notices, or failure to file notices with respect to these fixed rate securities, providing disclosures with respect to these demand securities is not expected to be a significant additional burden.

Another commenter stated that the Proposing Release "largely failed to assess the substantial additional time and expense required by issuers and other obligated persons to prepare (and for underwriters and remarketing agents to professionally review and check) disclosure about obligated persons in offerings of demand securities, unless the proposed amendments are clarified so as not to preclude offerings of LOC-backed demand securities without primary or continuing disclosure about the underlying obligor."[414] As discussed above, the amendments are not eliminating the exemption for demand securities from paragraphs (b)(1) through (b)(4) of the Rule, which relate to primary offering disclosure. As a result, under the amendments, issuers of demand securities will not have a paperwork burden with respect to primary offering disclosures. Accordingly, the commenter's concern appears misplaced.

ii. Annual Filings

Under the amendment to modify the Rule's exemption for demand securities, the Commission estimates that 12,000 municipal issuers with continuing disclosure agreements will prepare and submit approximately 22,909 annual filings yearly.[415]

As discussed in the Proposing Release, the Commission estimated, and continues to believe, that an issuer will require approximately 45 minutes to prepare and submit annual filings to the MSRB in an electronic format.[416] Therefore, under the amendments, the total burden on issuers of municipal securities to prepare and submit 22,909 annual filings to the MSRB in an electronic format is estimated to be 17,182 hours.[417] Other than as noted

as discussed in the Proposing Release. *See* Proposing Release, *supra* note 2, 74 FR at 36850, n.151.

[407] *See, e.g.,* SIFMA Letter, NABL Letter, GFOA Letter (expressed support for the statements made in the NABL Letter), CRRC Letter, and WCRRC Letter (WCRRC endorsed all of the positions expressed in the CRRC Letter) (the concerns expressed by CRRC and WCRRC are discussed in *infra* Sections V.D.2.b and V.E.2.c).

[408] *See* SIFMA Letter.

[409] *Id.*

[410] Issuers of demand securities with fixed-rate debt outstanding already would be subject to a continuing disclosure agreement in which they undertake to provide continuing disclosure documents, so they would be subject to minimal—if any—increased burdens. *See supra* Section V.D.2.a.

[411] *See supra* notes 402 to 406 and accompanying text.

[412] *Id.*

[413] *See* Proposing Release, *supra* note 2, 74 FR at 36837.

[414] *See* NABL Letter (the GFOA Letter expressed support for the statements made in the NABL Letter). The Commission notes that this commenter disputed that the Commission's 45 minute estimate in connection with the amendment to the time frame for the submission of event notices. This comment is addressed in *infra* Section V.D.2.b.i.

[415] 19,091 (12,791 (total annual filings submitted to the MSRB during the Sample Period)/.67) (annualized number of annual filings submitted to the MSRB based on the Sample Period) × 1.20 (20% increase in filings under the amendments) = 22,909 annual filings (estimated number of annual filings under the amendments). In the Proposing Release, the Commission estimated 18,000 annual filings would be submitted to the MSRB under the amendments. The Commission is revising this estimate to 22,909 filings to reflect actual filings submitted to the MSRB. This revised estimate is higher than the Commission's estimate in the Proposing Release by 4,909 annual filings or by approximately 27.27%.

[416] The Commission received comments relating to the time it would take an issuer to prepare and submit an event notice under the amendments. These comments are addressed in *infra* Section V.D.2.b.

[417] 22,909 (estimated number of annual filings under the amendments) × .75 hours (45 minutes) (estimated time to prepare and submit annual filings under the amendments) = 17,181.75 (rounded to 17,182 hours). In the Proposing

above, the Commission received no other comments on its estimates to prepare and submit annual filings under the amendment for demand securities. The Commission has considered the comments received and believes that its estimates, as revised to take into account the data provided by the MSRB, are appropriate.

iii. Event Notices

Under the amendment to modify the Rule's exemption for demand securities, the Commission estimates that the 12,000 municipal issuers with continuing disclosure agreements will prepare and submit approximately 74,605 event notices yearly.[418] As the Commission discussed in the Proposing Release, the Commission estimated, and continues to believe, that the process for an issuer to prepare and submit event notices to the MSRB in an electronic format will require approximately 45 minutes.[419] Since the amendments to the Rule do not change the way event notices are prepared and submitted, the Commission estimates that an issuer still will require approximately 45 minutes to prepare and submit an event notice. Therefore, under the amendments, the total burden on issuers of municipal securities to prepare and submit 74,605 event notices to the MSRB is estimated to be 55,954 hours.[420] The Commission received comments relating to its estimates to prepare and submit event notice filings generally under the proposed amendments. These comments are addressed in Section V.D.2.b, below.

iv. Failure To File Notices

Under the amendment to modify the exemption for demand securities, the Commission estimates that the 12,000 municipal issuers with continuing disclosure agreements will prepare and submit approximately 1,458 failure to file notices yearly.[421] As the Commission discussed in the Proposing Release, since the amendments to the Rule will not change the way failure to file notices are prepared and submitted, the Commission estimated, and continues to believe, that an issuer will require approximately 30 minutes to prepare and submit a failure to file notice.[422] Therefore, under the amendments, the total burden on issuers of municipal securities to prepare and submit 1,458 failure to file notices to the MSRB is estimated to be 729 hours.[423] The Commission received no comments on its estimates to prepare and submit failure to file notices and believes that its estimates, as revised to take into account the data provided by the MSRB, are appropriate.

b. Amendments to Event Notice Provisions of the Rule

Under the amendment to paragraph (b)(5)(i)(C) of the Rule, a Participating Underwriter will be required to reasonably determine that an issuer or obligated person has entered into a continuing disclosure agreement that, among other things, provides for the submission of an event notice to the MSRB in an electronic format upon the occurrence of certain specified events, either in each instance that the event occurs or subject to a materiality determination, as set forth in the amended Rule. The amendments also add to the Rule four new event disclosure items and revise an existing event disclosure item. In addition, the amendments to paragraphs (b)(5)(i)(C) and (d)(2)(ii)(B) amend the Rule to provide that a Participating Underwriter must reasonably determine that an issuer of municipal securities or obligated person has undertaken, in a written agreement or contract for the benefit of holders of municipal securities, to provide event notices in a timely manner "not in excess of ten business days after the occurrence of the event," rather than simply in a timely manner.

As discussed above, the Commission estimates that the amendment to modify the Rule's exemption for demand securities will increase the number of event notices to be prepared and submitted to an aggregate of 74,605 event notices annually.[424] The Commission believes that the amendments to paragraphs (b)(5)(i)(C) and (d)(2)(ii)(B) of the Rule also will increase the annual paperwork burden for issuers because of the increase in the number of event notices to be prepared and submitted, as discussed below.[425]

i. Time Frame for Submitting Event Notices Under a Continuing Disclosure Agreement

The amendments revise paragraphs (b)(5)(i)(C) and (d)(2)(ii)(B) of the Rule to state that notice of an event should be provided "in a timely manner not in excess of ten business days after the occurrence of the event" instead of simply in "a timely manner." As noted above, the Commission estimates that an issuer can prepare and submit an event notice in 45 minutes.[426] The amendment to the Rule providing for a ten business day time limit for submission of event notices will not change this estimated burden of 45 minutes, which is the amount of time estimated under the Rule's previous paperwork collection to prepare and submit event notices. Rather, the overall change in burden results from the fact

---

Release, the Commission estimated number of hours to prepare and submit annual filings under the amendment would be 13,500 hours. The Commission is revising this estimate to 17,182 hours. This revised estimate is higher than the estimate in the Proposing Release by 3,682 hours or by approximately 27.27%.

[418] 62,171 (41,654 (total number of event notice filings submitted to the MSRB during the Sample Period)/.67) (annualized number of event notices submitted to MSRB based on the sample period) × .1.20 (20% increase in filings under the amendments) = 74,605 event notices (estimated number of event notices under the amendments)). In the Proposing Release, the Commission estimated 72,000 event notice filings would be submitted to the MSRB under the amendments. The Commission is revising its estimate to 74,605 event notice filings. This estimate is higher than the estimate in the Proposing Release by 2,605 event notices or approximately 3.62%. In its analysis of the data the Commission received from the MSRB for the Sample Period, the Commission noted that the MSRB received a significant number of event notices for bond calls relative to the event notices for other events. The Commission, however, did not identify any particular trend for this event item in the data that, in its view, would lead to an underestimate of event notices that would be submitted in connection with the amendments. The Commission's estimates of the number of additional event notices associated with the amendments relating to the materiality condition and number of additional event disclosure items contained in paragraph (b)(5)(i)(C) of the Rule are discussed in Section V.D.2.b, *infra*. As discussed below, the total number of event notices estimated to be submitted to the MSRB in connection with the amendments is 81,362 notices.

[419] *See* Proposing Release, *supra* note 2, 74 FR at 36851–52.

[420] 74,605 (estimated number of event notices under the amendments) × .75 hours (45 minutes) (estimated time to prepare and submit material event notices under the amendments) = 55,953.7 hours (rounded to 55,954 hours). In the Proposing Release, the Commission estimated that municipal issuers would spend 54,000 hours to prepare and submit event notices to the MSRB. The Commission is revising its estimate to 55,954 hours. This estimate is higher than the estimate in the Proposing Release by 1,954 hours or 3.62%.

[421] 1,215 (814 (total number of failure to file notice filings submitted to the MSRB during the Sample Period)/.67 (annualized number failure to file notices submitted to MSRB) × 1.20 (20% increase in filings) = 1,458 failure to file notices (estimated number of failure to file notices under the amendments)). In the Proposing Release, the Commission estimated that issuers would prepare and submit 2,400 failure to file notices. The Commission is revising its estimate to 1,458 failure to file notices. This estimate is lower than the estimate in the Proposing Release by 942 failure to file notices or by 60.75%.

[422] *See* Proposing Release, *supra* note 2, 74 FR at 36852.

[423] 1,458 (estimated number of failure to file notices under the amendments) × .5 hours (30 minutes) (estimated time to prepare and submit failure to file notices under the amendments) = 729 hours. In the Proposing Release, the Commission estimated that issuers would spend 1,200 hours to prepare and submit failure to file notices. The Commission is revising its estimate to 729 hours. This estimate is lower than the estimate in the Proposing Release by 471 hours or by 39.25%.

[424] *See supra* note 418 and accompanying text.

[425] *Id.*

[426] *See supra* note 405 and accompanying text.

that more event notices are expected to be filed as a result of the amendments, as discussed in Section V.D.2.a.iii., above.[427]

Several commenters offered their views on the impact of the proposal to establish a ten business day time frame for the submission of event notices.[428] A number of these commenters expressed concern that the requirement would increase the burden for issuers.[429] The concerns expressed by these commenters included: (i) The impracticability of meeting the ten business day time period because of limited staff and resources, especially for smaller issuers;[430] (ii) the increased burdens and costs due to the additional monitoring to comply with the ten business day time frame;[431] (iii) the difficulty in reporting events in which the issuer does not control the information (*e.g.,* rating changes, changes to the trustee, changes to tax status of bonds under an IRS audit) within the ten business day time period;[432] and (iv) the use of the "occurrence of the event" as the trigger for the obligation to submit a notice.[433] Many of these commenters focused their concerns on the potential burdens associated with reporting rating changes within the ten business day time frame.[434] These commenters noted that ratings information is not within the issuer's control and that rating organizations do not directly notify issuers of rating changes.[435]

a. Discussion of Comments Relating to Impracticability of Meeting Time Frame Due to Limited Staff and Resources, Especially for Smaller Issuers

The Commission has considered commenters' concerns about the potential costs and burdens associated with the ten business day time frame for submission of event notices, especially for smaller issuers with limited staff and resources. As discussed above, the Commission estimates that 12,000 issuers will file 74,605 event notices annually. Thus, an issuer will file on average approximately 6 event notices each year (74,605/12,000 = 6.05) and spend a total of approximately 4.5 hours annually on average preparing them.[436] The Commission does not believe that spending approximately 4.5 hours annually on average preparing and submitting event notices would be particularly burdensome for issuers, even those with limited staff and resources.[437]

b. Discussion of Comments Relating to Issuers' Increased Burdens and Costs Due to Additional Monitoring, Lack of Issuer Control Over Events, and Use of "Occurrence of the Events" as the Trigger

The Commission has considered comments that the Commission did not fully account for the increased burdens and costs due to additional monitoring to comply with the ten business day time frame, particularly with respect to rating changes.[438] As noted above, one or more commenters believed that the "actual knowledge" of the occurrence of the event should be used as the trigger for the obligation to submit an event notice.[439] These commenters expressed their concerns relatively generally, and in most cases did not present any specific evidence to support their conclusions or alternatives to the Commission's estimates.

The Commission has considered the comments and believes that most of the events currently specified in paragraph (b)(5)(i)(C) of the Rule, and the additional event items included in the amendments, are significant and should become known to the issuer or obligated person expeditiously.[440] Further, many events, such as payment defaults, tender offers, and bankruptcy filings, generally involve the issuer's or obligated person's participation.[441] Other events (*e.g.,* failure of a credit or liquidity provider to perform) are of such importance that an issuer or obligated person likely will become aware of such events,[442] or will expect an indenture trustee, paying agent, or other transaction participant to bring them to the issuer's or obligated person's attention within a very short period of time.[443]

One commenter also expressed concern that the addition of paragraphs (b)(5)(i)(C)(12) of the Rule (pertaining to notices of bankruptcy, insolvency, receivership or similar event of an issuer or obligated person) and (b)(5)(i)(C)(13) of the Rule (pertaining to notices of mergers, consolidations and acquisitions or asset sales with respect to an issuer or obligated person) would impose a burden on issuers to undertake continuous monitoring of obligated

[427] *See supra* note 419 and accompanying text.

[428] *See, e.g.,* Halgren Letter, Los Angeles Letter, Portland Letter, CRRC Letter, WCRRC Letter, NFMA Letter, CHEFA Letter, NAHEFFA Letter, SIFMA Letter, Connecticut Letter, Kutak Letter, ICI II Letter, Fidelity Letter, California Letter, San Diego Letter, NABL Letter, GFOA Letter, and Metro Water Letter.

[429] *See* Halgren Letter, Los Angeles Letter, CRRC Letter, WCRRC Letter, CHEFA Letter, NAHEFFA Letter, SIFMA Letter, Connecticut Letter, Kutak Letter, California Letter, San Diego Letter, NABL Letter, GFOA Letter, and Metro Water Letter.

[430] *See* CRRC Letter, WCRRC Letter, Portland Letter at 2, NAHEFFA Letter at 2–4, Metro Water Letter at 1–2, CHEFA Letter at 2, and NABL Letter at 5–6.

[431] *See* Halgren Letter, Los Angeles Letter at 1, CRRC Letter, WCRRC Letter, NAHEFFA Letter at 2–4, CHEFA Letter at 2, and NABL Letter at 5–6, and 8–9.

[432] *See* Connecticut Letter at 1–2, California Letter at 1–2, San Diego Letter at 1–2, NAHEFFA Letter at 2–4, CHEFA Letter at 2, Kutak Letter at 2, and GFOA Letter at 2–3.

[433] *See* California Letter at 1–2, NAHEFFA Letter at 2–4, CHEFA Letter at 2, San Diego Letter at 1–2, GFOA Letter at 3, Kutak Letter at 2, and NABL Letter at 5–6.

[434] *See* Halgren Letter, Los Angeles Letter at 1–2, NAHEFFA Letter at 2–4, San Diego Letter at 1–2, California Letter at 1–2, and GFOA Letter at 3–4.

[435] *Id.*

[436] The Commission estimates that issuers will spend approximately 45 minutes on average to prepare and submit each event notice. The comments that the Commission received relating to this estimate are discussed below.

[437] The Commission also notes that Rule 15c2–12 currently provides a limited exemption, contained in paragraph (d)(2) of the Rule, which provides that paragraph (b)(5) of the Rule does not apply to a primary offering if the conditions contained therein are met. This limited exemption from the Rule is intended to assist small governmental jurisdictions that issue municipal securities and, as a result of this exemption, most small issuers do not have a paperwork burden under the Rule.

[438] *See* Halgren Letter, Los Angeles Letter at 1, CRRC Letter, WCRRC Letter, NAHEFFA Letter at 2–4, CHEFA Letter at 2, NABL Letter at 5–6, 13, Connecticut Letter at 3, California Letter at 3, San Diego Letter at 1–2, GFOA Letter at 2, and SIFMA Letter at 3.

[439] *See, e.g.,* Kutak Letter at 1. *See also* NAHEFFA Letter, California Letter, San Diego Letter, CHEFA Letter, GFOA Letter, Metro Water Letter, and NABL Letter.

[440] *See supra* note 372 and accompanying text for a description of events currently contained in Rule 15c2–12(b)(5)(i)(C). *See supra* Section III.E. for a description of events added to the Rule by these amendments. The only events specified in the Rule that may not be known to an issuer or obligated person expeditiously are rating changes and trustee name changes.

[441] In addition, as the Commission noted in the Proposing Release, involvement of the issuer or obligated person is often required for substitution of credit or liquidity providers; modifications to rights of security holders; release, substitution, or sale of property securing repayment of the securities; and optional redemptions. *See* Form Indenture and Commentary, National Association of Bond Lawyers, 2000.

[442] For example, as the Commission noted in the Proposing Release, issuers or obligated persons should have direct knowledge of principal and interest payment delinquencies, proposed or final determinations of taxability from the IRS, tender offers that they initiate, and bankruptcy petitions that they file.

[443] The Commission believes that indenture trustees generally would be aware of principal and interest payment delinquencies; material non-payment related defaults; unscheduled draws on credit enhancements reflecting financial difficulties; the failure of credit or liquidity providers to perform; and adverse tax opinions. The Commission notes that issuers and obligated persons may wish to consider negotiating a provision in indentures to which they are a party to require a trustee promptly to notify the issuer or obligated person in the event the trustee knows or has reason to believe that an event specified in paragraph (b)(5) of the Rule has or may have occurred.

persons to determine whether such events occurred unless limited to certain obligated persons and accompanied by a materiality condition.[444] As discussed above,[445] bankruptcies and similar events involving municipal issuers or obligated persons are relatively rare and issuers may avoid directly monitoring obligated persons by obtaining an agreement from them at the time of the primary offering to notify the party responsible for making event notice filings of such an event if and when it occurs.[446] Similar to its discussion regarding bankruptcies and similar events, the Commission believes that there are a variety of methods by which issuers and obligated persons could avoid having to directly monitor the activities of other obligated persons, such as obtaining, at the time of the primary offering, an agreement from them to provide information pertaining to a merger, consolidation, acquisition or similar asset sale to the party responsible for filing event notices.[447]

One commenter believed that the time that would be required for issuers and other obligated persons to establish and implement procedures to provide notice of rating changes within ten business days after their occurrence exceeds the Commission's estimate of 45 minutes per event notice filing.[448] This commenter believed that the Commission's estimates did not include the time necessary to monitor for rating changes, and that issuers would spend 26 to 52 hours per year on such monitoring.[449] Another commenter stated that, during the 2008–2009 fiscal year, it filed 169 separate "material event notices" relating to rating changes and that submission of such notices consumed 340 to 420 hours of staff time.[450] This commenter further believed that the ten business day time frame would exacerbate its burden since it would have to devote more staff time to monitor for rating changes. A third commenter believed that the ten business day time frame for submission of event notices for rating changes would double compliance time.[451]

The Commission notes that issuers and obligated persons, under current continuing disclosure agreements, contract to provide event notices, including those relating to rating changes, "in a timely manner." The amendments add a maximum time frame of ten business days for submission of an event notice, and the Commission acknowledges that some issuers may have to monitor for certain events more frequently than in the past, if they have been interpreting "in a timely manner" as allowing them to submit event notices more than ten business days after the event occurred. The Commission's PRA estimate encompasses the average amount of time spent monitoring for all of the events in the Rule. As noted above, most of the Rule's events, except perhaps rating changes and, in some cases, trustee name changes, should become known to the issuer prior to the event, or immediately or within a short period of time after the event.[452] While the commenters asserted, either generally or based on their own experience, that the Commission underestimated the time required to monitor for rating changes, the Commission emphasizes that the continuing disclosure agreements that issuers enter into under the current Rule already require them to submit notices for rating changes, which necessarily entails some degree of monitoring.[453] Furthermore, information about rating changes is readily available on the Internet Web sites of the rating agencies.

With respect to changes in trustees, the Commission believes that issuers can minimize monitoring burdens simply by adding a notice provision to the trust indenture that requires the trustee to provide the issuer with notice of the appointment of a new trustee or any change in the trustee's name.

The Commission continues to expect that issuers and obligated persons generally will become aware of events subject to event notices well within the ten business day time frame for submission of event notices to the MSRB.[454] The Commission believes that its burden analysis takes into account compliance by issuers with the ten business day time frame for preparing and submitting event notices, including with respect to rating changes and trustee changes. The Commission stresses that its estimate is an average of the burden associated with all event notices referenced in the Rule. Although some issuers may need to monitor more actively for certain events than they have in the past, in particular for ratings changes, the Commission believes its 45 minute estimate continues to reflect, on average, the amount of time required to prepare and submit an event notice, as most event notices concern events that are within the issuer's control and therefore require little if any monitoring.

For the foregoing reasons, the Commission continues to believe that, with respect to the amendment to the Rule regarding the ten business day time frame for submission of event notices, its estimated burden of 45 minutes to prepare and submit an event notice is appropriate.

ii. Modification With Regard to Those Events for Which a Materiality Determination Is Necessary

As discussed above, the Commission believes that it is appropriate to delete the condition in paragraph (b)(5)(i)(C) of the Rule that previously provided that notice of all of the listed events need be made only "if material." In connection with the deletion of the materiality condition, the Commission reviewed each of the Rule's specified events to determine whether a materiality determination should be retained, and proposed to do so where appropriate.[455] As a result, for those events listed in paragraph (b)(5)(i)(C) for which the materiality condition no longer applies, the Participating Underwriter must reasonably determine that the issuer or other obligated person has agreed to submit event notices to the MSRB

[444] *See* NABL Letter at 8–9.

[445] *See supra* Section III.E.2.

[446] *Id.*

[447] *Id.*

[448] *See* NABL Letter at 5–6.

[449] *Id.*

[450] *See* California Letter at 3. *See also* San Diego Letter at 2 (expressing similar concern that complying preparing and submitting event notices for rating changes required a "significant commitment of staff time and resources.").

[451] *See* Halgren Letter at 1.

[452] With respect to one commenter's assertion that monitoring for rating changes would take 26–52 hours each year, the Commission notes that 45 minutes per event notice is an average. With respect to the comment that, during the fiscal year 2008–2009, one commenter spent 340–420 hours of staff time preparing and submitting notices of rating changes, the Commission notes that this commenter is one of the very largest municipal securities issuers and, as such, likely has a large number of issues of municipal securities outstanding with a variety of credit ratings that may change at a variety of times. Accordingly, this issuer likely spends much more time than the average issuer preparing and submitting event notices. In addition, the Commission notes that the time period referenced by this commenter encompasses the period prior to the establishment of the MSRB's EMMA system as a single repository for continuing disclosure, when issuers submitted continuing disclosure documents to four information repositories. Accordingly, the Commission would expect that the time spent by the average issuer to monitor for rating changes would be substantially less than the estimate provided by this commenter.

[453] *See* 17 CFR 240.15c2–12.

[454] Those issuers or obligated persons required by Section 13(a) or Section 15(d) of the Exchange Act to report certain events on Form 8–K (17 CFR 249.308) would already make such information public in a Form 8–K. The Commission believes that such persons should be able to file material event notices, pursuant to the issuer's or obligated person's undertakings, within a short time after the Form 8–K filing. *See* 15 U.S.C. 78m and 78*o*(d).

[455] The discussion in this section pertains to materiality determinations for events previously specified in paragraph (b)(5)(i)(C) of the Rule. For new events being added to the Rule as a result of these amendments, a materiality determination discussion, if any, is included in the applicable section for each new event.

whenever such an event occurs. These events include: (1) Principal and interest payment delinquencies with respect to the securities being offered; (2) unscheduled draws on debt service reserves reflecting financial difficulties; (3) unscheduled draws on credit enhancements reflecting financial difficulties; (4) substitution of credit or liquidity providers, or their failure to perform; (5) defeasances; and (6) rating changes.[456]

Prior to the Commission's consideration of the Proposing Release, the Commission staff was advised that the total number of event notices as a result of the change to the materiality condition would increase by no more than 1,000, taking into account the revised exemption for demand securities.[457] Thus, in the Proposing Release, the Commission conservatively estimated that this change to the materiality condition would increase the total number of event notices to be submitted annually by issuers by 1,000 notices. The Commission received no comments on this estimate. Although the Commission has slightly increased the total number of continuing disclosure documents it expects the MSRB to receive based on actual submissions the MSRB received during the Sample Period,[458] it continues to believe that its estimate of 1,000 notices in connection with a change to the materiality condition is appropriate.

Several commenters offered their views on the impact of the proposal to delete the condition in paragraph (b)(5)(i)(C) of the Rule that previously provided that notice of all of the listed events need be made only "if material."[459] Two of these commenters expressed concern that this change would increase the burden for issuers, but did not specify whether the Commission's estimate of increased burdens was inaccurate, or offer an alternative estimate.[460]

One commenter believed that the proposal to delete the "if material" qualification could burden issuers in certain circumstances.[461] Another commenter believed the deletion of the materiality condition would increase monitoring burdens and require disclosure of events that otherwise would not be disclosed.[462] These commenters, however, did not specifically call into question the Commission's burden estimate, or offer an alternative estimate. The Commission has reviewed its estimates in light of commenters' views and believes that they do not reflect any new or additional burden that is not contemplated by the Commission's estimates.

iii. Amendment to the Submission of Event Notices Regarding Adverse Tax Events Under a Continuing Disclosure Agreement

Paragraph (b)(5)(i)(C)(6) of the Rule contemplates an event notice in the case of certain adverse tax events. Under the amendments, paragraph (b)(5)(i)(C)(6) of the Rule refers specifically to "adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701–TEB) or other material notices or determinations with respect to the tax status of the securities, or other material events affecting the tax status of the security." As discussed above,[463] the Commission believes that the amendment to paragraph (b)(5)(i)(C)(6) of the Rule clarifies that IRS proposed and final determinations of taxability, Notices of Proposed Issue (IRS Form 5701–TEB) or other material notices or determinations with respect to the tax status of a municipal security are events that should be disclosed under a continuing disclosure agreement. As discussed in the Proposing Release, the Commission estimated that the amendment to paragraph (b)(5)(i)(C)(6) of the Rule would increase the total number of event notices to be submitted by issuers annually by approximately 130 notices.[464]

As described in greater detail above, the Commission is making a few changes to the proposed text of the Rule to clarify the use of the word "material" in this event item and to replace the phrase "tax-exempt status" with "tax status" to provide greater clarity with respect to the application of this disclosure event to a particular kind of taxable municipal security. The Commission does not believe that these changes will affect its estimate of 130 additional event notices.

As discussed in Section III.D above, several commenters offered their views on the impact of the proposal to amend the Rule to include "the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701–TEB) or other material notices or determinations with respect to the tax-exempt status of the securities, or other events affecting the tax-exempt status of the security."[465] One commenter noted that the municipal market may be flooded with notices due to the generality and vagueness of the proposed tax disclosure items, but did not specifically call into question the Commission's burden estimate or offer an alternative estimate.[466] In addition, none of the other commenters specifically called into question the Commission's estimate of 130 additional notices. The Commission has reviewed its estimate in light of these comments and believes that its estimate of 130 notices for this disclosure event item remains appropriate.

iv. Tender Offers

Paragraph (b)(5)(i)(C)(8) of the Rule refers to notice of an event in the case of bond calls. Paragraph (b)(5)(i)(C)(8) of the Rule is amended to include tender offers as a disclosure event. The inclusion of tender offers as an event item expands the circumstances in which issuers undertake to submit an event notice to the MSRB. As discussed in the Proposing Release, the Commission estimated that this amendment would increase the total number of event notices to be submitted by issuers annually by approximately

[456] *See supra* Section III.C.3. for a discussion of the Commission's rationale regarding why it retained a materiality condition for these events.

[457] Telephone conversation between Ernesto A. Lanza, General Counsel, MSRB, and Martha M. Haines, Assistant Director and Chief, Office of Municipal Securities, Division, Commission, June 12, 2009. As noted in the Proposing Release, although the MSRB staff believed that the potential increase could be much smaller, the Commission is continuing to use the estimate of 1,000 event notices to provide a conservative estimate. *See* Proposing Release, *supra* note 2, 74 FR at 36853.

[458] *See supra* Section V.D.2.

[459] *See, e.g.,* NABL Letter, Metro Water Letter, California Letter, ICI Letter, and SIFMA Letter.

[460] *See* NABL Letter and Metro Water Letter.

[461] *See* NABL Letter at 6–7. The three circumstances where the commenter believes a materiality qualifier should be retained are: (1) With respect to LOC-backed demand securities, notices of unscheduled draws on debt service reserves that reflect financial difficulties of the obligated person because they might not be material to an investment in the securities because they are traded on the strength of a bank letter of credit; (2) with respect to demand securities, generally, require notice of each failure to remarket securities when they are put, because they might not be material to an investor due to the existence of a letter of credit or other liquidity facility; and (3) notice of defeasances of securities, because they might not be material to an investor if the remaining term of the securities is very short.

[462] *See* Metro Water Letter at 2.

[463] *See supra* Section III.D.

[464] Prior to the Commission's consideration of the proposed amendments, in conversations with the Commission staff in December 2008, the staff of the IRS indicated that during a 12-month period it issues approximately 130 notices of determinations of taxability. *See* Proposing Release, *supra* note 2, 74 FR at 36853, n. 188.

[465] *See, e.g.,* Connecticut Letter at 2, Metro Letter at 2, NABL Letter at 7, Kutak Letter at 5–6, and GFOA Letter at 2.

[466] *See* Kutak Letter at 4–7.

100 notices.[467] The Commission received no comments on this estimate and continues to believe that this estimate is appropriate.

v. The Occurrence of Bankruptcy, Insolvency, Receivership or Similar Event of the Obligated Person

Under the amendments, paragraph (b)(5)(i)(C)(12) is being added to the Rule to provide for the submission of an event notice in the case of bankruptcy, insolvency, receivership or similar event of the obligated person. Adding bankruptcy, insolvency, receivership or similar event of the obligated person as a disclosure event expands the circumstances in which obligated persons undertake to submit an event notice to the MSRB. Based on industry sources, the Commission estimated in the Proposing Release that this amendment would increase the total number of event notices submitted by obligated persons annually by approximately 24 notices.[468]

Several commenters offered their views on the impact of the proposal to add bankruptcy, insolvency, receivership or similar event of the obligated person as a new disclosure event.[469] One of these commenters expressed concern that the event item, unless revised, could increase the burdens for issuers to engage in continuous monitoring of obligated persons in certain circumstances.[470] The Commission has discussed this comment in Sections III.E.2 and V.D.2.b, above. None of these commenters, however, called into question the Commission's estimate of 24 additional event notices or offered an alternative estimate. The Commission has reviewed its estimate in light of these comments and believes that its estimate of 24 notices for this disclosure event remains appropriate.

vi. Merger, Consolidation, Acquisition, or Sale of All or Substantially All Assets

Under the amendments, paragraph (b)(5)(i)(C)(13) is being added to the Rule to provide for the submission of event notices in the case of a merger, consolidation, acquisition involving an obligated person or sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material. The addition to the Rule of this disclosure event will expand the circumstances in which issuers will undertake to submit an event notice to the MSRB. The Commission believes that this amendment will increase the total number of event notices submitted by issuers annually. Based on industry sources, the Commission estimated in the Proposing Release that adding the new event item in paragraph (b)(5)(i)(C)(13) of the Rule would increase the total number of event notices submitted by issuers annually by approximately 1,783 notices.[471]

Several commenters offered their views on the impact of the proposal to add a new disclosure event in the case of a merger, consolidation, acquisition or sale of all or substantially all assets.[472] One of these commenters expressed concern that the event item, unless revised, could increase the burdens for issuers to engage in continuous monitoring of obligated persons in certain circumstances.[473] The Commission has discussed this comment in Sections III.E.3 and V.D.2.b, above. None of these commenters, however, called into question the Commission's estimate of 1,783 additional event notices, or offered an alternative estimate. The Commission has reviewed its estimate in light of these comments and believes that its estimate of 1,783 notices for this disclosure event remains appropriate.

vii. Successor or Additional Trustee, or Change in Trustee Name

Under the amendments, paragraph (b)(5)(i)(C)(14) is being added to the Rule to provide for the submission of an event notice in the case of the appointment of a successor or additional trustee or the change of name of a trustee, if material. Adding this event item to the Rule expands the circumstances in which issuers undertake to submit an event notice to the MSRB. As the Commission noted in the Proposing Release, the Commission believes that trustee changes occur infrequently and a change affecting the largest trustee of municipal securities provides a reasonable and conservative estimate of the number of additional event notices that will be submitted annually under this amendment to the Rule.[474] The largest trustee was involved in approximately 31% of the municipal issuances in 2008,[475] and the Commission continues to believe that this represents a reasonable estimate of the percentage of issuers covered by the largest trustee. Thus, the Commission estimates that a change to the largest trustee will impact approximately 31%, or 3,720 issuers. The Commission believes this serves as a conservative proxy for the number of event notices to be submitted regarding a change in trustee.[476] Therefore, the Commission estimates that adding the new event item contained in paragraph (b)(5)(i)(C)(14) of the Rule will increase the total number of event notices

[467] *See* Proposing Release, *supra* note 2, 74 FR at 36853. Based on industry sources that include lawyers, trade associations and vendors of municipal disclosure information, the Commission estimated that there are typically no more than 100 tender offers annually in the municipal securities market.

[468] This estimate was based on the following: (i) 917 (number of issuances of municipal securities that defaulted during the 1990s based on statistics contained in Standard and Poor's "A Complete Look at Monetary Defaults in the 1990s" (June, 2000))/10 (number of years in a decade) = 91.7 (estimated number of issuances defaulting per year) (rounded to 92); (ii) 92 (estimated number of issuances defaulting per year)/50,000 (estimated total number of municipal issuers) = .002 (.2%) (estimated percentage of all issuers that default annually); and (iii) 12,000 (estimated number of issuers under amendments to the Rule) × (.002) (.2%) (estimated percentage of all issuers that default annually) × 1 (estimated number of material event notices that an issuer will file) = 24 notices. The Commission notes that not all issuers or obligated persons that default eventually enter bankruptcy so the number of actual notices may be less.

[469] *See* Connecticut Letter at 2, GFOA Letter at 4, Metro Water Letter at 2, and NABL Letter at 8.

[470] *See* NABL Letter at 8.

[471] *See* Proposing Release, *supra* note 2, 74 FR at 36853. This estimate was based on the following: (i) 2,201 (total number of merger transactions reported under the Hart-Scott-Rodino Act in 2007 contained in the *Hart-Scott-Rodino Annual Report Fiscal Year 2007* (November 2008) available at *http://www.ftc.gov/os/2008/11/hsrreportfy2007.pdf* ("HSR Report") × 81% (percentage of mergers in industries in which municipal securities may exist) = 1782.81 notices (rounded to 1783). The estimate of the percentage of mergers in the municipal industry was based on data contained in the HSR Report. The HSR Report contained data regarding the percentage of merger transactions reported from nine industry segments. Of these nine segments, the only segment that does not issue municipal securities is banking and insurance, which accounted for 19% of reported merger transactions. As discussed in the Proposing Release, the Commission notes that each of the mergers reported under the other industry segments may not involve entities that have issued municipal securities so the number of affected municipal securities issuers may be less.

[472] *See* Kutak Letter at 4, NFMA Letter at 2, SIFMA Letter at 4, Connecticut Letter, GFOA Letter at 4, ICI Letter at 8–9, Fidelity Letter at 3, CRRC Letter at 5, and WCRRC Letter.

[473] *See* NABL Letter at 8.

[474] *See* Proposing Release, *supra* note 2, 74 FR at 36854.

[475] *See Two Decades of Bond Finance: 1989–2008,* The Bond Buyer/Thomson Reuters 2009 Yearbook 7 (Matthew Kreps ed., SourceMedia, Inc.) (2009) and *Top 50 Trustee Banks: 2008,* The Bond Buyer/Thomson Reuters 2009 Yearbook 89 (Matthew Kreps ed., SourceMedia, Inc.) (2009).

[476] This estimate is based on the following: 12,000 (estimated number of issuers under amendments) × .31 (31%) (estimated percentage of issuers that would be impacted by a change to the largest trustee of municipal securities) = 3,720 issuers.

submitted by issuers annually by approximately 3,720 notices.[477]

Two commenters expressed concern regarding the increased costs and burdens that some issuers would incur to report changes pertaining to trustees within the Rule's ten business day time frame.[478] These comments are addressed in Section V.D.2.b, above. None of these commenters, however, called into question the Commission's estimate of 3,720 notices, or offered an alternative estimate. The Commission has reviewed its estimate in light of these comments and believes that its estimate of 3,720 notices for this disclosure event remains appropriate.

c. Total Burden on Issuers for Amendments to Event Notices

In the Proposing Release, the Commission estimated and continues to believe that the process for an issuer to prepare and submit event notices to the MSRB in an electronic format will require approximately 45 minutes.[479] As discussed above, the amendment to modify the Rule's exemption for demand securities will increase total number of issuers affected by the Rule to 12,000 issuers,[480] the total number of event notices submitted by issuers to 74,605 notices,[481] and the annual paperwork burden for issuers to submit event notices to 55,954 hours.[482]

Under the amendments to paragraph (b)(5)(i)(C) of the Rule, the Commission estimates that the 12,000 municipal issuers with continuing disclosure agreements will prepare an additional 6,757 event notices annually,[483] raising the total number of event notices prepared by issuers annually to approximately 81,362.[484] This increase in the number of event notices will result in an increase of 5,068 hours in the annual paperwork burden for issuers to submit event notices.[485] In total, the amendments will result in an annual paperwork burden of approximately 61,022 hours (55,954 hours + 5,068 hours) for issuers to submit notices to the MSRB.

d. Total Burden for Issuers

Accordingly, under the amendments, the total burden on issuers to submit annual filings, event notices and failure to file notices will be 78,933 hours.[486]

3. MSRB

As discussed in the Proposing Release, the Commission estimated, and continues to believe, that the MSRB will incur an annual burden of approximately 7,000 hours to collect, index, store, retrieve, and make available the pertinent documents under the Rule.[487] The Commission anticipates that the amendment to modify the Rule's exemption for demand securities will increase filings to the MSRB by approximately 20% annually.[488] In addition, the Commission estimates that the amendments to the event notice provisions of the Rule will increase filings submitted to the MSRB approximately 9% annually.[489] Accordingly, the Commission estimates that the total burden on the MSRB of collecting, indexing, storing, retrieving and disseminating information requested by the public also will increase by approximately 29% (20% + 9%) or 2,030 hours (7,000 hours × .29). Thus, the Commission estimates that the total burden on the MSRB as a result of the amendments will be 9,030 hours annually.[490] The Commission included these estimates in the Proposing Release and received no comments on them. The Commission continues to believe that these estimates are appropriate.

4. Annual Aggregate Burden for Amendments

The Commission estimates that, as a result of the amendments, the ongoing annual aggregate information collection burden under the Rule will be 88,263 hours.[491]

E. Total Annual Cost Burden

1. Broker-Dealers and the MSRB

The Commission does not expect broker-dealers to incur any additional external costs associated with the amendments since there is no change to the obligation of broker-dealers under the Rule to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract for the benefit of holders of such municipal securities, to provide annual filings, event notices, and failure to file notices to the MSRB. The Commission included this cost burden estimate in the Proposing Release and received no specific comments on it. However, the Commission received one comment relating to broker-dealers' costs under the Rule.[492] This commenter believed that the Commission underestimated the additional burdens and costs that the amendments would impose on Participating Underwriters to review disclosure about obligated persons in offerings for demand securities, unless the amendments to the Rule were clarified for offerings of LOC-backed demand securities.[493]

---

[477] This estimate is based on the following: 3,720 (estimated number of issuers that will be impacted by a change to the largest trustee of municipal securities) × 1 (estimated number of event notices that an issuer will file) = 3,720 notices. The Commission believes that the actual number of changes involving the trustee, which occur annually, is likely to be significantly less than 3,720. However, to provide a conservative estimate for the paperwork burden, the estimate takes into account a change involving the largest trustee.

[478] *See* CHEFA Letter at 3 and NAHEFFA Letter at 4.

[479] *See* Proposing Release, *supra* note 2, 74 FR at 36851.

[480] *See supra* note 375.

[481] *See supra* note 418.

[482] *See supra* note 420.

[483] 1,000 (estimated number of additional notices due to change to materiality condition) + 130 (estimated number of additional adverse tax event notices) + 100 (estimated number of tender offers event notices) + 24 (estimated number of bankruptcy/insolvency event notices) + 1,783 (estimated number of merger or acquisition event notices) + 3,720 (estimated number of appointment/change of trustee event notices) = 6,757 (total estimated number of additional event notices that will be prepared under the amendments). *See also* Proposing Release, *supra* note 2, 74 FR at 36854.

[484] 72,000 (number of event notices estimated under the Rule under the amendments modifying the exemption for event notices in the Proposing Release) + 2,605 (revised number of event notices under amendments modifying the exemption for demand securities exemption) + 6,757 (total number of additional event notices that will be prepared under the amendments to the event notice provisions of the Rule) = 81,362 event notices. This estimate is higher than the estimate in the Proposing Release by 2,605 filings or 3.31%. *See supra* notes 418, 483, and accompanying text.

[485] 6,757 (total number of additional event notices that will be prepared under the amendments to the event notice provisions of the Rule) × .75 hours (45 minutes) (estimated time to prepare an event notice) = 5,067.75 hours (rounded to 5,068 hours). *See supra* note 483 and accompanying text.

[486] 17,182 hours (estimated burden for issuers to submit annual filings) + 61,022 hours (estimated burden for issuers to submit event notices) + 729 hours (estimated burden for issuers to submit failure to file notices) = 78,933 hours. This estimate is higher than the estimate in the Proposing Release by 5,165 hours or 7%. *See supra* notes 417, 420, 423, 485 and accompanying text.

[487] *See* Proposing Release, *supra* note 2, 74 FR at 36854. This estimate is further described in the Commission's 2008 PRA submission. *See* 2008 PRA submission, *supra* note 374.

[488] *See supra* note 402 and accompanying text.

[489] 6,757 (estimated additional event notices under the final event notice amendments)/77,000 (estimated number of continuing disclosure documents submitted under the Rule prior to the amendments (60,000 (event notices) + 15,000 (annual filings) + 2,000 (failure to file notices) = 77,000)) = .087 × 100 = approximately 9%. For additional information regarding PRA estimates related to Rule 15c–12 prior to the amendments, including the estimate of 77,000, *see* 2008 PRA submission, *supra* note 374.

[490] Annual burden for MSRB: 7,000 hours (annual burden under the Rule prior to the amendments) + 2,030 hours (additional hourly burden under amendments) = 9,030 hours.

[491] 300 hours (total estimated burden for broker-dealers) + 78,933 hours (total estimated burden for issuers) + 9,030 hours (total estimated burden for MSRB) = 88,263 hours. This estimate is higher than the estimate in the Proposing Release by 5,165 hours or 6.22%.

[492] *See* NABL Letter.

[493] *See* NABL Letter at 12–13.

In the Proposing Release, the Commission solicited comment regarding the accuracy of its cost burden estimates in connection with the revised collection of information that would apply to broker-dealers.[494] Although the commenter noted above provided general comments relating to broker-dealers' burdens and costs under the Rule, which are addressed in Section V.D.1.a, it did not offer specific information or data that conflicts with the Commission's estimates nor did it provide alternative estimates. Also, this commenter made a similar statement with respect to burdens on issuers with respect to demand securities, which the Commission addressed in Section V.D.2.a.i above, and its response is also applicable here.

In addition, the Commission believes that the MSRB may incur costs to modify the indexing system of its EMMA system to accommodate the amendments to the Rule that incorporate additional disclosure events. As discussed in the Proposing Release, based on information provided to the Commission staff by MSRB, the Commission estimated that the MSRB's costs to update its EMMA system to accommodate the new or revised disclosure events would be no more than approximately $10,000.[495] The Commission also included this cost estimate in the Proposing Release and received no comments on it. The Commission continues to believe that this estimate is appropriate.

2. Issuers

a. Current Issuers

The Commission expects that some issuers that already submit continuing disclosure documents to the MSRB in an electronic format (referred to herein as "current issuers") may be subject to some costs associated with the amendments to the Rule. For current issuers that convert their annual filings, event notices and/or failure to file notices into the MSRB's prescribed electronic format through a third party, there will be costs associated with any additional submissions of event notices and failure to file notices.

The cost for an issuer to have a third-party vendor convert paper continuing disclosure documents into the MSRB's prescribed electronic format may vary depending on what resources are required to transfer the documents into the appropriate electronic format. One example of such a transfer would be the scanning of paper-based continuing disclosure documents into an electronic format. As discussed in the Proposing Release, the Commission estimated that the cost for an issuer to have a third-party vendor scan documents would be $6 for the first page and $2 for each page thereafter.[496] The Commission also estimated that event notices and failure to file notices consist of one to two pages.[497] Accordingly, the approximate cost for an issuer to use a third-party vendor to scan an event notice or failure to file notice would be $8 per notice. The Commission included this cost estimate in the Proposing Release and received no comments on it. The Commission believes that this estimate is still accurate.

In addition, the Commission estimated that an issuer submits three event notices to the MSRB annually.[498] As discussed above, the Commission recently received updated information from the MSRB relating to the actual number of annual filings, event notices and failure to file notices submitted to its EMMA system during the Sample Period. Based on this information from the MSRB, the Commission is updating its PRA estimates of the total number of event notices that will be submitted by issuers. The Commission also is updating its estimate to reflect that an issuer on average will submit five event notices to the MSRB annually plus an additional notice as a result of the new event items.[499] Under the amendments, some current issuers will need to prepare additional event notices for submission to the MSRB. Some current issuers may need to submit these additional event notices to a third party for conversion into an electronic format for submission to the MSRB. The Commission estimated that the number of additional event notices that an issuer will need to submit annually under the amendments is one, increasing the total estimate to six notices per year.[500] Each of these issuers will incur an annual cost of $8 to convert the additional event notice into an electronic format for submission to the MSRB.[501] The Commission believes that current issuers that already have the technological resources to convert continuing disclosure documents into an electronic format for submission to the MSRB will not incur any additional external costs associated with the amendments. The Commission included this $8 cost estimate in the Proposing Release and received no comments on it.

As the Commission noted in the Proposing Release, there may be some costs incurred by issuers to revise their current template for continuing disclosure agreements to reflect the amendments to the Rule.[502] The Commission understands that models currently exist for continuing disclosure agreements that are relied upon by legal counsel to issuers and, accordingly, these documents are likely to be updated by outside attorneys to reflect the amendments. Based on industry sources and as discussed in the Proposing Release, the Commission believes that continuing disclosure agreements are form agreements.[503] Additionally, based on industry sources, the Commission estimates that it will take an outside attorney approximately 15 minutes to revise the template for continuing disclosure agreements for a current issuer.[504] Thus, the Commission estimates that, for each current issuer, the approximate cost to revise a continuing disclosure agreement to reflect the amendments will be approximately $100,[505] for a one-time total cost of $1,000,000 [506] for all current issuers. The Commission included these cost estimates in the Proposing Release and received no specific comments on them.

[494] *See* Proposing Release, *supra* note 2, 74 FR at 36858.

[495] *See* Proposing Release, *supra* note 2, 74 FR at 36855, n. 205. Telephone conversation between Harold Johnson, Deputy General Counsel, MSRB, and Martha M. Haines, Assistant Director and Chief, Office of Municipal Securities, Division, Commission, November 7, 2008.

[496] *See* Proposing Release, *supra* note 2, 74 FR at 36855.

[497] *Id.*

[498] *Id.*

[499] *See* discussion of estimate of the average number of event notices to be submitted by each issuer, *supra* Section V.D.2.b.

[500] 6,757 (estimated additional event notices submitted under amendments)/12,000 (estimated number of issuers under amendments) = .563 notices per issuer (rounded up to 1) (estimated number of additional event notices submitted annually per issuer).

[501] $8 (cost to have third party convert an event notice or failure to file notice into an electronic format) × 1 (estimated number of additional event or failure to file notices filed per year per issuer) = $8.

[502] *See* Proposing Release, *supra* note 2, 74 FR at 36855.

[503] *Id.*

[504] *Id.* Continuing disclosure agreements are prepared and executed at the time of an offering of municipal securities, when an issuer has already retained bond counsel for other purposes. Accordingly, the Commission believes that there should only be minimal incremental costs for an outside attorney to revise the template for continuing disclosure agreements.

[505] 1 (continuing disclosure agreement) × $400 (hourly wage for an outside attorney) × .25 hours (estimated time for outside attorney to revise a continuing disclosure document in accordance with the amendments to the Rule) = $100. The $400 per hour estimate for an outside attorney's work is based on industry sources.

[506] $100 (estimated cost to revise a continuing disclosure agreement in accordance with the amendments to the Rule) × 10,000 (number of current issuers) = $1,000,000.

b. Demand Securities Issuers

As discussed above, the Commission estimates that the amendments relating to demand securities will increase the number of issuers affected by the Rule by approximately 20% or 2,000 issuers or obligated persons (referred to herein as "demand securities issuers").[507] As discussed in the Proposing Release, demand securities issuers may have some external costs associated with the preparation and submission of annual filings, event notices and failure to file notices.[508]

Under the Rule, Participating Underwriters are required to reasonably determine that an issuer has entered into a continuing disclosure agreement to provide continuing disclosure documents to the MSRB in an electronic format as prescribed by the MSRB. Under the amendments, Participating Underwriters will need to reasonably determine that these demand securities issuers have entered into continuing disclosure agreements. This change applies to any initial offering and remarketing that is a primary offering of demand securities occurring on or after the compliance date of the amendments.[509] However, to accommodate commenters' concerns about the proposal's impact on existing demand securities, the amendment does not apply to remarketings of demand securities that are outstanding in the form of demand securities on the day preceding the amendments' compliance date and that continuously have remained outstanding in the form of demand securities.

The Commission understands that models currently exist for continuing disclosure agreements that are relied upon by legal counsel to issuers and, accordingly, these documents are likely to be updated by outside attorneys to reflect the amendments. Based on industry sources, the Commission believes that continuing disclosure agreements are form agreements. Also, based on industry sources, the Commission estimates that it will take an outside attorney approximately 1.5 hours to draft a continuing disclosure agreement. Thus, the Commission estimates that the cost of preparing a continuing disclosure agreement for each demand securities issuer will be approximately $600,[510] for a one-time total cost of $1,200,000[511] for all demand securities issuers, if an outside counsel prepares the agreement. The Commission included these estimates in the Proposing Release and did not receive any comments on them. The Commission continues to believe they are appropriate.

The Commission believes that demand securities issuers generally will not incur any other external costs associated with the preparation of annual filings, event notices (including notices for the new event disclosure items included in the amendments) and failure to file notices. The Commission believes that demand securities issuers will prepare the information contained in these continuing disclosure documents internally and that these internal costs have been accounted for in the hourly burden section above.[512]

The Commission believes that the only external costs demand securities issuers may incur in connection with the submission of continuing disclosure documents to the MSRB will be the costs associated with converting them into an electronic format. The Commission believes that many issuers of municipal securities already have the computer equipment and software necessary to convert paper copies of continuing disclosure documents to electronic copies and to electronically transmit the documents to the MSRB. Demand securities issuers that presently do not have the ability to prepare their annual filings, event notices or failure to file notices in an electronic format may incur some costs to obtain electronic copies of such documents if they are prepared by a third party (*e.g.,* an accountant or attorney) or, alternatively, to have a paper copy converted into an electronic format. These costs may vary depending on how the demand securities issuer elects to convert its continuing disclosure documents into an electronic format. An issuer could elect to have a third-party vendor transfer its paper continuing disclosure documents into the appropriate electronic format. An issuer also could decide to undertake the work internally, and its costs may vary depending on the issuer's current technological resources. An issuer also could elect to use a designated agent to submit its continuing disclosure documents to the MSRB.

As discussed in the Proposing Release, the Commission estimated that 30% of issuers would elect to use designated agents to submit continuing disclosure documents to the MSRB.[513] Generally, when issuers utilize the services of a designated agent, they enter into a contract with the agent for a package of services, including the submission of continuing disclosure documents, for a single fee. Based on industry sources, the Commission estimated this fee to range from $100 to $500 per year depending on the designated agent an issuer uses.[514] Accordingly, the Commission estimated that the high end of the total annual cost that may be incurred by demand securities issuers that use the services of a designated agent will be $300,000.[515] The Commission included these estimates in the Proposing Release and received no comments on them. The Commission continues to believe they are appropriate.

The cost for an issuer to have a third-party vendor convert its paper continuing disclosure documents into an appropriate electronic format may vary depending on the type of resources that are required. One method would be to scan paper-based continuing disclosure documents into an electronic format. As discussed in the Proposing Release, the Commission estimated that the approximate cost for an issuer to use a third-party vendor to scan an event notice or failure to file notice would be $8 per notice, and that the maximum number of event notices or failure to file notices that an issuer would submit annually is three.[516] The Commission included these estimates in the Proposing Release and received no comments on them. As discussed above, the Commission now estimates that an issuer will file five event notices. The Commission believes that these estimates are appropriate. Under the amendments, the Commission estimates that the maximum number of event notices and failure to file notices submitted by issuers will increase to six.[517] Accordingly, the Commission

[507] *See supra* Section V.D.2.a.

[508] *See supra* note 402 and accompanying text.

[509] As noted above, the compliance date of the amendments to the Rule is December 1, 2010.

[510] 1 (continuing disclosure agreement) × $400 (hourly wage for an outside attorney) × 1.5 hours (estimated time for outside attorney to draft a continuing disclosure document) = $600. The $400 per hour estimate is based on industry sources. *See supra* note 504.

[511] $600 (cost for continuing disclosure agreement) × 2,000 (number of demand securities issuers) = $1,200,000.

[512] *See supra* Section V.D.2.a.

[513] *See* Proposing Release, *supra* note 2, 74 FR at 36856.

[514] This estimated range of the annual fee for the services of a designated agent is based on industry sources in December 2008.

[515] 2,000 (number of demand securities issuers) × .30 (percentage of issuers that use designated agents) × $500 (estimated annual cost for issuer's use of a designated agent) = $300,000.

[516] *See* Proposing Release, *supra* note 2, 74 FR at 36856.

[517] 6,757 (estimated additional event notices submitted under the amendments)/12,000 (estimated number of issuers under the amendments) = .563 notices per issuer (rounded up to 1) (estimated number of additional event notices submitted annually per issuer). To provide a conservative estimate, the Commission estimates

estimates that the maximum external costs for a demand securities issuer that elects to have a third party scan continuing event notices or failure to file notices into an electronic format under the amendments is $48.[518]

As discussed in the Proposing Release, the Commission estimated that the approximate cost for an issuer to use a third-party vendor to scan an average-sized annual financial statement would be $64 per annual statement, and that the maximum number of annual filings submitted per year is two.[519] The Commission included these estimates in the Proposing Release and received no comments on them. The Commission continues to believe that these estimates are appropriate. Although the amendments will increase the number of issuers submitting annual filings each year, the number of annual filings each issuer submits will not increase. Thus, the Commission expects that the number of annual filings submitted yearly, per issuer, under the amendments will remain unchanged. Accordingly, the Commission estimates that the maximum external costs for a demand securities issuer that elects to have a third party scan its annual filings into an electronic format will be $128.[520]

Alternatively, a demand securities issuer that currently does not have the appropriate technology to convert paper continuing disclosure documents into an electronic format could elect to purchase the necessary resources to do so.[521] As discussed in the Proposing Release, the Commission estimated that an issuer's initial cost to acquire these technological resources could range from $750 to $4,300.[522] Some demand securities issuers, however, may have the necessary hardware to transmit documents electronically to the MSRB, but may need to upgrade or obtain the software necessary to submit documents to the MSRB in an electronic format. In the Proposing Release, the Commission estimated that an issuer's cost to update or acquire this software could range from $50 to $300.[523] The Commission included these estimates in the Proposing Release and received no comments on them. The Commission continues to believe that these estimates are appropriate.

In addition, demand securities issuers without direct Internet access may incur some costs to obtain such access to submit the documents. As discussed in the Proposing Release, the Commission noted that Internet access is now broadly available to and utilized by businesses, governments, organizations and the public, and the Commission expects that most issuers of municipal securities currently have Internet access.[524] In the event that a demand securities issuer does not have Internet access, it may incur costs in obtaining such access, which the Commission estimated to be approximately $50 per month, based on its limited inquiries to Internet service providers.[525] Otherwise, there are multiple free or low cost locations that an issuer could utilize, such as various commercial sites, which could help an issuer to avoid the costs of maintaining continuous Internet access solely to comply with the amendments.[526] The Commission included this estimate in the Proposing Release and received no comments on it. The Commission continues to believe that this estimate is appropriate.

The Commission estimated in the Proposing Release that the costs to some of the demand securities issuers to acquire the technology necessary to convert continuing disclosure documents into an electronic format to submit to the MSRB may include: (i) Approximately $8 per notice to use a third-party vendor to scan an event notice or failure to file notice, and approximately $64 to use a third-party vendor to scan an average-sized annual financial statement; (ii) approximately $750 to $4,300 to acquire the technological resources to convert continuing disclosure documents into an electronic format; (iii) approximately $50 to $300 solely to upgrade or acquire the software to submit documents in an electronic format; and (iv) approximately $50 per month to establish Internet access. The Commission included these estimates in the Proposing Release and received no comments on them. The Commission continues to believe that they are appropriate.[527]

For a demand securities issuer that does not have Internet access and elects to have a third-party convert continuing disclosure documents into an electronic format ("Category 1"), the estimated total maximum external cost such issuer would incur will be $776 per year.[528] For an issuer that does not have Internet access and elects to acquire the technological resources to convert continuing disclosure documents into an electronic format internally ("Category 2"), the estimated total maximum external cost such demand securities issuer would incur will be $4,900 for the first year and $600 per year thereafter.[529] To provide a conservative estimate for PRA purposes, the Commission estimated that any demand securities issuers that incur costs associated with converting continuing disclosure documents into

that each issuer will submit one additional event notice as a result of the amendments.

[518] The maximum cost is the cost to scan and convert six event or failure to file notices: 6 (number of notices submitted annually) × $8 (cost to scan and convert each notice) = $48.

[519] *See* Proposing Release, *supra* note 2, 74 FR at 36856.

[520] The maximum cost is the cost to scan and convert two annual filings: 2 (number of annual filings submitted annually) × $64 (cost to scan and convert each annual filing) = $128.

[521] Generally, the technological resources necessary to convert a paper document into an electronic format are a computer, scanner and possibly software to convert the scanned document into the appropriate electronic document format. Most scanners include a software package that is capable of converting scanned images into multiple electronic document formats. An issuer would only need to purchase software if the issuer (i) has a scanner that does not include a software package that is capable of converting scanned images into the appropriate electronic format; or (ii) purchases a scanner that does not include a software package capable of converting documents into the appropriate electronic format.

[522] *See* Proposing Release, *supra* note 2, 74 FR at 36857.

[523] *Id.*

[524] *Id.*

[525] *Id.*

[526] *Id.*

[527] *Id.*

[528] *See* Proposing Release, *supra* note 2, 74 FR at 36857. The total maximum external cost for a Category 1 demand securities issuer is calculated as follows: [$64 (cost to have third party convert annual filing into an electronic format) × 2 (maximum estimated number of annual filings filed per year per issuer)] + [$8 (cost to have third party convert event notices or failure to file notices into an electronic format) × 6 (maximum estimated number of event or failure to file notices filed per year per issuer)] + [$50 (estimated monthly Internet charge) × 12 months] = $776. The Commission estimates that an issuer will file one to eight continuing disclosure documents per year. These documents generally will consist of no more than two annual filings and six event or failure to file notices. The Commission estimates the maximum number of documents filed annually per issuer as follows: 7 documents (consisting of 2 annual filings and 5 event or failure to file notices) + 1 document (consisting of the additional event notice that would be filed under the amendments). In the Proposing Release, the Commission estimated that the maximum number of documents filed annually per issuer would be $760. This estimate was based on 5 documents (consisting of 2 annual filings and 3 event or failure to file notices) + 1 document (consisting of the additional event notice that would be filed under the amendments). As discussed above, the Commission is updating this number to reflect more current data submitted to the MSRB. *See supra* note 368 and accompanying text. The above cost estimate is higher than the estimate in the Proposing Release by $16 or 2.1%.

[529] *See* Proposing Release, *supra* note 2, 74 FR at 36857. The total maximum external cost for a Category 2 demand securities issuer is to be calculated as follows: [$4300 (maximum estimated one-time cost to acquire technology to convert continuing disclosure documents into an electronic format)] + [$50 (estimated monthly Internet charge) × 12 months] = $4900. After the initial year, issuers who acquire the technology to convert continuing disclosure documents into an electronic format internally will have only the cost of obtaining Internet access. $50 (estimated monthly Internet charge) × 12 months = $600.

an electronic format will choose the Category 2 option.[530] The Commission estimated that approximately no more than 400 demand securities issuers will incur costs associated with acquiring technological resources to convert continuing disclosure documents into an electronic format.[531] The Commission included these estimates in the Proposing Release and received no comments on them. The Commission continues to believe they are appropriate.

In addition, the Commission estimates that the aggregate maximum annual costs for those demand securities issuers that need to acquire technological resources to submit documents to the MSRB will be approximately $1,960,000[532] for the first year after the adoption of the amendments and approximately $240,000[533] for each year thereafter. The Commission included these cost burden estimates in the Proposing Release and received no comments on them. The Commission continues to believe that these estimates are appropriate.

c. Current Issuers and Demand Securities Issuers

Some current issuers and demand securities issuers may incur a one-time external cost associated with the amendment to revise the time frame for submitting event notices from "in a timely manner" to "in a timely manner not to exceed ten business days after the occurrence of the event." In particular, some current issuers and demand securities issuers may incur a one-time external cost associated with becoming apprised of the appointment of a new trustee or for the change in the trustee's name. One way an issuer may become apprised of such a change would be for its counsel to add a notice provision to the issuer's trust indenture that requires the trustee to provide the issuer with notice of the appointment of a new trustee or any change in the trustee's name. Based on industry sources, the Commission estimates that it will take an outside attorney approximately 15 minutes to draft and add a provision to an indenture agreement requiring notice of a change of trustee or to the trustee's name. Thus, the Commission estimates that the approximate cost of adding this notice provision to an issuer's trust indenture will be approximately $100 per issuer,[534] for a one-time annual cost of $1,200,000[535] for all issuers. The Commission included these cost burden estimates in the Proposing Release and received no comments on them. The Commission continues to believe they are appropriate.

As discussed in the Proposing Release, the Commission solicited comment regarding the accuracy of its cost burden estimates in connection with the revised collection of information applicable to issuers. As noted above, although some commenters offered general comments relating to issuers' burdens and costs under the Rule, they did not quantify these burdens or costs. For example, some commenters expressed the view that the Commission underestimated the burdens or costs that would be imposed on issuers and obligated persons as a result of the amendments.[536] A number of commenters expressed concern about additional burdens or costs, which they believed issuers would incur as a result of the ten business day time frame for submitting notices for events outside of the issuer's control.[537] These commenters also remarked that these increased burdens or costs would be particularly difficult for small issuers.[538] Although these commenters provided general views relating to issuers' burdens and costs under the Rule, which are addressed in Section V.D.2 above, they did not offer specific information or data that conflicted with the Commission's cost estimates nor did they provide alternative estimates. As discussed above, the Commission agrees that some issuers, including small issuers, will have increased burdens and costs under the Rule. However, for the reasons discussed in Section V.D.2 above, the Commission continues to believe that these burdens and costs are accounted for in the Commission's PRA burden analysis.

In addition to the commenters discussed above, two commenters opposed the proposed amendment to modify the exemption for demand securities because they viewed it as imposing an audit requirement on small issuers.[539] One of these commenters stated that the proposal could increase costs to a small issuer by $30,000–40,000 annually to prepare audited or consolidated financial statements.[540] The commenter believed that such costs could force small demand securities issuers to withdraw from the tax-exempt municipal market and thus recommended that the Commission withdraw the proposed amendment to modify the exemption for demand securities or create a limited exception for LOC-backed demand securities.[541]

As discussed further in Section III.A. above, the Commission notes that, for purposes of paragraph (b)(5)(i)(B) of the Rule, audited financial statements need to be submitted, pursuant to the issuer's and obligated person's undertaking in a continuing disclosure agreement, only "when and if available."[542] This limitation, which is consistent with the Commission's position in the 1994 Amendments Adopting Release, should mitigate some concerns of those obligated persons that do not prepare audited financial statements in the ordinary course of their business.[543] Further, although not all issuers or obligated persons, in the ordinary course of their business, prepare audited financial statements or other financial

[530] *See* Proposing Release, *supra* note 2, 74 FR at 36857.

[531] 2,000 demand securities issuers × 20% = 400 demand securities issuers. The Commission used a 20% estimate in the Proposing Release. The Commission believes that this estimate is still appropriate.

[532] 400 (Category 2 issuers) × $4,900 = $1,960,000.

[533] 400 (Category 2 issuers) × $600 = $240,000.

[534] 1 (continuing disclosure agreement) × $400 (hourly wage for an outside attorney) × .25 hours (estimated time for outside attorney to draft and add a change of name notice provision to a trust indenture) = $100. The $400 per hour estimate for an outside attorney's work is based on industry sources.

[535] $100 (estimated cost to have outside counsel add a notice provision to a trust indenture) × 12,000 (number of issuers under the amendments) = $1,200,000.

[536] *See* Connecticut Letter at 3 ("I suspect that the Commission has underestimated the true costs of some of these proposals"), NABL Letter at 12–13 ("The Commission's estimates of costs and other regulatory impacts * * * greatly underestimate the likely impact of the amendments"), and GFOA Letter at 5 ("The SEC's estimated time needed and costs associated with implementing the proposals are a fraction of what issuers will likely incur. This is true for both small and large issuers, as compliance costs and monitoring will increase, as will an issuer's need to retain bond counsel").

[537] *See* Halgren Letter at 1–2, Kutak Letter at 2, NAHEFFA Letter at 3, Los Angeles Letter at 2, San Diego Letter at 3, California Letter at 2–3, CHEFA Letter at 2–3, CRRC Letter at 5, WCRRC Letter at 1, and Connecticut Letter at 3. *See supra* Section V.D.2.i.a.c.

[538] *Id.*

[539] *See* CRRC Letter at 5 and WCRRC Letter at 1 (generally expressed support for comments in CRRC Letter).

[540] *Id.*

[541] *Id.*

[542] 17 CFR 240.15c2–12(b)(5)(i)(B). *See also supra* Section III.A. concerning audited financial statements and 1994 Amendments Adopting Release, *supra* note 8, 59 FR at 59599.

[543] As discussed in the 1994 Amendments Adopting Release, the 1994 Amendments "[do] not adopt the proposal to mandate audited financial statements on an annual basis with respect to each issuer and significant obligor. Instead, the amendments require annual financial information, which may be unaudited, and may, where appropriate and consistent with the presentation in the final official statement, be other than full financial statements. * * * However, if audited financial statements are prepared, then when and if available, such audited financial statements will be subject to the undertaking and must be submitted to the repositories. Thus * * * the undertaking must include audited financial statements only in those cases where they otherwise are prepared." *See* 1994 Amendments Adopting Release, *supra* note 8, 59 FR at 59599.

and operating information of the type included in annual filings, a number of issuers and obligated persons do.[544]

The Commission acknowledges that issuers or obligated persons of demand obligations that assemble financial and operating data for the first time in response to their undertakings in a continuing disclosure agreement may incur incremental costs beyond those costs incurred by those issuers or obligated persons that already assemble this information.[545] Also, smaller issuers or obligated persons may have relatively greater burdens than larger issuers or obligated persons. However, the overall burdens for these demand securities issuers or obligated persons in preparing financial information are expected to be commensurate with those of issuers or obligated persons that already are preparing financial information as part of their continuing disclosure undertakings.[546] The Commission believes that the burdens that will be incurred in the aggregate by issuers or obligated persons, as a result of the amendments with respect to demand securities, may not be significant and, in any event, are justified by the benefits to investors of enhanced disclosure.[547]

As indicated above, another commenter stated its view that the proposed amendments would increase an issuer's need to retain bond counsel.[548] To the extent that bond counsel will need to be retained to revise the continuing disclosure agreement or add a notice provision to the issuer's trust indenture, the Commission has provided estimates relating to these costs in Section V.E.2, above.

F. Retention Period of Recordkeeping Requirements

The amendments do not contain any recordkeeping requirements. However, as a self-regulatory organization subject to Rule 17a-1 under the Exchange Act,[549] the MSRB is required to retain records of the collection of information for a period of not less than five years, the first two years in an easily accessible place. The amendments to the Rule contain no recordkeeping requirements for any other persons.

G. Collection of Information Is Mandatory

The collection of information is mandatory.

H. Responses to Collection of Information Will Not Be Kept Confidential

The collection of information will not be confidential and will be publicly available. The collection of information will be accessible through the MSRB's EMMA system and thus will be publicly available via the Internet.

VI. Costs and Benefits of Amendments to Rule 15c2–12

A. Background

Rule 15c2–12 is intended to enhance disclosure and deter fraud in the municipal securities market by establishing standards for obtaining, receiving and disseminating information about municipal securities by their underwriters.[550] The amendments to Rule 15c2–12 revise certain requirements regarding the information that a Participating Underwriter must reasonably determine that an issuer of municipal securities or an obligated person has undertaken, in a written agreement or contract for the benefit of holders of the issuer's municipal securities, to provide to the MSRB. Specifically, the amendments: (1) Narrow a previously-existing exemption from the Rule for demand securities, subject to the limited grandfather provision; (2) specify that the time period as to which the Commission's rules require a Participating Underwriter to reasonably determine that the issuer or obligated person has agreed to provide notice of specified events in a timely manner must not be in excess of ten business days after the event's occurrence; (3) eliminate materiality qualifications for certain events triggering a notice to the MSRB; and (4) add additional events to the list of events for which a notice is provided.

The Commission is deleting the exemption for demand securities set forth in paragraph (d)(1)(iii) of the Rule and adding new paragraph (d)(5) to the Rule, thereby making the continuing disclosure provisions of paragraphs (b)(5) and (c) of the Rule apply to a primary offering of demand securities,[551] subject to the limited grandfather provision described below. This change applies to any primary offering of demand securities (including a remarketing that is a primary offering) occurring on or after the compliance date of the final amendments.[552] The Commission's amendment differs from the amendment the Commission originally proposed in that it includes a "limited grandfather provision" for remarketings of currently outstanding demand securities. Specifically, the continuing disclosure provisions will not apply to remarketings of demand securities that are outstanding in the form of demand securities on the day preceding the compliance date of the final amendments and that continuously have remained outstanding in the form of demand securities. This amendment will increase the amount of information in the market relating to primary offerings of demand securities occurring on or after the compliance date and will provide investors with valuable information, thereby enabling them to make better informed investment decisions relating to whether they should buy, sell, or hold such securities and reduce the likelihood that investors will be subject to fraud facilitated by inadequate disclosure.

The amendment to the Rule regarding notice of specified events "in a timely manner not in excess of ten business days" after the event's occurrence will have the effect of establishing a definitive time frame for the submission of event notices. This provision will supplement the "in a timely manner" language that existed in the Rule prior to these amendments, which allowed for the possibility of event notices being submitted to the MSRB at inconsistent times for similar events, because each issuer could decide for itself what constitutes "in a timely manner."

[544] *See http://www.emma.msrb.org* for audited financial statements or other financial and operating information submitted to EMMA.

[545] The Commission, however, believes that the operations of an issuer or obligated person generally entail the preparation and maintenance of at least some financial and operating data.

[546] Further, issuers or obligated persons that assemble financial and operating data for the first time may face a greater burden than those issuers or obligated persons that already assemble this information. The amendments therefore initially may have a disparate impact on those issuers or obligated persons, including small entities, entering into a continuing disclosure agreement for the first time, as compared with those that already have outstanding continuing disclosure agreements.

[547] *See supra* Section V.D. As discussed therein, some commenters believed that the amendment could force some small entities to withdraw from the tax-exempt market because: (1) Disclosure of small issuers' or obligated persons' financial information would provide their large, national competitors with information about these small issuers or obligated persons, which they believed could result in a competitive disadvantage to them; and (2) small issuers or obligated persons would have to prepare costly audited financial statements. *See, e.g.,* CRRC Letter at 3–4 and WCRRC Letter at 1. As discussed above, the undertakings contemplated by the amendments (and Rule 15c2–12 in general) require annual financial information only to the extent provided in the final official statement, and audited financial statements only when and if available.

[548] *See* GFOA Letter at 5.

[549] 17 CFR 240.17a–1.

[550] *See* 1989 Adopting Release, 1994 Amendments Adopting Release, and 2008 Amendments Adopting Release, *supra* note 8.

[551] *See supra* note 38 and accompanying text.

[552] As noted in Section III.G., the compliance date for the amendments to the Rule is December 1, 2010.

Because the Rule did not contain a specific time frame for submission of event notices, investors could not be certain whether or not an event had occurred over an indefinite period in the past. This amendment still requires Participating Underwriters to reasonably determine that a continuing disclosure agreement provides for timely disclosure, but sets an outside time frame of ten business days after the event's occurrence for submission of an event notice. To the extent that issuers provide disclosure within ten business days, consistent with their continuing disclosure agreements, there likely will be more certainty for investors concerning when they will receive information concerning such events and, on the whole, more timely information to investors and the municipal securities market generally. More up-to-date information about municipal securities can serve to protect investors from fraud facilitated by inadequate disclosure and assist investors in determining whether the price of a municipal security is appropriate.

The amendment to remove the "materiality" condition for six specified events in paragraph (b)(5)(i)(C) of the Rule will have the effect of increasing the disclosure of such events to investors and the municipal securities market generally.[553] In addition, issuers and obligated persons no longer will have to separately analyze whether each occurrence of such events is material.

In addition, the amendment to modify paragraph (b)(5)(i)(C)(6) of the Rule, which relates to a Participating Underwriter's obligation to reasonably determine that the issuer or obligated person has undertaken in a continuing disclosure agreement to provide notice to the MSRB of certain tax events, will have the effect of enhancing the disclosure of events that are important to investors in determining whether the tax status of their municipal securities is at risk.

The amendment to modify paragraph (b)(5)(i)(C) of the Rule adds four new event items to be disclosed to investors.[554] The disclosure of these events will provide investors and the market with important information regarding municipal securities.

These amendments are intended to help improve the availability of timely and important information to investors and other market participants regarding municipal securities, including demand securities, so that investors can make more knowledgeable investment decisions, effectively manage and monitor their investments, and help reduce the likelihood of fraud facilitated by inadequate disclosure. In addition, the amendments are intended to help brokers, dealers, and municipal securities dealers to satisfy their obligation to have a reasonable basis on which to recommend a municipal security.

The Commission is sensitive to the costs and benefits that result from its rules. In the Proposing Release, the Commission identified certain costs and benefits of the amendments as proposed and requested comment on all aspects of its cost-benefit analysis, including the identification and assessment of any cost and benefits not discussed in the analysis. The Commission sought comment on the value of the benefits identified and the accuracy of its cost estimates. The Commission also encouraged commenters to provide relevant data. The Commission received some comments relating to the Commission's cost-benefit analysis. For the reasons discussed below, the Commission continues to believe that its estimates of the benefits and costs of the amendments to the Rule 15c2–12, as set forth in the Proposing Release, are appropriate.

B. Benefits

The Commission discusses below the benefits of the Rule for each amendment to the Rule.

1. Increased Disclosure Relating to Demand Securities

The Commission is modifying the Rule's exemption for primary offerings of demand securities (including any remarketing that is a primary offering) to narrow the Rule's prior exemption, which will result in the greater availability of information about these securities to investors, broker-dealers, municipal securities analysts, and the securities markets generally. In addition, under this amendment, a broker, dealer or municipal securities dealer that recommends the purchase or sale of demand securities will need to have procedures in place that provide reasonable assurance that it will receive prompt notice of event notices and failure to file notices.[555]

The greater availability of information regarding demand securities should increase the efficiency of markets in allocating capital at appropriate prices that reflect the creditworthiness of issuers and increase the efficiency of prices in the secondary market, benefiting issuers and investors alike, and should also benefit investors by allowing them to make more informed decisions whether to buy, sell or hold these securities. This greater availability of information is also likely to benefit brokers, dealers, or municipal securities dealers by reducing their costs in forming a reasonable basis for recommending demand securities. Specifically, these market participants will have more information about these securities to draw upon when they are deciding whether or not to recommend demand securities to investors. Greater availability of information also will benefit broker-dealers and municipal securities dealers by reducing their costs in establishing secondary market quotations for demand securities. In addition, greater transparency in the market due to the applicability of the continuing disclosure requirements to demand securities should reduce the likelihood that investors will be subject to fraud facilitated by inadequate disclosure, resulting in potentially reduced costs associated with such fraud.

By 2009, the outstanding amount of VRDOs was estimated to be approximately $400 billion, which is a significant percentage of the municipal securities market.[556] The Commission recognizes that some issuers of demand securities voluntarily provide continuing disclosure documents, notwithstanding the exemption for demand securities that existed prior to the amendments. Therefore, the above-referenced benefits will result primarily from the additional disclosure that is provided by issuers of demand securities that did not previously provide continuing disclosure documents.

A number of commenters were supportive of applying the continuing disclosure to demand securities.[557]

[553] These events are: (1) Principal and interest payment delinquencies; (2) unscheduled draws on debt service reserves reflecting financial difficulties; (3) unscheduled draws on credit enhancements reflecting financial difficulties; (4) substitution of credit or liquidity providers, or their failure to perform; (5) defeasances; and (6) rating changes.

[554] These events are: (1) Tender offers; (2) bankruptcy, insolvency, receivership or similar event of the obligated person; (3) consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to such actions, other than pursuant to its terms, if material; and (4) appointment of a successor or additional trustee, or the change of name of a trustee, if material.

[555] *See* 17 CFR 240.15c2–12(c).

[556] *See* Andrew Ackerman, "Concerns Raised on VRDOs," The Bond Buyer, June 9, 2009.

[557] *See* California Letter at 1, CHEFA Letter at 2, Connecticut Letter at 1, DAC Letter at 3, e-certus Letter I at 11, Fidelity Letter at 3, Folts Letter at 1,

Several commenters agreed that the amendments relating to demand securities are critical to assist investors in making informed investment decisions.[558] One commenter noted that the market for demand securities was among the sectors most affected by the recent market turmoil and, consequently, stated its view that there is "little justification for exempting VRDOs from continuing disclosure requirements."[559] Similarly, another commenter stated that, during the recent market downturn, investors in demand securities were well served by those issuers or obligated persons who voluntarily provided continuing disclosures about these securities, despite the Rule's exemption.[560] Another commenter believed that, because many VRDO issuers already are subject to requirements for continuing disclosure and the submission of material event notices for their fixed rate debt, the submission of information with respect to their VRDOs will not be a significant burden and will provide access to information about these securities to a much broader segment of the market.[561]

2. More Timely Disclosure

Establishing an outside timeframe of ten business days after the occurrence of the specified event to submit an event notice will help improve the timeliness of the dissemination of the information to investors and the market. The more timely availability of event notices will help improve the efficient pricing of municipal securities and will benefit investors by allowing them to make more informed investment decisions and to do so with greater certainty as to the timeliness of available information. The more timely availability of event notices also will contribute to the speedier dissemination of event notices to the market, which may, in turn, trigger important contractual rights that may have otherwise been delayed. In addition, the increased availability of *up-to-date information about municipal securities* is likely to improve the transparency in the market; should increase the efficiency of markets in allocating capital at appropriate prices that reflect the creditworthiness of issuers, which benefits issuers and investors alike; and should reduce the likelihood that investors will be subject to fraud facilitated by inadequate disclosure.

Four commenters supported the proposal to establish a ten business-day timeframe for the submission of event notices pursuant to a continuing disclosure agreement.[562] Two of these commenters indicated that the benefits of the proposed amendment include more timely and efficient access to comprehensive and accurate information about municipal securities, which is critical to investors.[563] These commenters also noted that the establishment of a definitive timeframe by which event notices are to be submitted better informs the market that an event has occurred, which assists in the efficient pricing of their municipal securities.[564] Two commenters also noted that the definitive time frame provides more timely information to pricing evaluation services and relieves investors of dependence on bondholders to disclose information to these services.[565]

3. Increased Disclosure Due to the Deletion of the Materiality Condition for Six Events

The Commission is adopting the proposal to delete the "if material" condition with respect to notice for six of the Rule's disclosure events.[566] The deletion of the materiality condition for these six events will benefit issuers by eliminating the costs presently incurred by an issuer in making such a determination. Further, because issuers will not need to make a materiality determination, this Rule revision is likely to help speed the disclosure of these six events to investors and other market participants and help improve the efficient pricing of municipal securities. Greater certainty that information about these events will be disclosed pursuant to continuing disclosure agreements also is likely to help improve the transparency of the municipal security's pricing. The greater availability of information regarding events that have an immediate effect on the valuation of the security will help reduce the likelihood of fraud facilitated by inadequate disclosure, and in return will help reduce costs associated with such fraud.

A number of commenters supported the deletion of the "if material" qualification for these six events and believed that this change would be beneficial.[567] For example, one commenter believed that notice of these events should always be provided because their occurrence is always important to investors and other market participants. The commenter also noted that, in all probability, the amendment will not result in many changes to current practice.[568] Two other commenters also agreed that these events are important to investors, and generally should be known immediately to issuers.[569] Another two commenters concurred that many disclosure events are of such high consequence and relevance to investors in informing their investment decisions that they should be disclosed as a matter of course.[570] These commenters also supported the unqualified disclosure of two events, *i.e.,* bond calls and non-payment related defaults, for which a materiality condition is retained.[571]

4. Increased Disclosure of Tax-Related Events

The amendments also require a Participating Underwriter to reasonably determine that the issuer or obligated person has undertaken in a continuing disclosure agreement to provide notice to the MSRB of adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701–TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security. The improved disclosure of the tax status of municipal securities will benefit investors by helping to ensure that the information about the tax status of the municipal security is reflected in the price of the security in a timely manner.

Two commenters agreed that the amendment will benefit investors and the market. One commenter stated that the tax status of tax-exempt debt is of critical concern to many municipal investors, particularly municipal mutual funds, and that an adverse tax opinion likely will substantially decrease the market value and liquidity of a security.[572] Thus, the subsequent sale of the affected security could have a significant financial impact on

ICI Letter at 2, NFMA Letter at 1, RBDA Letter at 2, and SIFMA Letter at 2.

[558] *See, e.g.,* ICI Letter at 5, SIFMA Letter at 2, and RBDA Letter at 2.

[559] *See* RBDA Letter at 2.

[560] *See* CHEFA Letter at 2.

[561] *See* NMFA Letter at 1.

[562] *See* NFMA Letter at 1–2, SIFMA Letter at 3, ICI Letter at 6–7, and Fidelity Letter at 3–4.

[563] *See* ICI Letter at 1 and Fidelity at 2.

[564] *Id.*

[565] *Id.*

[566] *See supra* note 553 describing the events.

[567] *See* California Letter at 2, San Diego Letter at 2, SIFMA Letter at 3, ICI Letter at 7–8, and Fidelity Letter at 3.

[568] *See* SIFMA Letter at 3.

[569] *See* California Letter at 2 and San Diego Letter at 2.

[570] *See* ICI Letter at 7–8 and Fidelity Letter at 3.

[571] *Id.*

[572] *See* NFMA Letter at 2.

investors.[573] A second commenter believed that investors have a strong interest in being informed of actions taken by the IRS that present a material risk to the tax-exempt status of their holdings.[574]

5. Increased Disclosure of Additional Events

The amendments also add four new event items to Rule 15c2–12. The amendments add the disclosure of tender offers to the provision of the Rule that currently applies only to bond calls.[575] Information regarding a tender offer, which necessitates that an investor decide whether or not to tender within the prescribed time period, will improve the ability of issuers and other obligated persons to communicate tender offers to bondholders effectively and of bondholders to respond within the tender offer period. In addition, the amendment should help reduce the possibility of investor confusion regarding whether a certain municipal security is the subject of a tender offer.

The amendments also add the disclosure of bankruptcy, insolvency, receivership or similar event of the obligated person.[576] While these events are uncommon in the municipal market, their improved disclosure can have a significant effect on the price of the municipal securities.

In addition, the amendments add the disclosure of the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.[577] As with bankruptcy, insolvency, receivership or similar event of the obligated person, the improved disclosure of the consummation of a material merger, consolidation, or acquisition or the sale of all or substantially all of the assets of the obligated person can have a significant effect on the price of the municipal securities. This amendment is likely to help improve investors' and other market participants' ability to obtain knowledge of the identity of the entity that will have responsibility for municipal security repayment obligations after the transaction is consummated. In addition, investors and other market participants will have the opportunity to review the creditworthiness and other aspects of the acquiring entity that support repayment of the security following the transaction.

The addition of these new disclosure events to the Rule will help improve the informativeness of the municipal security prices with respect to these events, which will benefit investors, issuers, broker-dealers, municipal securities analysts and other market participants. In addition, greater transparency should reduce the likelihood of fraud facilitated by inadequate disclosure, and in return will help reduce costs associated with such fraud.

Under the amendments, the appointment of a successor or additional trustee or the change of name of a trustee, if material, is added to the list of events contained in the Rule. As discussed earlier, the trustee of a municipal security performs important functions for investors in that security, including providing information to bondholders.[578] This amendment is likely to benefit investors by helping reduce the costs associated with determining the identity of and contact information for the most current trustee and that of any new trustee.

Several commenters supported the addition of the new event items to the Rule.[579] For example, two commenters believed that disclosure of trustee-related events will provide meaningful insights and information regarding a particular bond.[580] One of these commenters particularly noted that it was critical that investors are informed of trustee name changes since bondholders' rights are generally exercised through the actions of the trustee.[581] Another commenter noted that disclosure of trustee-related events will likely always be of importance to both retail and institutional investors.[582]

B. Costs

The Commission discusses below the costs of the amendments to the Rule for various market participants.

1. Broker-Dealers

Broker-dealers are not likely to incur significant additional recurring external or internal costs in connection with the implementation of the Rule, as amended, because the amendments will not significantly alter the Rule's existing requirements for broker-dealers. As discussed above, broker-dealers acting as Participating Underwriters have an existing obligation to reasonably determine that issuers or obligated persons have undertaken in their continuing disclosure agreements to provide notice to the MSRB of specified events. The Commission does not expect that the addition of several new disclosure events to the Rule and a provision establishing the time frame for submission of such notices are likely to significantly alter broker-dealers' obligations under the Rule and thus their costs. As a practical matter, broker-dealers' obligations affected by the amendments involve verifying that the continuing disclosure agreement contains an undertaking by the issuer or obligated person to provide notice to the MSRB of the events that are listed in the Rule, including the new events, within ten business days after the event's occurrence. Moreover, because continuing disclosure documents generally are form documents, a broker-dealer simply will need to make sure that the continuing disclosure agreement reflects the amendments to the Rule.

The amendments also modify the Rule's exemption for demand securities. This change applies to any initial offering and remarketing that is a primary offering of demand securities occurring on or after the compliance date of the amendments and does not apply to remarketings of demand securities that are outstanding in the form of demand securities on the day preceding the compliance date and that continuously have remained outstanding in the form of demand securities (*i.e.,* the limited grandfather provision).

Although the amendments relating to demand securities are not likely to result in external recurring costs for broker-dealers, broker-dealers may incur an increase in internal recurring costs because the proposals will increase the number of municipal securities offerings subject to the Rule's disclosure requirements. As noted above, the Commission estimates that the modification of the exemption for demand securities will increase the number of issuers with municipal securities offerings subject to the Rule by 20%.[583] The Commission estimates

[573] *Id.*

[574] *See* SIFMA Letter at 3.

[575] *See supra* Section III.E.1.

[576] *See supra* Section III.E.2.

[577] *See supra* Section III.E.3.

[578] *See supra* Section III.E.4.

[579] *See* ICI Letter at 8, Fidelity Letter at 2–3, Connecticut Letter at 2, NFMA Letter at 2, and SIFMA Letter at 4.

[580] *See* ICI Letter at 8 and Fidelity Letter at 2.

[581] *See* Fidelity Letter at 3.

[582] *See* NFMA Letter at 2.

[583] *See supra* Section V.D.2.a. As noted above, adoption of the limited grandfather provision will not materially affect the Commission's estimate of the number of demand securities issuers that will be affected by the amendments. Therefore, the Commission is retaining its estimate that there will

that the annual information collection burden for each broker-dealer under this amendment will be 1.20 hours (1 hour and 12 minutes).[584] Accordingly, the Commission estimates that it will cost each broker-dealer $349 annually to comply with the Rule, which represents a cost increase of $79 annually over each broker-dealer's current annual cost.[585]

In addition, the Commission estimates that a broker-dealer may have a one-time internal cost associated with having an in-house compliance attorney prepare and issue a memorandum advising the broker-dealer's employees about the final revisions to Rule 15c2–12. The Commission estimates that it will take internal counsel approximately 30 minutes to prepare this memorandum,[586] for a cost of approximately $146.[587] The Commission further believes that the ongoing obligations of broker-dealers under the Rule will be handled internally because compliance with these obligations is consistent with the type of work that a broker-dealer typically handles in-house.

The Commission included these specific cost estimates in the Proposing Release and received no comments on them.[588]

2. Issuers

a. Current Issuers

Some current issuers are likely to be subject to some internal and external costs associated with the amendments. The costs for current issuers will result from the amendments relating to the new and modified event notice provisions and the elimination of the materiality determination for certain of the Rule's events.[589] Current issuers will incur internal costs associated with the preparation of the additional event notices that may result from these changes to the Rule. Current issuers also will incur costs if they issue demand obligations, as discussed in the next sub-section. As noted above, the revisions to the Rule regarding the ten business day time frame for submission of event notices and the elimination of the materiality condition for many of the Rule's disclosure events will not change the substance of an event notice, the method for filing an event notice, or the location to which an event notice will be submitted. Consequently, issuers may not incur costs associated with the new ten business day time frame for submission of event notices. As discussed above, some issuers, including small issuers, may need to submit event notices more promptly than they do now and may need to monitor events not within their direct control, such as a rating change, that will prompt submission of an event notice.

The Commission also believes that current issuers may incur some internal labor costs associated with the preparation and submission of additional event notices. As discussed above,[590] the Commission estimates that a current issuer will submit a maximum of one additional event notice annually.[591] Thus, the Commission estimates that the maximum annual labor cost to prepare and submit the additional event notice is approximately $44 per current issuer.[592]

For current issuers that convert their annual filings, event notices and/or failure to file notices into the MSRB's prescribed electronic format through a third party, there will be costs associated with any additional submissions of event notices and failure to file notices. As noted above, the Commission estimates that each current issuer will submit one additional event notice annually as a result of the amendments.[593] If a current issuer uses a third-party vendor to scan the additional event notice into an electronic format for submission to the MSRB, the Commission estimates that such issuer will have an additional annual cost of $8 per notice.[594] For current issuers that convert their annual filings, event notices and/or failure to file notices into the MSRB's prescribed electronic format internally there will be no additional external costs associated with such conversion. Further, some current issuers may incur a one-time cost of $100 associated with a revision to the template for continuing disclosure agreements.[595]

The Commission included these specific cost estimates in the Proposing Release and received no comments on them.[596]

---

be a 20% increase in the number of issuers affected by the amended Rule.

[584] *Id.*

[585] 1.20 hours (estimated annual information collection burden for each broker-dealer) × $291 (hourly cost for a broker-dealer's internal compliance attorney) = $349. The hourly rate for the compliance attorney is from SIFMA's Management & Professional Earnings in the Securities Industry 2009, modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. Cost increase for Broker-Dealers under the amendments: $349 (annual cost under amendments) − $270 (previous annual cost) = $79. This estimated cost for broker-dealers also accounts for their review of continuing disclosure agreements in connection with remarketings of demand securities that are primary offerings. The Commission has slightly revised this cost estimate upward from the estimate contained in the Proposing Release to reflect updated hourly rate information from SIFMA for 2009.

[586] *See supra* Section V.D.1.c.

[587] .5 hours (estimated annual information collection burden for each broker-dealer) × $291 (hourly cost for a broker-dealer's internal compliance attorney) = $146. The hourly rate for the compliance attorney is from SIFMA's Management & Professional Earnings in the Securities Industry 2009, modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. The Commission has slightly revised this cost estimate upward from the estimate contained in the Proposing Release to reflect updated hourly rate information from SIFMA for 2009.

[588] These cost estimates correspond with the burden estimates set forth in Section V.D.1., above. Therefore, to the extent the Commission received comments that generally relate to broker-dealers' costs under the Rule, they are discussed above, and the responses to those comments are incorporated herein by reference. The Commission does not believe that these comments affect these cost estimates.

[589] The amendments include a materiality condition for two of the new disclosure events. A materiality determination may result in costs to investors, market professionals and others to the extent that the issuer or obligated person determines that the event is not material and thus does not submit a notice to the MSRB. If investors, market professionals and others would consider the information important and have access to it, they may reach a different investment decision.

[590] *See supra* Section V.E.2.a.

[591] This estimate includes additional event notices that may be submitted as a result of the modification of the materiality condition in paragraph (b)(5)(i)(C) of the Rule.

[592] 1 (maximum estimated number of additional material event notices submitted per year per issuer) × $59 (hourly wage for a compliance clerk) × .75 hours (45 minutes) (estimated time for compliance clerk to prepare and submit a material event notice) = $44.25 (rounded to $44). The $59 per hour estimate for a compliance clerk is from SIFMA's Office Salaries in the Securities Industry 2009, modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead. The Commission has slightly revised this cost estimate downward from the estimate contained in the Proposing Release to reflect updated hourly rate information from SIFMA for 2009. To provide an estimate of total costs for issuers that will not be under-inclusive, the Commission elected to use the higher end of the estimate of annual submissions of continuing disclosure documents.

[593] *See supra* Section V.E.2.a. These cost estimates correspond with the burden estimates set forth in Section V.D.2., above. Therefore, to the extent the Commission received comments that generally relate to issuers' costs under the Rule, they are discussed above, and the responses to those comments are incorporated herein by reference. The Commission does not believe that these comments affect these cost estimates.

[594] *Id.*

[595] *Id.* The Commission estimates that there is an approximate cost of $100 associated with revising the issuer's continuing disclosure agreement by the current issuer's outside counsel to conform the agreement to the amendments. Thus, the total cost for revising continuing disclosure agreements for all current issuers by the current issuers' outside counsel will be approximately $1,000,000.

[596] The Commission has slightly revised these cost estimates upward from the estimates contained

Continued

b. Demand Securities Issuers

As discussed above, the Commission estimates that the modification of the Rule's exemption for demand securities will increase the number of issuers affected by the Rule by approximately 20% or 2,000 issuers.[597] These demand securities issuers are likely to have some costs associated with the preparation and submission of continuing disclosure documents. Also as discussed in the PRA section above, the Commission estimates that each demand securities issuer may have a one-time external cost of $600 associated with preparing into a continuing disclosure agreement.[598]

Other external costs for demand securities issuers are likely to be the costs associated with converting continuing disclosure documents into an electronic format to submit to the MSRB. As noted in the PRA section above, the Commission believes that many issuers of municipal securities currently have the computer equipment and software necessary to convert paper copies of continuing disclosure documents to electronic copies and to electronically transmit the documents to the MSRB.[599] Demand securities issuers that presently do not have the ability to prepare their annual filings, event notices and/or failure to file notices in an electronic format may incur some costs to obtain electronic copies of such documents if they are prepared by a third party (*e.g.,* accountant or attorney) or, alternatively, to have a paper copy converted into an electronic format. These costs will vary depending on how the demand securities issuer elects to convert its continuing disclosure documents into an electronic format. An issuer may elect to have a third-party vendor transfer its paper continuing disclosure documents into the appropriate electronic format. An issuer also may decide to undertake the work internally, and its costs will vary depending on the issuer's current technological resources. An issuer also may use the services of a designated agent to submit its continuing disclosure documents to the MSRB. In the Proposing Release, the Commission noted that approximately 30% of municipal issuers rely on the services of a designated agent to submit continuing disclosure documents for them.[600] Generally, when issuers utilize the services of a designated agent, they enter into a contract with the agent for a package of services, including the submission of continuing disclosure documents, for a single fee. The Commission estimates that the annual fees for designated agents range from $100 to $500 per issuer, for a total maximum annual cost of $300,000 for all demand securities issuers.[601]

The Commission estimates that some demand securities issuers may have to convert continuing disclosure documents into an electronic format to submit to the MSRB. The costs associated with this conversion may include: (i) Approximately $8 per notice to use a third-party vendor to scan a event notice or failure to file notice, and approximately $64 to use a third-party vendor to scan an average-sized annual financial statement; (ii) approximately $750 to $4,300 to acquire technological resources to convert continuing disclosure documents into an electronic format; (iii) approximately $50 to $300 solely to upgrade or acquire the software to submit documents in an electronic format; and (iv) approximately $50 per month to establish Internet access.[602]

Based on the PRA section above, the Commission estimates that Category 1 demand securities issuers will incur a total maximum external cost of $776 per year.[603] The Commission estimates that Category 2 demand securities issuers will incur a total maximum external cost of $4,900 for the first year and $600 per year thereafter.[604] As noted above, the Commission estimates that any demand securities issuer that incurs costs associated with converting continuing disclosure documents into the MSRB's prescribed electronic format will choose the more expensive Category 2 option.[605] The Commission estimates that approximately 400 demand securities issuers will incur costs associated with acquiring technological resources to convert continuing disclosure documents into an electronic format.[606] In addition, the Commission estimates that the maximum annual costs for those demand securities issuers that need to acquire technological resources to submit documents to the MSRB will be approximately $1,960,000 for the first year after the adoption of the amendments and approximately $240,000 for each year thereafter.[607]

The Commission included these specific cost estimates in the Proposing Release and received no comments on them.[608]

c. Current Issuers and Demand Securities Issuers

Lastly, as discussed in the PRA section above, some current issuers and some demand securities issuers are likely to incur external costs associated with the amendment to revise the timing for submitting event notices from "in a timely manner" to "in a timely manner not to exceed ten business days after the occurrence of the event."[609] In particular, some current issuers and some demand securities issuers may incur external costs associated with monitoring the appointment of a new trustee or a change in the trustee's name. One way an issuer may monitor such a change would be for its counsel to add a notice provision to the issuer's trust indenture that requires the trustee to provide the issuer with notice of the appointment of a new trustee or any change in the trustee's name. The Commission estimates that the approximate cost of adding this notice provision to an issuer's trust indenture will be approximately $100 per issuer,[610] for a one-time annual cost of $1,200,000[611] for all issuers. The Commission included these specific cost estimates in the Proposing Release and received no comments on them.[612]

in the Proposing Release to reflect updated hourly rate information from SIFMA for 2009.

[597] *See supra* Section V.C.

[598] *See supra* Section V.E.2.b. The Commission estimated that there is an approximate cost of $600 associated with drafting a continuing disclosure agreement by the demand securities issuer's outside counsel. Thus, the total cost for preparing continuing disclosure documents for all demand securities issuers by the demand securities issuers' outside counsel will be approximately $1,200,000.

[599] *Id.*

[600] *See* Proposing Release, *supra* note 2, 74 FR at 36862.

[601] *See supra* Section V.E.2.b.

[602] *Id.*

[603] A Category 1 demand securities issuer is one that does not have Internet access and needs to have a third party convert continuing disclosure documents into an electronic format. *See supra* Section V.E.2.b.

[604] A Category 2 demand securities issuer is one that does not have Internet access and elects to acquire the technological resources to convert continuing disclosure documents into an electronic internally. *See supra* Section V.E.2.b.

[605] *Id.*

[606] 2,000 demand securities issuers × 20% = 400 demand securities issuers.

[607] *See supra* Section V.E.2.b.

[608] These cost estimates correspond with the burden estimates set forth in *supra* Section V.D.2. Therefore, to the extent the Commission received comments that generally relate to issuers' costs under the Rule, they are discussed above, and the responses to those comments are incorporated herein by reference. The Commission does not believe that these comments affect these cost estimates.

[609] *See supra* Section V.E.2.c.

[610] *Id.*

[611] *Id.*

[612] *Id.* These cost estimates correspond with the burden estimates set forth in *supra* Section V.D.2. Therefore, to the extent the Commission received comments that generally relate to issuers' costs under the Rule, they are discussed above, and the responses to those comments are incorporated herein by reference. The Commission does not believe that these comments affect these cost estimates.

In addition to the burdens and costs discussed in the PRA section above, the Commission received several comments relating to other costs and burdens associated with the proposed amendments. Several commenters expressed general concerns about the burdens and costs associated with the establishment of a maximum ten business day time frame for the submission of event notices. Some of these concerns included the impracticability of meeting the time frame because of limited staff and resources, especially for smaller issuers,[613] and the increased burdens and costs in connection with the additional monitoring and compliance necessary to submit notices within ten business days.[614] Other commenters expressed concerns relating to the submission of event notices for information that the issuer does not control (*e.g.,* rating changes, changes to the trustee, and changes to the tax status of bonds as a result of an IRS audit) within the ten business day time frame.[615] In particular, many of these commenters expressed concerns regarding the costs associated with the reporting of rating changes within the ten business day time frame. These commenters noted that rating changes are not within the issuer's control and that rating organizations do not directly notify issuers of rating changes.[616] As a result, these commenters believed that it would be difficult for most issuers to meet the proposed ten business day time frame without incurring substantial costs associated with monitoring for rating changes,[617] such as devoting more staff to the task of monitoring for rating changes and/or subscribing to a service that will provide issuers notice of rating changes.

The foregoing comments chiefly relate to concerns regarding submission of notices for events outside of the issuer's control. In this regard, the Rule currently contains a disclosure event relating to rating changes and so the concerns raised by these commenters are inherent in the Rule as it existed prior to the amendments, except that the amendments provide for event notices to be submitted within ten business days of the event's occurrence. In addition, for some event items, including rating changes, a materiality condition no longer will be a part of the Rule. Ratings for municipal issuers are available on the Internet Web sites of the rating agencies and thus issuers should be able to ascertain readily whether a rating change has occurred. In addition, issuers may be able to subscribe to a service that provides them with prompt rating updates for their securities. The Commission notes, however, that some issuers may have to monitor for these events more frequently than in the past. However, as discussed above, the Commission believes that its estimate of the time that issuers will spend, on average, to prepare and submit notices of events, including rating changes, is appropriate. With respect to the concern that some issuers will have to pay a vendor to provide them with notice of rating changes, the Commission reiterates that information regarding rating changes is available for free on the Internet Web sites of the rating agencies.

Several commenters also expressed general concerns about the costs of the amendment that eliminates the materiality condition from certain events. For example, one commenter believed that removal of the "if material" condition from some events creates a risk of dividing events into two disclosure categories that could cause confusion.[618] Two commenters believed that there are circumstances when an event, such as delinquent payments, are beyond an issuer's control and do not represent a financial failure on the issuer's part.[619] According to these commenters, in the past they would have treated such events as immaterial.[620] These commenters believed that if issuers have to file notice in such circumstances, it could create an unwarranted implication that the issuer has suffered financial adversity.[621] Some commenters believed that the materiality qualification should be retained or included for certain specified events to prevent a large volume of notices that are irrelevant to investors' decision to buy, sell or hold municipal securities.[622]

In addition, several commenters expressed concerns about the costs associated with the revised disclosure item regarding adverse tax events. For example, one commenter stated that the Rule should not be expanded to include notice of routine reviews and random audits because they would unnecessarily alarm investors.[623] Some commenters believed that disclosure of potential taxability determinations could limit issuers' options to negotiate settlements with the IRS in ways that do not present material risk to bondholders[624] and could affect market perceptions of municipal issuers' securities, which would impose increased interest rates and other costs to issuers, and would limit future market access.[625] Some of these commenters believed that the proposal would lead to a flood of information about preliminary taxability actions[626] that could confuse and mislead investors[627] or desensitize investors regarding adverse tax event determinations.[628] One of these commenters suggested that event notices regarding adverse tax events should include a materiality condition.[629]

Furthermore, as discussed in Section III.A. above, several commenters expressed general concerns about the costs of the proposal relating to the modification of the exemption for demand securities. For example, one commenter noted that the elimination of the Rule's exemption for demand securities from the Rule would impose such insurmountable administrative costs that small issuers and non-profit organizations would refuse to enter continuing disclosure agreements.[630] Similarly, some commenters also believed that the elimination of the exemption for demand securities would hinder or prevent many issuers, particularly small issuers and non-profits, from using LOC-backed demand securities to access the tax-exempt markets.[631] They opined that local communities would be hurt as a result of the proposed amendment to delete the exemption for demand securities because small issuers and obligated persons that rely on the exemption will have to pass along to users of their service any increased costs that they

[613] *See* CRRC Letter, WCRRC Letter, Portland Letter at 2, NAHEFFA Letter at 2–4, Metro Water Letter at 1–2, CHEFA Letter at 2, and NABL Letter at 5–6.

[614] *See* Halgren Letter, Los Angeles Letter at 1, CRRC Letter, WCRRC Letter, NAHEFFA Letter at 2–4, CHEFA Letter at 2, and NABL Letter at 5–6.

[615] *See* Halgren Letter, Los Angeles Letter at 1–2, NAHEFFA Letter at 2–4, San Diego Letter at 1–2, California Letter at 1–2, NABL Letter at 8, and GFOA Letter at 3–4.

[616] *Id.*

[617] *See, e.g.,* Halgren Letter at 1.

[618] *See* Connecticut Letter at 2.

[619] *See* California Letter at 2 and San Diego Letter at 2.

[620] *Id.*

[621] *Id.*

[622] *See* NABL Letter at 8 and Kutak Letter at 4.

[623] *See* Connecticut Letter at 2.

[624] *See* Metro Letter at 2, Kutak Letter at 5, and NABL Letter 7.

[625] *See* Metro Letter at 2 and Kutak Letter at 5.

[626] *See* Kutak Letter at 6.

[627] *See* Kutak Letter at 6, NABL Letter at 7, and GFOA Letter at 4.

[628] *See* Kutak Letter at 6.

[629] *See* NABL Letter at 7.

[630] *See* SIFMA Letter at 2–3.

[631] *See* CRRC Letter at 3–5, NABL Letter A–9—A–12, and WCRRC Letter at 1.

may incur.[632] One of the commenters remarked that many non-governmental conduit borrowers[633] have no previous undertakings to provide continuing disclosure information and, for such persons, complying with paragraph (b)(5) of the Rule would not merely be an extension of pre-existing obligations but a new and significant burden.[634]

Moreover, two commenters stated that many obligated persons of LOC-backed demand securities do not prepare annual filings, such as audited financial statements, in the ordinary course of their business.[635] As discussed in the PRA section above, one of these commenters believed that they would incur $30,000–$40,000 per year to prepare audited or consolidated financial statements.[636] The commenters therefore believed that eliminating the exemption for demand securities would impose administrative costs and burdens that could potentially force some conduit borrowers of LOC-backed demand securities to withdraw from the tax-exempt bond market.[637]

As discussed in Section III.A. above, the Commission has considered the comments concerning the costs and burden on demand securities issuers and obligated persons. In response to commenters' concerns, the Commission has revised the proposal relating to demand securities to include a limited grandfather provision. The Commission notes that a number of demand securities issuers and obligated persons, including some small issuers and non-profit organizations, do voluntarily enter into continuing disclosure agreements.[638] Further, many demand securities issuers and obligated persons are likely also to have outstanding fixed rate securities[639] that are subject to continuing disclosure agreements. Because any such existing continuing disclosure agreement would obligate an issuer or an obligated person to provide annual filings, event notices, or failure to file notices with respect to these fixed rate securities, providing disclosures with respect to demand securities should not be a significant additional burden for issuers and obligated persons that already have outstanding fixed rate securities.

Regarding the concern that any new disclosure burdens may induce some obligated persons to withdraw from the tax-exempt municipal market because they do not prepare annual filings in the ordinary course of their business, the Commission notes that, for purposes of the Rule, annual filings are required only to the extent provided in the final official statements.[640] Further, pursuant to paragraph (b)(5)(i)(B) of the Rule, audited financial statements need to be submitted, pursuant to the issuer's and obligated person's undertaking in a continuing disclosure agreement, only "when and if available."[641] This limitation, which is consistent with the Commission's position in the 1994 Amendments Adopting Release, should mitigate some concerns of those obligated persons that do not prepare audited financial statements in the ordinary course of their business.[642] Further, although not all issuers or obligated persons, in the ordinary course of their business, prepare audited financial statements or other financial and operating information of the type included in annual filings, a number of issuers and obligated persons do.[643]

The Commission acknowledges that issuers or obligated persons of demand obligations that assemble financial and operating data for the first time in response to their undertakings in a continuing disclosure agreement may incur incremental costs beyond those costs incurred by those issuers or obligated persons that already assemble this information.[644] Also, smaller issuers or obligated persons may have relatively greater burdens than larger issuers or obligated persons. However, the overall burdens for these demand securities issuers or obligated persons in preparing financial information are expected to be commensurate with those of issuers or obligated persons that already are preparing financial information as part of their continuing disclosure undertakings.[645] The Commission believes that the burdens that will be incurred in the aggregate by issuers or obligated persons, as a result of the amendments with respect to demand securities, may not be significant and, in any event, are justified by the benefits to investors of enhanced disclosure.[646]

3. *MSRB*

Since the number of continuing disclosure documents submitted will increase as a result of the amendments, the MSRB may incur costs associated with the amendments. The Commission estimates that these costs for the MSRB may include: (i) The cost to hire additional clerical personnel at an estimated annual cost of $119,770 to process the additional submissions associated with the amendments;[647]

[632] *See* CRRC Letter at 3–5 and WCRRC Letter at 1.

[633] *See* NABL Letter at A–2, n. 1.

[634] *Id.*

[635] *See* CRRC Letter at 5 and NABL Letter at A–2.

[636] *See* CRRC Letter at 5. *See also supra* note 539 and accompanying text.

[637] *See* CRRC Letter at 5 and NABL Letter at A–10. Two commenters also expressed concern that, in complying with the revised Rule, smaller and not-for-profit obligated persons could encounter similar administrative costs and burdens. *See* NABL Letter at A–2 (noting that many small businesses and non-profit organizations utilize LOC-backed demand securities in accessing the tax-exempt debt markets) and SIFMA Letter at 2–3.

[638] *Id.*

[639] *See* Proposing Release, *supra* note 2, 74 FR at 36837.

[640] *See supra* Section III.A. for additional discussion concerning the provision of annual filings and audited financial statements.

[641] 17 CFR 240.15c2–12(b)(5)(i)(B). *See also supra* Section III.A.

[642] As discussed in the 1994 Amendments Adopting Release, the 1994 Amendments "[do] not adopt the proposal to mandate audited financial statements on an annual basis with respect to each issuer and significant obligor. Instead, the amendments require annual financial information, which may be unaudited, and may, where appropriate and consistent with the presentation in the final official statement, be other than full financial statements. * * * However, if audited financial statements are prepared, then when and if available, such audited financial statements will be subject to the undertaking and must be submitted to the repositories. Thus * * * the undertaking must include audited financial statements only in those cases where they otherwise are prepared." *See* 1994 Amendments Adopting Release, *supra* note 8, 59 FR at 59599.

[643] *See http://www.emma.msrb.org* for audited financial statements or other financial and operating information submitted to EMMA.

[644] The Commission, however, believes that the operations of an issuer or obligated person generally entail the preparation and maintenance of at least some financial and operating data.

[645] Further, issuers or obligated persons that assemble financial and operating data for the first time may face a greater burden than those issuers or obligated persons that already assemble this information. The amendments therefore initially may have a disparate impact on those issuers or obligated persons, including small entities, entering into a continuing disclosure agreement for the first time, as compared with those that already have outstanding continuing disclosure agreements.

[646] *See supra* Section V.D. As discussed therein, some commenters believed that the amendment could force some small entities to withdraw from the tax-exempt market because: (1) Disclosure of small issuers' or obligated persons' financial information would provide their large, national competitors with information about these small issuers or obligated persons, which they believed could result in a competitive disadvantage to them; and (2) small issuers or obligated persons would have to prepare costly audited financial statements. *See, e.g.,* CRRC Letter at 3–4 and WCRRC Letter at 1. As discussed above, the undertakings contemplated by the amendments (and Rule 15c2–12 in general) require annual financial information only to the extent provided in the final official statement, and audited financial statements only when and if available.

[647] 2,030 hours (estimated additional annual number of hours worked by a compliance clerk) × $59 (hourly wage for a compliance clerk) = $119,770 (annual salary for compliance clerk). The $59 per hour estimate for a compliance clerk is from SIFMA's Office Salaries in the Securities Industry 2009, modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead. The estimate for additional annual hours worked by a compliance clerk is the

and (ii) the cost to update its EMMA system to accommodate indexing information in connection with the changes to the Rule's disclosure events. Based on information provided to the Commission staff by the MSRB staff in a telephone conversation on November 7, 2008, the MSRB staff estimated that the MSRB's costs to update its EMMA system to accommodate the final changes to the disclosure events would be approximately $10,000.[648] Therefore, in connection with the amendments, the MSRB would incur a one-time cost of approximately $10,000 as well as a recurring annual cost of approximately $119,770.[649]

The Commission received a comment letter from the MSRB relating to its costs associated with the proposed amendments.[650] The MSRB stated that, in determining whether to approve or modify the proposed amendments, the Commission should note that changes to the manner of providing disclosures under the Rule or to the parties expected to make submissions, *i.e.,* if third parties were to submit event notices rather than issuers or obligated persons, may have an impact on the design and timing of necessary EMMA system changes to implement the revised continuing disclosure provisions.[651] The MSRB also stated that the Commission should verify that any such revisions can reasonably be implemented; that the revisions would improve the efficiency, timeliness and public access process; and that no direct charges would be imposed on the MSRB for revisions such as third-party submissions.[652] Further, the MSRB noted that certain revisions would likely result in a longer planning, development and implementation time frame and could result in greater development and operational costs.[653]

C. Limited Grandfather Provision Relating to Modification of Exemption for Demand Securities

As discussed in Section III.A. above, the Commission is revising the amendment relating to demand securities from that proposed in the Proposing Release to include a limited grandfather provision, so that paragraphs (b)(5) and (c) will not apply to demand securities outstanding as of November 30, 2010. The Commission believes that the limited grandfather provision strikes an appropriate balance between the need to improve disclosure available to investors and the recognition that the practical effects of applying paragraphs (b)(5) and (c) of the Rule to outstanding issues of demand securities could unduly burden issuers and obligated persons and thus may adversely impact the market. As the Commission noted in Section III.A. above, there would be benefits to making outstanding demand obligations subject to paragraphs (b)(5) and (c) of the Rule because greater information about these securities would be available to investors on a timely basis. However, demand securities, such as VRDOs, generally are long-term securities. If an outstanding demand security became subject to paragraph (b)(5)(i)(C) of the Rule, a Participating Underwriter, in the first remarketing of the VRDO following the compliance date of the amendments, would have to reasonably determine that an issuer or an obligated person has executed a continuing disclosure agreement to provide annual financial information for each obligated person for whom financial information or operating data is presented in the final official statement.

For an outstanding issue of demand securities, however, referring back to information included in the final official statement may be problematic, if not impossible, because the official statement may be years old. Thus, its information would be out-of date, thereby increasing the underwriter's cost of complying with Rule 15c2–12 substantially. In addition, the official statement may be difficult to obtain if the remarketing agent was not the underwriter of the original offering. Further, absent the limited grandfathering provision, the issuer or the obligated person of such security, pursuant to its continuing disclosure undertaking, would have needed to update annual financial information that may no longer be prepared or available, which may also be a potentially costly undertaking. In addition, application of the amendments to remarketings of demand securities occurring on or after the compliance date would necessitate a large number of issuers or obligated persons of demand securities entering into continuing disclosure agreements in a very short time period, which could delay remarketings and temporarily disrupt the markets for demand securities. The Commission believes that the benefits of applying paragraphs (b)(5) and (c) of the Rule to demand securities outstanding prior to the compliance date would not justify the high cost of such change to both Participating Underwriters and issuers or obligated persons of such securities and therefore is adopting the limited grandfather provision. The Commission further notes that some issuers or obligated persons of demand securities also have issued fixed rate municipal securities and, in that case, continuing disclosures about those issuers or obligated persons should be available to investors.

VII. Consideration of Burden and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act[654] requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act[655] requires the Commission, when adopting rules under the Exchange Act, to consider the impact such rules would have on competition. Section 23(a)(2) of the Exchange Act also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The municipal securities market is comprised of approximately 51,000 issuers that are states and local governments or their agencies and instrumentalities. As discussed in more detail above, there are approximately $400 billion of new issuances of municipal securities annually and approximately $2.8 trillion of municipal securities are outstanding.[656] There are two primary types of municipal securities: general obligation bonds and revenue bonds. General obligation bonds are backed by the full faith and credit of the issuer and are also usually secured by specific tax levies. In contrast, revenue bonds are generally secured by a pledge of specific revenues of the issuer, which are typically

estimated additional hourly burden the MSRB will incur on an annual basis under the amendments. The Commission has slightly revised this cost estimate downward from the estimate contained in the Proposing Release to reflect updated hourly rate information from SIFMA for 2009. *See supra* Section V.D.3.

[648] *See* Proposing Release, *supra* note 2, 74 FR at 36855, n. 205. Telephone conversation between Harold Johnson, Deputy General Counsel, MSRB, and Martha M. Haines, Assistant Director and Chief, Office of Municipal Securities, Division, Commission, November 7, 2008.

[649] *See supra* notes 487 through 490.

[650] *See* MSRB Letter at 2.

[651] *Id.*

[652] *Id.*

[653] *Id.*

[654] 15 U.S.C. 78c(f).

[655] 15 U.S.C. 78w(a)(2).

[656] *See supra* Section II.

derived from the facility financed by the bonds (for example, water rates may be used to pay principal and interest on the bonds issued to pay for construction of a water system). Revenue bonds are further divided into two general types: Governmental and private purpose. Governmental bonds are issued to finance the needs of the states or local governments, their agencies and instrumentalities. Private purpose bonds (often referred to as conduit bonds), however, are issued to provide the benefit of a tax-exempt interest rate to a private entity as permitted by various provisions of the Internal Revenue Code. The obligation to pay conduit bonds rests entirely on the private borrower, such as 501(c)(3) hospitals, colleges and universities, the owners of low and moderate income housing projects and of small industrial facilities.

As described above, because of the diversity of disclosure practices, the Commission believes that the informational efficiency of the municipal bond market could be improved. As a result, the Commission believes that the amendments are appropriate to enhance the efficiency of the municipal securities market, particularly in the sense of informational efficiency. Informational efficiency helps investors efficiently allocate capital, since it helps to ensure that a security's price accurately reflects important information. When accurate information is available, the municipal security's price serves to convey aggregate information to investors, further facilitating investment decisions. The amendments encourage disclosure of information that, in the Commission's view, reasonable investors consider important in their transaction decisions. The amendments strengthen the municipal disclosure process because of the new events being added to paragraph (b)(5)(i)(C) of the Rule. In addition, inclusion of the provision that submissions of event notices to the MSRB be made in a timely manner not in excess of ten business days of the event's occurrence, and the deletion of the exemption for demand securities (other than those demand securities that qualify for the limited grandfather provision), also is expected to promote the efficiency of the municipal securities market, as described above including in the cost-benefit section. Currently, the Rule does not contain a specific time frame within which event notices must be provided to the MSRB pursuant to a continuing disclosure agreement. Thus, the Commission believes that the revision relating to the time frame for submission of event notices will help individuals and others to obtain greater information about municipal securities within ten business days of the event's occurrence. In addition, certain events regarding municipal securities that may be important to investors, such as certain tender offers or the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material, are now included as event items in the Rule. Further, certain events listed in paragraph (b)(5)(i)(C) of the Rule will now be disclosed without the issuer first having to make a materiality determination.

Moreover, the Rule's exemption for demand securities has been narrowed, although a limited grandfather provision is in place for many pre-existing demand obligations.[657] As a consequence of the amendments, in some cases, greater information about municipal securities and their issuers will be more readily accessible on a more timely basis to broker-dealers, mutual funds analysts and other market professionals, institutional and retail investors, and the public generally. Thus, these individuals and entities are expected to have access to important information about municipal securities within a specific ten business day time frame, which could aid them in making better informed and more efficient investment decisions and should help reduce the likelihood of fraud facilitated by inadequate disclosure. To the extent that greater information efficiency ultimately allows for better allocation of investments in the municipal securities market, the amendments are expected to promote allocative efficiency as well.

The Commission considers the existing state of the municipal securities market to be a competitive one, given the large number and diversity of issuers, and the volume of municipal securities regularly issued and remarketed, as noted above, despite certain characteristics of municipal bonds, discussed below, that lead to a certain degree of non-fungibility and market segmentation. The size of the municipal securities market—with approximately 51,000 issuers, $400 billion of new issuances annually, and approximately $2.8 trillion in securities outstanding—suggests that the market for issuance and purchase of municipal securities may be highly competitive. Additionally, investors can substitute to some degree their portfolios between municipal securities and other securities, particularly fixed-income securities of comparable credit quality. Depending on the municipality, these may include U.S. Treasury obligations, corporate bonds, and, more recently, taxable bonds known as Build America Bonds. Such substitutability implies that municipal issuers must currently compete not only with each other but also with other comparable opportunities available to investors. Relative to this existing competitive benchmark, the Commission believes that the amendments promote competition in the purchase and sale of municipal securities, as described below.

Because of the limited grandfather provision and the transition aspects of the amendments discussed in Section IV above, a number of issuers will have differing disclosure undertakings. In this regard, some issuers of demand securities will qualify for the limited grandfather provision. In addition, the Commission recognizes that by not applying the amendments to continuing disclosure agreements entered into prior to the amendments' compliance date, for a period of time there will be municipal securities that are subject to differing disclosure. This circumstance may cause some confusion and thus could lead to some inefficiency with respect to investors and broker-dealers who otherwise would prefer uniform disclosure. Because of the nature of the market for demand securities, the Commission does not believe that it is appropriate to impose requirements that would mandate revisions to existing continuing disclosure agreements.

The Commission believes that the amendments will promote competition in the purchase and sale of municipal securities due to the greater availability and timeliness of information as a result of the amendments. Competition is generally more robust when many willing buyers and many willing sellers transact with full information. Competition in the municipal securities market is generally based on the premise that investors are informed of

[657] As discussed above, although it may be optimal for all outstanding demand obligations to be subject to paragraph (b)(5) and (c) of the Rule, the application of the continuing disclosure requirements of the Rule to all outstanding demand securities issued prior to the compliance date may be burdensome for issuers and Participating Underwriters because they would need to enter into a continuing disclosure agreement for any remarketing that is a primary offering that occurs on or after the compliance date, which, potentially, could temporarily disrupt the market for demand securities.

the various attributes of the investment instruments, and issuers are competing for investors. Even with multiple sellers and buyers, if there are high search costs (that is, if investors have to incur high costs to gather relevant information), these costs can be a barrier to effective competition. The Commission believes that its amendments will tend to remove this barrier. As a result, more investors may be attracted to this market sector and broker-dealers and municipal issuers can compete for their business.

The amendments are designed to encourage improvement in the completeness and timeliness of issuer disclosures and thus foster additional interest in municipal securities by retail and institutional customers. In addition, the greater availability of information about municipal securities will be beneficial to vendors of municipal securities information as they develop their value-added products. Thus, the amendments will promote competition among those vendors of municipal securities information that utilize the information provided to the MSRB pursuant to continuing disclosure agreements and compete with each other in creating and offering for sale value-added products relating to municipal securities. As discussed above,[658] the amendments may result in some additional cost and hourly burdens for broker-dealers, issuers and the MSRB.

By providing more timely disclosure of important information to an important segment of the capital markets as a whole, the Commission believes that these amendments also will improve the allocative efficiency of capital formation both within the municipal segment of the fixed income market and within the municipal bond market, in particular. Allocative efficiency of capital is enhanced when investors are able to make better-informed investment decisions since capital should flow to its most efficient use. The amendments will provide investors and other municipal market participants with notice of additional events, to be provided in a timely manner not in excess of ten business days of the event's occurrence, and the Commission has provided a limited grandfathering provision. The Commission believes that the limited grandfather provision strikes an appropriate balance between the need to improve disclosure available to investors and the recognition that the practical effects of applying paragraphs (b)(5) and (c) of the Rule to outstanding issues of demand securities could unduly burden issuers and obligated persons and thus may adversely impact the market. In addition, the amendments will help to provide investors and other municipal market participants with access to important information about demand securities that previously were not subject to the Rule's disclosure provisions. To assess the effect of the amended Rule on capital formation, the Commission has evaluated the benefits of enhanced disclosure on the allocative efficiency of the capital market.

In the Proposing Release, the Commission considered the proposed amendments in light of the standards set forth in the above-noted Exchange Act provisions. The Commission solicited comment on whether, if adopted, the proposal would result in any anti-competitive effects or would promote efficiency, competition or capital formation. The Commission asked commenters to provide empirical data or other facts to support their views on any anti-competitive effects or any burdens on efficiency, competition or capital formation that might result from the proposed amendments. The Commission received some comments about the competitive effects of the proposed amendments.

As discussed above,[659] some commenters believed that the elimination of the Rule's exemption for demand securities would force some issuers, particularly small issuers and non-profit organizations, to choose between accepting the burdens of complying with the continuing disclosure provisions of the Rule and withdrawing from the tax-exempt market.[660] Two of these commenters argued that the proposed amendment would have a chilling effect on competition for small issuers and obligated persons because it would favor their large national competitors that are either already reporting companies or have superior financial and employee resources to comply with the Rule.[661] In their view, the proposed amendment would force small and local businesses that rely on the exemption for demand securities to choose between giving up their proprietary financial information and accessing tax-exempt financing. Revelation of this financial information, in their view, would favor competitors, relative to the status quo.[662] They opined that there could be a negative impact on capital formation if these businesses decided to forego tax exempt financing and were unable to obtain other sources of lending and if investors were not afforded the opportunity to acquire the securities that these businesses otherwise would have issued.[663]

The Commission acknowledges that for those primary offerings of demand securities that no longer will be exempt from the Rule and for which the issuer is not currently submitting continuing disclosure documents to the MSRB, the practice will be different than it was prior to the amendments. In such cases, Participating Underwriters will need to reasonably determine that the issuer or obligated person has undertaken, in a continuing disclosure agreement, to provide continuing disclosure documents to the MSRB. This change applies to any initial offering and remarketing that is a primary offering of demand securities unless the limited grandfather provision applies. Those issuers that have not previously issued securities covered by the Rule will be entering into a continuing disclosure agreement for the first time and thereby will incur some costs to provide continuing disclosure documents to the MSRB. Although the Commission recognizes that, if some small entities elected to forego tax-exempt financing because of the impact of the amendments, the amendments could have an adverse impact on those entities; however, it believes that any additional burden on issuers and obligated persons is, on balance, justified by the improved availability of information with respect to demand securities. This conclusion, moreover, is supported by a number of commenters.[664] Therefore, while the Commission is mindful of the additional burdens that may befall certain competitors in the market, based on its analysis as well as other comments submitted, the Commission continues to believe the overall result of the amendments will be to promote competition in the municipal securities market.

In addition, as the Commission previously noted, a number of issuers and obligated persons of demand securities are likely to have outstanding fixed rate securities. Some of these securities, in turn, likely would be subject to continuing disclosure agreements under the Rule. Because any

[658] *See supra* Sections V.E.1. and V.E.2.

[659] *See supra* Section III.A.

[660] *See* NABL Letter A–9–A–12, CRRC Letter at 3–5, and WCRRC Letter at 1.

[661] *See* CRRC Letter at 3–5, and WCRRC Letter at 1.

[662] *Id.*

[663] *See* CRRC Letter at 3–5, and WCRRC Letter at 1.

[664] *See, e.g.,* CHEFA Letter at 2, Connecticut Letter at 1, e-certus Letter I at 11, Folt Letter at 1, ICI Letter at 5, NFMA Letter at 1, RBDA Letter at 2, and SIFMA Letter at 2.

existing continuing disclosure agreement would obligate an issuer or an obligated person to provide annual filings, event notices, or failure to file notices with respect to these fixed rate securities, providing disclosures with respect to demand securities is not expected to be a significant additional burden for these issuers and obligated persons.

Regarding the concern that any new disclosure burdens may induce some obligated persons to withdraw from the tax-exempt municipal market because they do not prepare annual filings in the ordinary course of their business, the Commission notes that, for purposes of the Rule, annual filings are required only to the extent provided in the final official statement.[665] Further, pursuant to paragraph (b)(5)(i)(B) of the Rule, audited financial statements need to be submitted, pursuant to the issuer's and obligated person's undertaking in a continuing disclosure agreement only "when and if available."[666] This limitation, which is consistent with the Commission's position in the 1994 Amendments Adopting Release, should mitigate some concerns of those obligated persons that do not prepare audited financial statements in the ordinary course of their business.[667] Further, although not all issuers or obligated persons, in the ordinary course of their business, prepare audited financial statements or other financial and operating information of the type included in annual filings, a number of issuers and obligated persons do.[668]

The Commission acknowledges that issuers or obligated persons of demand obligations that assemble financial and operating data for the first time in response to their undertakings in a continuing disclosure agreement may incur incremental costs beyond those costs incurred by those issuers or obligated persons that already assemble this information.[669] Also, smaller issuers or obligated persons may have relatively greater burdens than larger issuers or obligated persons. However, the overall burdens for these demand securities issuers or obligated persons in preparing financial information are expected to be commensurate with those of issuers or obligated persons that already are preparing financial information as part of their continuing disclosure undertakings.[670] The Commission believes that the burdens that will be incurred in the aggregate by issuers or obligated persons, as a result of the amendments with respect to demand securities, may not be significant and, in any event, are justified by the benefits to investors of enhanced disclosure.[671]

Two commenters viewed the addition of the event item for mergers, acquisitions, and substantial asset sales as "anti-competitive," because they believed that disclosure of such events by closely held companies prior to public announcement would allow competitors to interfere with the transaction.[672] However, the Commission believes that competition in the market for corporate control would be enhanced, not reduced, by the possibility of disclosure creating more open conditions for the sale of privately held-companies. The Commission further notes that parties to mergers and acquisition agreements generally may, subject to legal obligations, include remedies in such agreements that are designed to balance the conflicting interests of the buyer and the seller.

For the foregoing reasons, pursuant to Section 3(f) of the Exchange Act, the Commission has considered the amendments to the Rule and believes that they, on balance, should promote efficiency and capital formation and increase competition. In addition, pursuant to Section 23(a)(2) of Exchange Act, the Commission does not believe that they impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

VIII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis ("FRFA") has been prepared in accordance with the provisions of the Regulatory Flexibility Act ("RFA").[673] It relates to amendments to Rule 15c2–12[674] under the Exchange Act.[675] The amendments revise certain requirements regarding the information that a broker, dealer, or municipal securities dealer acting as an underwriter in a primary offering of municipal securities must reasonably determine that an issuer of municipal securities or an obligated person has undertaken, in a written agreement or contract for the beneficial holders of the issuer's municipal securities, to provide, and revise an exemption from the rule. Specifically, the amendments: (1) Require a Participating Underwriter to reasonably determine that an issuer or obligated person has agreed to provide notice of specified events in a timely manner not in excess of ten business days of the occurrence of the event; and (2) modify the list of events for which notices are to be provided. In addition, the amendments modify the condition that event notices are to be submitted to the MSRB "if material," for some, but not all, of the Rule's specified events. Further, the amendments revise an exemption from the Rule for demand securities, by making the offering of those securities subject to the continuing disclosure obligations set forth in the Rule. This change applies to any initial offering and remarketing that is a primary offering of demand securities occurring on or after the compliance date of the amendments.[676] However, to address commenters' concerns about the impact of the

[665] *See supra* Section III.A. for additional discussion concerning the provision of annual filings and audited financial statements.

[666] 17 CFR 240.15c2–12(b)(5)(i)(B). *See also supra* Section III.A. concerning audited financial statements and 1994 Amendments Adopting Release, *supra* note 8, 59 FR at 59599.

[667] As discussed in the 1994 Amendments Adopting Release, the 1994 Amendments "[do] not adopt the proposal to mandate audited financial statements on an annual basis with respect to each issuer and significant obligor. Instead, the amendments require annual financial information, which may be unaudited, and may, where appropriate and consistent with the presentation in the final official statement, be other than full financial statements. * * * However, if audited financial statements are prepared, then when and if available, such audited financial statements will be subject to the undertaking and must be submitted to the repositories. Thus * * * the undertaking must include audited financial statements only in those cases where they otherwise are prepared." *See* 1994 Amendments Adopting Release, *supra* note 8, 59 FR at 59599.

[668] *See http://www.emma.msrb.org* for audited financial statements or other financial and operating information submitted to EMMA.

[669] The Commission, however, believes that the operations of an issuer or obligated person generally entail the preparation and maintenance of at least some financial and operating data.

[670] Further, issuers or obligated persons that assemble financial and operating data for the first time may face a greater burden than those issuers or obligated persons that already assemble this information. The amendments therefore initially may have a disparate impact on those issuers or obligated persons, including small entities, entering into a continuing disclosure agreement for the first time, as compared with those that already have outstanding continuing disclosure agreements.

[671] *See supra* Section V.D. As discussed therein, some commenters believed that the amendment could force some small entities to withdraw from the tax-exempt market because: (1) Disclosure of small issuers' or obligated persons' financial information would provide their large, national competitors with information about these small issuers or obligated persons, which they believed could result in a competitive disadvantage to them; and (2) small issuers or obligated persons would have to prepare costly audited financial statements. *See, e.g.,* CRRC Letter at 3–4 and WCRRC Letter at 1. As discussed above, the undertakings contemplated by the amendments (and Rule 15c2–12 in general) require annual financial information only to the extent provided in the final official statement, and audited financial statements only when and if available.

[672] *Id.*

[673] 5 U.S.C. 604(a).

[674] 17 CFR 240.15c2–12.

[675] 15 U.S.C. 78a *et seq. See also* Proposing Release, *supra* note 2, 74 FR at 36836.

[676] As noted above, the compliance date of the amendments to the Rule is December 1, 2010.

amendments on existing demand securities, the amendment does not apply to remarketings of demand securities that are outstanding in the form of demand securities on the day preceding the amendments' compliance date and that continuously have remained outstanding in the form of demand securities.

A. Need for Amendments to Rule 15c2–12

The main purpose of the amendments is to improve the availability of significant and timely information to the municipal securities markets and to help deter fraud and manipulation in the municipal securities market by prohibiting the underwriting of, and subsequent recommendation of transactions in, municipal securities for which adequate information is not available on an ongoing basis.

The amendments modify paragraphs (b)(5)(i)(C) and (d)(2)(ii)(B) of Rule 15c2–12 to require a Participating Underwriter to reasonably determine that the issuer or obligated person has agreed in its continuing disclosure agreement to provide event notices to the MSRB in an electronic format as prescribed by the MSRB, in a timely manner not in excess of ten business days after the occurrence of any such event. Previously, the Rule stated that event notices were to be provided "in a timely manner." In 1994, the Commission adopted amendments to Rule 15c2–12 and noted at that time that it had not established a specific time frame with respect to "timely" because of the wide variety of events and issuer circumstances.[677] However, the Commission stated that, in general, this determination must take into consideration the time needed to discover the occurrence of the event, assess its materiality, and prepare and disseminate the notice.[678] It has been reported that there have been some instances in which event notices were not submitted until months after the events occurred.[679] The Commission believes that such delays can deny investors important information that they need to make informed decisions regarding whether to buy, sell, or hold municipal securities. Moreover, notice of important events can aid investors in determining whether the price that they pay or receive for their municipal security transactions is appropriate.[680]

The Commission believes that codifying in the Rule a specific time within which event notices are to be provided to the MSRB, in accordance with the continuing disclosure agreement, should result in these notices being made available more promptly than at present. Accordingly, the amendments require a broker, dealer, or municipal securities dealer (*i.e.,* a Participating Underwriter) to reasonably determine that an issuer or obligated person has agreed, in a continuing disclosure agreement, to provide notice of the Rule's specified events in a timely manner not in excess of ten business days after the event's occurrence. The Commission believes that this change will help promote more timely disclosure of this important information to municipal security investors.

Paragraph (b)(5)(i)(C)(6) of the Rule currently requires Participating Underwriters reasonably to determine that the issuer or obligated person has entered into a continuing disclosure agreement to submit a notice for "[a]dverse tax opinions or events affecting the tax-exempt status of the security." The Commission is adopting, with certain modifications from that proposed, an amendment to paragraph (b)(5)(i)(C)(6) of the Rule to require that Participating Underwriters reasonably determine that the issuer or obligated person has entered into a continuing disclosure agreement to submit a notice for "[a]dverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701–TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security." A determination by the IRS that interest on a municipal security may, in fact, be taxable not only could reduce the security's market value, but also could adversely affect each investor's federal and, in some cases, state income tax liability.[681] The tax-exempt status of a municipal security is also important to many mutual funds whose governing documents, with certain exceptions, limit their investments to tax-exempt municipal securities.[682] Therefore, retail and institutional investors alike are very interested in events that could adversely affect the tax-exempt status of the municipal securities that they own or may wish to purchase.[683]

Under the Rule, as amended, a materiality determination is no longer necessary for the following six existing events: (1) Principal and interest payment delinquencies with respect to the securities being offered; (2) unscheduled draws on debt service reserves reflecting financial difficulties; (3) unscheduled draws on credit enhancements reflecting financial difficulties; (4) substitution of credit or liquidity providers, or their failure to perform; (5) defeasances; and (6) rating changes.[684] The Commission believes that these events are of such importance to investors that notice of their occurrence should always be provided pursuant to a continuing disclosure agreement. Furthermore, the Commission believes that eliminating the necessity to make a materiality decision upon the occurrence of these events will simplify issuer compliance with the terms of their continuing disclosure agreements and will help to make such filings available more promptly to investors and others.

The amendments also add the following events, for which disclosure notices are to be provided pursuant to a continuing disclosure agreement: (i) Tender offers (paragraph (b)(5)(i)(C)(8) of the Rule);[685] (ii) bankruptcy, insolvency, receivership or similar event of the obligated person (paragraph (b)(5)(i)(C)(12) of the Rule);[686] (iii) the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material (paragraph (b)(5)(i)(C)(13) of the Rule);[687] and (iv) appointment of a successor or additional trustee, or the change of name of a trustee (paragraph (b)(5)(i)(C)(14) of the Rule), if material.[688] The Commission believes that there is a need to make available to all investors this important information because it can affect their investment decisions and the value of their municipal securities. The Commission further believes that the addition of these four events disclosure items to the Rule will substantially improve the

[677] *See* 1994 Amendments, *supra* note 7, 59 FR at 59601

[678] *Id.*

[679] *See* Proposing Release, *supra* note 2, 74 FR at 36837.

[680] *Id.*

[681] *See* Proposing Release, *supra* note 2, 74 FR at 36840–41.

[682] *Id.*

[683] *Id.*

[684] *See* Proposing Release, *supra* note 2, 74 FR at 36839–40.

[685] *See* Proposing Release, *supra* note 2, 74 FR at 36842–46.

[686] *Id.*

[687] *Id.*

[688] *Id.*

availability of important information in the municipal securities market.

Finally, the amendments modify the Rule's exemption for demand securities by eliminating paragraph (d)(1)(iii) to Rule 15c2–12 and adding new paragraph (d)(5) to the Rule. The Commission's experience with the operation of the Rule and changes in the municipal securities market suggest a need to increase the availability of information to investors regarding demand securities.[689] Furthermore, the recent period of turmoil in the market for municipal auction rate securities and demand securities also suggests that the Rule's exemption for demand securities is no longer appropriate and that the exemption should be modified to apply paragraphs (b)(5) and (c) of the Rule, relating to the submission of continuing disclosure documents and recommendations by brokers, dealers, and municipal securities dealers, respectively, to primary offerings of demand securities.[690]

B. Objectives

The purpose of the amendments is to achieve more efficient, effective, and wider availability of municipal securities information to broker-dealers, mutual funds, analysts and other market professionals, institutional and retail investors, and the public generally, and to help prevent, fraudulent, deceptive, or manipulative acts or practices in the municipal securities market.

C. Significant Issues Raised by Public Comment

In the Proposing Release, the Commission requested comment on matters discussed in the IRFA.[691] No commenter suggested that the Rule would have a significant impact on smaller broker-dealers, who are not entities directly subject to the Rule. As discussed in greater detail above, several commenters raised concerns regarding the impact of the proposed amendments on small issuers, although they are not directly subject to the rule.[692]

D. Small Entities Subject to the Rule

The amendments apply directly to any broker, dealer, or municipal securities dealer that acts as a Participating Underwriter in a primary offering of municipal securities with an aggregate principal amount of $1,000,000 or more and indirectly issuers of such securities.

The RFA defines "small entity" to mean "small business," "small organization," or "small government jurisdiction."[693] The Commission's rules define "small business" and "small organization" for purposes of the RFA for each of the types of entities the Commission regulates.

A broker-dealer is a small business if its total capital (net worth plus subordinated liabilities) on the last day of its most recent fiscal year was $500,000 or less, and is not affiliated with any entity that is not a "small business."[694]

A municipal securities dealer that is a bank (including a separately identifiable department or division of a bank) is a small business if it has total assets of less than $10 million at all times during the preceding fiscal year; had an average monthly volume of municipal securities transactions in the preceding fiscal year of less than $100,000; and is not affiliated with any entity that is not a "small business."[695]

For purposes of Commission rulemaking, an issuer or person, other than an investment company, is a "small business" or "small organization" if its "total assets on the last day of its most recent fiscal year were $5 million or less."[696]

Based on information obtained by the Commission's staff, the Commission estimates that 250 broker-dealers, including municipal securities dealers, would be Participating Underwriters within the meaning of Rule 15c2–12.[697] Based on a recent review of industry sources, the Commission does not believe that any Participating Underwriters would be small broker-dealers or municipal securities dealers.[698] The Commission did not receive any comments on this issue.

A "small governmental jurisdiction" is defined by the RFA to include "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[699] Currently, there are approximately 51,000 state and local issuers of municipal securities[700] that are subject to the amendments. The Commission estimates that approximately 40,000 state and local issuers are "small" entities for purposes of the RFA. However, the Commission believes that most issuers of municipal securities qualify for the limited exemption in paragraph (d)(2) of the Rule.[701] In the 2008 Amendments Adopting Release, the Commission estimated that 10,000 issuers would enter into continuing disclosure agreements that provide for their submitting continuing disclosure documents to the MSRB.[702] Under the amendment to narrow the Rule's exemption for demand securities, the number of affected issuers is estimated to increase to 12,000 issuers.[703] Some of these issuers may be small issuers.

In the Proposing Release, the Commission requested comment on the above estimates. The Commission received no comments responding to these estimates and continues to believe that they are appropriate.

E. Reporting, Recordkeeping and Other Compliance Requirements

The amendments apply to all small entities that are currently subject to Rule 15c2–12. Because small entities already may submit notices to the MSRB to disclose events already covered by the Rule, these entities should be able to prepare notices for events that are incorporated into the Rule by the amendments. The Commission expects that adding the new disclosure events will increase costs incurred by small entities, to the extent that their primary offerings of municipal securities are covered by the Rule, because they potentially will have to provide a greater number of event notices than they do currently.

F. Action To Minimize Effect on Small Entities and Consideration of Alternatives

In connection with the final revisions to the Rule, the Commission considered the above comments and the following alternatives:

(1) Establishing differing compliance or reporting requirements or timetables

[689] *See* Proposing Release, *supra* note 2, 74 FR at 36835–37.

[690] *Id.*

[691] *See* Proposing Release, *supra* note 2, 74 FR at 36867.

[692] *See* CRRC Letter, WCRRC Letter, Kutak Letter, CHEFA Letter, NAHEFFA Letter, Connecticut Letter, SIFMA Letter, NABL Letter, and GFOA Letter. *See supra* Sections III.B., III.E., and V.D.

[693] 5 U.S.C. 601(6).

[694] 17 CFR 240.0–10(c).

[695] 17 CFR 240.0–10(f).

[696] 17 CFR 230.157. *See also* 17 CFR 240.0–10(a).

[697] *See supra* Section V.C.

[698] *See* Proposing Release, *supra* note 2, 74 FR at 36866.

[699] 5 U.S.C. 601(5).

[700] *See* Securities Exchange Act Release No. 33741 (March 9, 1994), 59 FR 12748 (March 17, 1994).

[701] Specifically, Rule 15c2–12(d)(2) provides an exemption from the application of paragraph (b)(5) of the Rule (Rule's provision regarding Participating Underwriters obligations with respect to continuing disclosure agreements) with respect to primary offerings if, among other things, the issuer or obligated person has agreed to a limited disclosure obligation, including sending certain material event notices to the MSRB. *See* 17 CFR 240.15c2–12(d)(2).

[702] *See* 2008 Adopting Release, *supra* note 7, 73 FR at 76121.

[703] *See* Proposing Release, *supra* note 2, 74 FR at 36850.

which take into account the resources available to smaller entities;

(2) Exempting smaller entities from coverage of the disclosure requirements, or any part thereof;

(3) The clarification, consolidation, or simplification of disclosure for small entities; and

(4) Use of performance standards rather than design standards.

As noted above, breaker-dealers who are the entities directly subject to the Rule are not likely to be significantly affected by the amendments. The Commission notes, however, that it has adopted a delayed compliance date of December 1, 2010, to allow broker-dealers, and other entities indirectly affected by the Rule, additional time to familiarize themselves with the amendments and to give the MSRB time to make the necessary system changes to its EMMA system. As for issuers who are not directly subject to the Rule, the Commission notes that Rule 15c2–12 currently provides differing compliance criteria for larger and smaller issuers because most small issuers of municipal securities are eligible for the limited exemption currently contained in paragraph (d)(2) of the Rule. The exemption in Rule 15c2–12(d)(2) provides that paragraph (b)(5) of the Rule, which relates to the submission of continuing disclosure documents, does not apply to a primary offering if the conditions contained therein are met.[704] This limited exemption from the Rule is intended to assist small governmental jurisdictions that issue municipal securities. In the case of primary offerings by small governmental jurisdictions that are not covered by the exemption, the Commission notes that the amendments balance the informational needs of investors and others with regard to municipal securities issued by small governmental jurisdictions with the impact effects of the amendments on such small issuers.[705]

Further, the Commission believes that, in the case of those issuers that do not qualify for the exemption in paragraph (d)(2) of the Rule and that issue securities after the amendments compliance date, there should be comparable standards for municipal securities disclosure events. The Commission nevertheless recognizes that by not applying the amendments to continuing disclosure requirements entered into prior to the amendments' compliance date, for a period of time there will be municipal securities that are subject to differing disclosure. The Commission is mindful of the potential difficulties presented by revising continuing disclosure agreements that reflect contractual commitments entered into by the municipal issuer at the time of the security's issuance. These differences in disclosure that will result from applying the amendments to new issuances and not to municipal securities outstanding prior to the compliance date will, however, diminish over time. With respect to the clarification, consolidation, or simplification of disclosure for small entities, the Commission notes that, although the amendments are uniform for large and small issuers, they are largely based on existing requirements.

IX. Statutory Authority

Pursuant to the Exchange Act, and particularly Sections 2, 3(b), 10, 15(c), 15B, 17 and 23(a)(1) thereof, 15 U.S.C. 78b, 78c(b), 78j, 78*o*(c), 78*o*–4, 78q and 78w(a)(1), the Commission is adopting amendments to § 240.15c2–12 of Title 17 of the *Code of Federal Regulations* in the manner set forth below.

Text of Rule Amendments

List of Subjects in 17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

■ For the reasons set out in the preamble, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78*o,* 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Section 240.15c2–12 is amended by the following:

■ A. Revise the introductory text of paragraph (b)(5)(i)(C), and paragraphs (b)(5)(i)(C)(*2*), (b)(5)(i)(C)(*6*), (b)(5)(i)(C)(*7*), (b)(5)(i)(C)(*8*), (b)(5)(i)(C)(*10*), and (b)(5)(i)(C)(*11*);

■ B. Add new paragraphs (b)(5)(i)(C)(*12*), (*13*) and (*14*);

■ C. Revise paragraph (d)(1)(ii);

■ D. Remove paragraph (d)(1)(iii);

■ E. Revise paragraph (d)(2)(ii)(B); and

■ F. Add new paragraph (d)(5).

The additions and revisions read as follows.

§ 240.15c2–12 Municipal securities disclosure.

* * * * *

(b) * * *

(5)(i) * * *

(C) In a timely manner not in excess of ten business days after the occurrence of the event, notice of any of the following events with respect to the securities being offered in the Offering:

* * * * *

(*2*) Non-payment related defaults, if material;

* * * * *

(*6*) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701–TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;

(*7*) Modifications to rights of security holders, if material;

(*8*) Bond calls, if material, and tender offers;

* * * * *

(*10*) Release, substitution, or sale of property securing repayment of the securities, if material;

(*11*) Rating changes;

(*12*) Bankruptcy, insolvency, receivership or similar event of the obligated person;

Note to paragraph (b)(5)(i)(C)(12): For the purposes of the event identified in paragraph (b)(5)(i)(C)(12) of this section, the event is considered to occur when any of the following occur: The appointment of a receiver, fiscal agent or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person.

(*13*) The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any

[704] *See* 17 CFR 240.15c2–12(d)(2).

[705] The Commission also notes that the Rule's exemption for primary offerings of municipal securities that have an aggregate principal amount of less than $1,000,000 may also apply to small issuers and small governmental jurisdictions. *See* 17 CFR 240.15c2–12(a).

such actions, other than pursuant to its terms, if material;

(*14*) Appointment of a successor or additional trustee or the change of name of a trustee, if material; and

* * * * *

(d) * * *

(1) * * *

(ii) Have a maturity of nine months or less.

* * * * *

(2) * * *

(ii) * * *

(B) In a timely manner not in excess of ten business days after the occurrence of the event, notice of events specified in paragraph (b)(5)(i)(C) of this section with respect to the securities that are the subject of the Offering; and

* * * * *

(5) With the exception of paragraphs (b)(1) through (b)(4), this section shall apply to a primary offering of municipal securities in authorized denominations of $100,000 or more if such securities may, at the option of the holder thereof, be tendered to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by an issuer or its designated agent; provided, however, that paragraphs (b)(5) and (c) of this section shall not apply to such securities outstanding on November 30, 2010, for so long as they continuously remain in authorized denominations of $100,000 or more and may, at the option of the holder thereof, be tendered to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by an issuer or its designated agent.

* * * * *

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ 3. Part 241 is amended by adding Release No. 34–62184A and the release date of May 26, 2010, to the list of interpretative releases.

By the Commission.

Dated: May 26, 2010.

Elizabeth M. Murphy,

Secretary.

Note: Exhibit A to the Preamble will not appear in the Code of Federal Regulations

Exhibit A

Key to Comment Letters Cited in Adopting Release Amendment to Municipal Securities Disclosure (File No. S7–15–09)

1. Letter from Bill Boatwright, Wealth Advisor, UBS Financial Services, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated July 16, 2009 ("Boatwright Letter").

2. Letter from James R. Folts, Investor, to Elizabeth M. Murphy, Secretary, Commission, dated August 4, 2009 ("Folts Letter").

3. Letter from Leonard Becker, Investor, to Elizabeth M. Murphy, Secretary, Commission, dated August 12, 2009 ("Becker Letter").

4. Letter from Charles Halgren, Financial Analyst, to Elizabeth M. Murphy, Secretary, Commission, dated August 18, 2009 ("Halgren Letter").

5. Letter from Philip A. Shalanca, Retired School Business Administrator, to Elizabeth M. Murphy, Secretary, Commission, dated August 30, 2009 ("Shalanca Letter").

6. Letter from Glenn Byers, Assistant Treasurer and Tax Collector, County of Los Angeles, to Mary Schapiro, Chairman, Commission, dated August 31, 2009 ("Los Angeles Letter").

7. Letter from Kenneth L. Rust, Chief Administrative Officer, City of Portland, Oregon ("Portland"), and Eric H. Johansen, Debt Manager, Portland, to Elizabeth M. Murphy, Secretary, Commission, dated September 1, 2009 ("Portland Letter").

8. Letter from Jerry Moffatt, State President, California Refuse Recycling Council ("CRRC"), and Doug Button, North District President, CRRC, to Elizabeth M. Murphy, Secretary, Commission, dated September 2, 2009 ("CRRC Letter").

9. Letter from Lisa S. Good, Executive Director, National Federation of Municipal Analysts ("NFMA"), to Elizabeth M. Murphy, Secretary, Commission, dated September 2, 2009 ("NFMA Letter").

10. Letter from Connecticut Health and Educational Facilities Authority ("CHEFA"), to Elizabeth M. Murphy, Secretary, Commission, dated September 4, 2009 ("CHEFA Letter").

11. Letter from Robert Donovan, Executive Director, Rhode Island Health and Educational Building Corporation, on behalf of the National Association of Health and Education Facilities Finance Authorities ("NAHEFFA"), to Elizabeth M. Murphy, Secretary, Commission, dated September 4, 2009 ("NAHEFFA Letter").

12. Letter from Brian G. Thomas, Assistant General Manager/Chief Financial Officer, The Metropolitan Water District of Southern California ("Metro Water"), to Elizabeth M. Murphy, Secretary, Commission, dated September 4, 2009 ("Metro Water Letter").

13. Letter from Trish Roath, Executive Director, CRRC, Kristan Mitchell, Executive Director, Oregon Refuse & Recycling Association, and Brad Lovas, Executive Director, Washington Refuse & Recycling Association, on behalf of West Coast Refuse & Recycling Coalition ("WCRRC"), to Elizabeth M. Murphy, Secretary, Commission, dated September 7, 2009 ("WCRRC Letter").

14. Letter from Ronald A. Stack, Chair, Municipal Securities Rulemaking Board ("MSRB"), to Elizabeth M. Murphy, Secretary, Commission, dated September 8, 2009 ("MSRB Letter I").

15. Letter from Richard T. McNamar, President, e-certus, Inc. ("e-certus"), to Elizabeth M. Murphy, Chairman, Commission, dated September 8, 2009 ("e-certus Letter I").

16. Letter from Leon J. Bijou, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), to Elizabeth M. Murphy, Secretary, Commission, dated September 8, 2009 ("SIFMA Letter").

17. Letter from Michael Decker, Co-Chief Executive Officer, Regional Bond Dealers Association ("RBDA"), and Mike Nicholas, Co-Chief Executive Officer, RBDA, to Elizabeth M. Murphy, Secretary, Commission, dated September 8, 2009 ("RBDA Letter").

18. Letter from Denise L. Nappier, Treasurer, State of Connecticut, to Elizabeth M. Murphy, Secretary, Commission, dated September 8, 2009 ("Connecticut Letter").

19. Letter from Daniel C. Lynch, Kutak Rock LLP, to Elizabeth M. Murphy, Secretary, Commission, dated September 8, 2009 ("Kutak Letter").

20. Letter from Tom Sanzillo, Consultant, T.R. Rose Associates, Mark Kresowick, Corporate Accountability Representative, Sierra Club, and Lisa Anne Hamilton, Counsel, to Elizabeth M. Murphy, dated September 8, 2009 ("T.R. Rose and Sierra Letter").

21. Letter from Paula Stuart, Chief Executive Officer, Digital Assurance Certification, LLC ("DAC"), to Elizabeth M. Murphy, Secretary, Commission, dated September 8, 2009 ("DAC Letter").

22. Letter from Karrie McMillan, General Counsel, Investment Company Institute ("ICI"), to Elizabeth M. Murphy, Secretary, Commission, dated September 8, 2009 ("ICI Letter").

23. Letter from Mark Paxson, General Counsel, Office of California State Treasurer, to Elizabeth M. Murphy, Secretary, Commission, dated September 8, 2009 ("California Letter").

24. Letter from Donald F. Steuer, Chief Financial Officer, County of San Diego, to Elizabeth M. Murphy, Secretary, Commission, dated September 8, 2009 ("San Diego Letter").

25. Letter from Scott C. Goebel, Senior Vice President and General Counsel, FMR Co., Fidelity Investments ("Fidelity"), to Elizabeth M. Murphy, Secretary, Commission, dated September 11, 2009 ("Fidelity Letter").

26. Letter from William A. Holby, President, National Association of Bond Lawyers ("NABL"), to Elizabeth M. Murphy, Secretary, Commission, dated September 23, 2009 ("NABL Letter").

27. Letter from Frank R. Hoadley, Chairman, Governmental Debt Management Committee, Government Finance Officers Association ("GFOA"), to Elizabeth M. Murphy, Secretary, Commission, dated September 24, 2009 ("GFOA Letter").

28. Letter from Richard T. McNamar, President, e-certus, Inc. ("e-certus"), to

Elizabeth M. Murphy, Secretary, Commission, dated October 14, 2009 ("e-certus Letter II").

29. Letter from Peter Lehner, Executive Director, Natural Resources Defense Council ("NRDC"), to Elizabeth M. Murphy, Secretary, Commission, dated December 15, 2009 ("NRDC Letter").

[FR Doc. 2010–13165 Filed 6–9–10; 8:45 am]

BILLING CODE 8010–01–P

Reader Aids

Federal Register

Vol. 75, No. 111

Thursday, June 10, 2010

CUSTOMER SERVICE AND INFORMATION

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, JUNE

CFR PARTS AFFECTED DURING JUNE

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.

107.....32658
312.....32658
803.....32658
Proposed Rules:
1301.....32140
1309.....32140

24 CFR

Proposed Rules:
3500.....31334

25 CFR

900.....31699
1000.....31699

26 CFR

1.....31736, 32659

27 CFR

478.....31285

29 CFR

1202.....32273
1206.....32273
1404.....30704
2530.....32846
Proposed Rules:
1910.....32142

30 CFR

Proposed Rules:
218.....32343

33 CFR

100 .....30296, 32661, 32852
117 .....30299, 30300, 32663, 32854
147.....32273
165 .....30706, 30708, 32275, 32280, 32664, 32666, 32855
Proposed Rules:
100.....32866
117 .....30305, 30747, 30750, 32349, 32351
165.....30753

34 CFR

361.....32857
691.....32857
Proposed Rules:
Ch. VI.....31338

37 CFR

256.....32857

38 CFR

17.....32668, 32670
21.....32293
Proposed Rules:
17.....30306

39 CFR

111 .....30300, 31288, 31702
Proposed Rules:
111.....32143
501.....30309

40 CFR

7.....31702
51.....31514
52 .....30710, 31288, 31290, 31306, 31514, 31709, 31711, 32293, 32673, 32857, 32858
63.....31317
70.....31514
71.....31514
141.....32295
180.....31713
260.....31716
261.....31716
262.....31716
263.....31716
264.....31716
265.....31716
266.....31716
268.....31716
270.....31716
Proposed Rules:
7.....31738
52 .....30310, 31340, 32353
60 .....31938, 32613, 32682
63 .....31896, 32006, 32682
241.....31844, 32682
1039.....32613
1042.....32613
1065.....32613
1068.....32613

42 CFR

417.....32858
422.....32858
423.....32858
480.....32858
Proposed Rules:
412.....30756, 30918
413.....30756, 30918

44 CFR

64.....32302
Proposed Rules:
67 .....31361, 31368, 32684

45 CFR

Proposed Rules:
301.....32145
302.....32145
303.....32145
307.....32145

46 CFR

501.....31320

47 CFR

36.....30301
Proposed Rules:
54.....32692, 32699
73.....30756

48 CFR

216.....32641
217.....32638, 32639
225.....32637, 32640
228.....32642
231.....32642
234.....32638
252.....32642
505.....32860
3025.....32676
3052.....32676
Proposed Rules:
252.....32636
970.....32719
3015.....32723
3016.....32723
3052.....32723

49 CFR

390.....32860
395.....32860
1002.....30711
1011.....30711
1152.....30711
1180.....30711
Proposed Rules:
611.....31321

50 CFR

223.....30714
600.....30484
635 .....30484, 30730, 30732
648.....30739
679.....31321, 31717
Proposed Rules:
17 .....30313, 30319, 30338, 30757, 30769, 31387, 32727, 32728, 32869
20.....32872
80.....32877
223.....30769
224.....30769
660.....32994

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 1121/P.L. 111–167
Blue Ridge Parkway and Town of Blowing Rock Land Exchange Act of 2009 (May 24, 2010; 124 Stat. 1188)

H.R. 1442/P.L. 111–168
To provide for the sale of the Federal Government's reversionary interest in approximately 60 acres of land in Salt Lake City, Utah, originally conveyed to the Mount Olivet Cemetery Association under the Act of January 23, 1909. (May 24, 2010; 124 Stat. 1190)

H.R. 2802/P.L. 111–169
To provide for an extension of the legislative authority of the Adams Memorial Foundation to establish a commemorative work in honor of former President John Adams and his legacy, and for other purposes. (May 24, 2010; 124 Stat. 1192)

H.R. 5148/P.L. 111–170
To amend title 39, United States Code, to clarify the instances in which the term ''census'' may appear on mailable matter. (May 24, 2010; 124 Stat. 1193)

H.R. 5160/P.L. 111–171
Haiti Economic Lift Program Act of 2010 (May 24, 2010; 124 Stat. 1194)

S. 1067/P.L. 111–172
Lord's Resistance Army Disarmament and Northern Uganda Recovery Act of 2009 (May 24, 2010; 124 Stat. 1209)

H.R. 5014/P.L. 111–173
To clarify the health care provided by the Secretary of Veterans Affairs that constitutes minimum essential coverage. (May 27, 2010; 124 Stat. 1215)

S. 1782/P.L. 111–174
Federal Judiciary Administrative Improvements Act of 2010 (May 27, 2010; 124 Stat. 1216)

S. 3333/P.L. 111–175
Satellite Television Extension and Localism Act of 2010 (May 27, 2010; 124 Stat. 1218)

Last List May 20, 2010

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.