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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 509

[No. 2005–08]

RIN 1550–AB96

Special Rules for Adjudicatory Proceedings for Certain Holding Companies

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Interim final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is adding a new subpart to its Rules of Practice and Procedure in Adjudicatory Proceedings to provide for expedited processing of certain actions to determine if a company is exercising a controlling influence over the management or policies of a savings association or savings and loan holding company (collectively, savings association) for certain purposes under section 10 of the Home Owners' Loan Act, 12 U.S.C. 1467a (HOLA). The new proceedings will be used only to determine if a company has acquired a controlling influence over the management or policies of a savings association for purposes of those subsections of section 10 other than subsections (c), (d), (f), (h)(2), (m), (n), (q) and (s). Under the new procedure, a company that holds no more than ten percent of the stock of a savings association may be found to control that savings association, thereby becoming an OTS-regulated entity.

DATES: This rule is effective on April 1, 2005. Comments must be received by May 2, 2005.

ADDRESSES: You may submit comments, identified by No. 2005–08, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail address: regs.comments@ots.treas.gov.* Please include No. 2005–08 in the subject line of the message and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2005–08.
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2005–08.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*. In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552, by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT: Donna M. Deale, Assistant Managing Director, Examinations and Supervision Policy, (202) 906–7488; and Aaron B. Kahn, Special Counsel, Business Transactions Division, (202) 906–6263, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Interim Final Rule

OTS is adding a new subpart to its Rules of Practice and Procedure in Adjudicatory Proceedings to provide for expedited processing of certain actions to determine if a company is exercising a controlling influence over the management or policies of a savings association. OTS may commence an adjudicatory proceeding under its existing rules to determine if a company has obtained a controlling influence over the management or policies of a savings association. However, the present regulation does not differentiate between proceedings that may lead to a finding that an acquiror has obtained control for all purposes under section 10 of the Home Owners' Loan Act (HOLA), 12 U.S.C. 1467a, and proceedings that may lead to a conclusion that a company has obtained control for only certain provisions of section 10. The new proceedings will be used only to determine if a company has acquired a controlling influence over the management or policies of a savings association for purposes of those subsections of section 10 other than subsections (c), (d), (f), (h)(2), (m), (n), (q) and (s).[1]

Under the new procedure, a company that holds no more than ten percent of the stock of a savings association may be found to control that savings association, thereby becoming an OTS-regulated entity. However, the company found to be in control generally would not become subject to certain provisions of HOLA section 10 that are more appropriately applied when the company controls a greater percentage of a savings association's stock, such as transactions with affiliates provisions or activities limitations.[2] The OTS Holding Company Handbook describes OTS's regulatory approach regarding a company found to exercise a controlling influence over the management or

[1] The procedure would not be applicable to bank holding companies that are subject to the Bank Holding Company Act of 1956. *See* 12 U.S.C. 1467a(t). However, companies that are not bank holding companies but own or control foreign banks could be subject to the proceedings. Thus, for example, a domestic company with European financial activities could be subject to the proceedings.

[2] Once a company becomes regulated by OTS the agency could, if warranted, issue such orders to the company as necessary or appropriate to carry out the purposes of HOLA section 10. *See* 12 U.S.C. 1467a(g).

policies of a savings association under this provision.[3]

The new procedure will be applied only where OTS has reason to believe that a company has acquired control of a savings association through ownership of at least one percent but not more than ten percent of the voting stock of such savings association.[4] OTS believes that some large companies that engage, directly or indirectly, in insurance, securities, or banking activities may acquire small stakes (10 percent or less of the voting shares) in individual savings associations. While such ownership does not necessarily mean that the acquiring company has obtained control of the savings association, the relative size of the companies involved and the fact that they operate in related industries may result in the acquiring company obtaining a controlling influence over the management or policies of the savings association.

The new procedure is designed to provide an opportunity to determine whether the type of company identified above has obtained a controlling influence over the management or policies of a savings association in an expedited fashion where, if the facts are not in dispute or all the evidence is documentary, the agency will commence proceedings, preside at the hearing, and enter the final decision.[5] Thus, the new procedure reduces regulatory burdens by dispensing with unnecessary extended proceedings requiring an Administrative Law Judge and a recommended decision.

The proceedings will be commenced by OTS exercising its discretion to issue a notice to the company. The notice will contain a statement setting forth why OTS believes the company is exercising a controlling influence over the management or policies of the savings association. Thereafter, the company may consent to the allegations in the notice either by written consent or by choosing not to respond to the notice. If the company answers the notice and denies the allegations, an evidentiary hearing will be held unless OTS determines to withdraw the notice. If either party seeks discovery or to present oral testimony the expedited procedure contained in this new subpart will be terminated and the procedures presently in the regulations will be employed until a final decision is reached.

Because the new procedures do not affect any substantive rights, impose any new burdens, or require any new action by any regulated entity, OTS is issuing these regulations as interim final regulations. However, OTS is seeking comments on all aspects of these regulations.

II. Regulatory Analysis

A. Administrative Procedure Act

Section 553 of the Administrative Procedure Act exempts rules of agency organization, procedure, and practice from notice and comment procedures. 5 U.S.C. 553. OTS finds that prior notice and public comment are not required to the extent that this rule modifies current OTS rules and procedures for adjudicatory proceedings under section 10(a)(2)(D) of the HOLA, 12 U.S.C. 1467a(a)(2)(D), to determine control of savings associations. The rule revises OTS rules for adjudicatory proceedings to provide more streamlined procedures for OTS to find a company in control of a savings association under certain limited circumstances. OTS finds good cause for issuing these rule changes as an interim final rule. Accordingly, OTS finds that prior notice and public comment on these rule changes are impractical, unnecessary, and contrary to the public interest.

B. Plain Language Requirement

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires federal banking agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this rule easier to understand. For example:

(1) Have we organized the material to suit your needs?

(2) Are the requirements in the rule clearly stated?

(3) Does the rule contain technical language or jargon that isn't clear?

(4) Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

(5) Would more (but shorter) sections be better?

(6) What else could we do to make the rule easier to understand?

C. Paperwork Reduction Act

OTS has determined that this interim final rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

D. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities. The rule amends OTS regulations regarding adjudicatory proceedings to provide more streamlined procedures for OTS to find a company in control of a savings association under certain limited circumstances. These changes should not have a significant impact on small institutions. Accordingly, OTS has determined that regulatory flexibility analysis is not required.

E. Executive Order 12866

The Director of OTS has determined that this interim final rule does not constitute a ''significant regulatory action'' for purposes of Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires an agency to prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The interim final rule revises OTS rules for adjudicatory proceedings to provide more streamlined procedures for OTS to find a company in control of a savings association under certain limited circumstances. Accordingly, OTS has determined that this rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more and that a budgetary impact statement is not required.

List of Subjects in 12 CFR Part 509

Administrative practice and procedure, Penalties.

Authority and Issuance

■ For the reasons outlined in the preamble, the Office of Thrift Supervision amends chapter V of title 12 of the Code of Federal Regulations, as set forth below:

[3] *See e.g.*, OTS Holding Company Handbook, section 940.

[4] OTS anticipates that, in most cases, its initial belief will be engendered by the company informing OTS of its stock holdings. However, OTS recognizes the possibility that other circumstances may give rise to OTS's preliminary view that a company has obtained a controlling influence over the management or policies of a savings association.

[5] OTS anticipates that either the Director of OTS or a senior OTS official, acting with delegated authority, will constitute the ''agency'' for purposes of such proceedings.

PART 509—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

■ 1. The authority citation for part 509 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 1464, 1467, 1467a, 1468, 1817(j), 1818, 3349, 4717; 15 U.S.C. 78(l), 78o–5, 78u–2; 28 U.S.C. 2461 note; 31 U.S.C. 5321; 42 U.S.C. 4012a.

■ 2. Revise § 509.100(a) of subpart B to read as follows:

Subpart B—Local Rules

§ 509.100 Scope.

* * * * *

(a) Proceedings under section 10(a)(2)(D) of the HOLA (12 U.S.C. 1467a(a)(2)(D)) to determine whether any person directly or indirectly exercises a controlling influence over the management or policies of a savings association or any other company, except to the extent the Director exercises his or her discretion to commence a proceeding of the kind identified in subpart C of this part;

* * * * *

■ 3. Amend part 509 by adding a new Subpart C to read as follows:

Subpart C—Special Rules

Sec.
509.200 Scope.
509.201 Definitions.
509.202 Commencement of proceedings and contents of notice.
509.203 Answer, consequences of failure to answer, and consent.
509.204 Hearing Procedure.

§ 509.200 Scope.

The rules and procedures in subpart C of this part and those rules and procedures in subparts A and B of this part that are identified in subpart C of this part shall apply to any proceedings under section 10(a)(2)(D) of the HOLA (12 U.S.C. 1467a(a)(2)(D)) to determine for purposes of section 10 of the HOLA, other than subsections (c), (d), (f), (h)(2), (m), (n), (q) and (s), whether any company that owns at least one percent but no more than 10 percent of the outstanding shares of a savings association or savings and loan holding company directly or indirectly exercises a controlling influence over the management or policies of such savings association or savings and loan holding company.

§ 509.201 Definitions.

The definitions contained in § 509.3 of this part shall apply to this subpart.

§ 509.202 Commencement of proceedings and contents of notice.

(a) *Commencement of proceedings.* The Director commences a proceeding by issuing a notice and having it served on the respondent in the manner provided for service by the Director in § 509.11 of this part;

(b) *Contents of notice.* The notice must set forth: (1) The legal authority for the proceeding and for the Office's jurisdiction over the proceeding;

(2) A statement of the matters of fact or law showing the Office is entitled to issue an Order finding, for purposes of section 10 of the HOLA, other than subsections (c), (d), (f), (h)(2), (m), (n), (q) and (s), the respondent to be directly or indirectly exercising a controlling influence over the management or policies of a savings association or savings and loan holding company;

(3) A proposed Order;

(4) A statement that the respondent must file an answer and, if it so desires, request a hearing within 20 days of service of the notice; and

(5) The time and place of the hearing if one is properly requested by the respondent.

§ 509.203 Answer, consequences of failure to answer, and consent.

(a) *Content of answer.* (1) An answer must specifically respond to each paragraph or allegation of fact contained in the notice and must admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice which is not denied in the answer must be deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes a prayer for relief or proposed Order.

(2) If a respondent does not contest the allegations in a notice, the respondent may file an answer that contains only a statement that the respondent consents to the entry of the proposed Order. At any time thereafter, the proposed Order may be issued as a final Order.

(b) *Default.* Failure of a respondent to file an answer within the time provided constitutes a waiver of its right to appear and contest the allegations in the notice. If a timely answer is not filed, a default Order may be entered. A respondent that believes that there was good cause for it to not file an answer within the time allowed may request that the Office exercise its discretion to vacate such a default Order. A default Order based upon a respondent's failure to answer is deemed to be a final Order issued upon consent.

§ 509.204 Hearing Procedure.

(a) (1) The Director shall preside at the hearing and enter the final decision of the agency, provided that no party seeks discovery or proffers any oral testimony;

(2) Respondents shall provide two copies of any pleadings and other filings to the Office of the Chief Counsel, Business Transactions Division. The Office of the Chief Counsel, Business Transactions Division shall serve in the manner provided in § 509.11 of this part, each respondent separately represented with a copy of any pleading or other filing made by the Office.

(b) If any party seeks discovery or proffers any oral testimony, the procedures in subparts A and B of this part shall apply from that time until the conclusion of the proceeding.

Dated: February 24, 2005.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 05–4017 Filed 3–1–05; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563e

[No. 2005–09]

RIN 1550–AB48

Community Reinvestment Act—Assigned Ratings

AGENCY: Office of Thrift Supervision, Treasury (OTS).

ACTION: Final rule.

SUMMARY: In this final rule, OTS is making changes to its Community Reinvestment Act (CRA) regulations to reduce burden, provide greater flexibility to meet community needs, and restore the focus of CRA to lending. Specifically, OTS is providing additional flexibility to each savings association evaluated under the large retail institution test to determine the combination of lending, investment, and service it will use to meet the credit needs of the local communities in which it is chartered, consistent with safe and sound operations.

DATES: This rule is effective on April 1, 2005.

FOR FURTHER INFORMATION CONTACT: Celeste Anderson, Program Manager, Thrift Policy, (202) 906–7990; Richard Bennett, Counsel, Regulations and Legislation Division, (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction

On November 24, 2004, OTS published a notice of proposed rulemaking (NPR) proposing changes to, and soliciting comment on, its CRA regulations in two areas: (1) the definition of ''community development'' and (2) the assignment of ratings. (69 FR 68257) OTS indicated that it was considering addressing these areas to reduce burden to the extent consistent with the safe and sound supervision of the industry and provide institutions with more flexibility to make their own determinations about how best to serve their communities.

The proposal was designed to further the CRA burden reduction OTS began in its final rule published in the **Federal Register** on August 18, 2004 (69 FR 51155), which revised the definition of ''small savings association'' (2004 Final Rule). It was also crafted to increase the burden reductions in the interim final rule published in the **Federal Register** on November 24, 2004 (69 FR 68239) as part of OTS's review of regulations under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) (EGRPRA Interim Final Rule).

In this final rule, OTS is adopting changes to the way it assigns CRA ratings. OTS is deferring action, however, on revising the definition of ''community development.'' OTS notes that the Federal Deposit Insurance Corporation (FDIC) has also issued a proposal to expand the definition of ''community development.'' 69 FR 51611 (August 20, 2004). OTS is deferring action on this portion of its proposal to allow for further opportunities for consideration of, and coordination on, these and other proposals. Accordingly, the remainder of this Supplementary Information section is limited to addressing the assignment of ratings.

II. The Way CRA Works

A. The CRA Statute

CRA is a statute addressed to the credit needs of communities. The statute clearly states that the purpose of CRA is ''to require each appropriate Federal financial supervisory agency to use its authority when examining financial institutions to encourage such institutions to help meet *the credit needs* of the local communities in which they are chartered consistent with the safe and sound operation of such institutions.'' 12 U.S.C. 2901(b) (emphasis added). Congress further provided that the written evaluations of CRA performance are to evaluate ''the institution's record of meeting *the credit needs* of its entire community, including low and moderate-income neighborhoods.'' 12 U.S.C. 2906(a)(1) (emphasis added).

The legislation's chief sponsor, Senator William Proxmire, indicated the lending focus to CRA when he explained the purpose of the provision authorizing the federal banking agencies to evaluate how well institutions meet the *credit* needs of the areas which they are primarily chartered to serve. He stated, ''The provision is intended to eliminate the practice of *redlining* by lending institutions.'' 123 Cong. Rec. S8932 (daily ed. June 6, 1977) (emphasis added).

B. The Original CRA Rule

The four federal banking agencies (the Agencies) implemented the CRA through joint final regulations published in 1978. 43 FR 47144 (October 12, 1978) (1978 rule). These regulations specified twelve factors that the Agencies would consider in assessing an institution's record of performance in helping to meet the credit needs of its community.

Several of the twelve factors focused on the institution's lending. However, some factors focused on the institution's services and investments. For example, one service-focused factor was ''the institution's record of opening and closing offices and providing services at offices.'' 43 FR 47154 (promulgating 12 CFR 563e.7(g)). One investment-focused factor was ''the institution's participation, including investments, in local community development and redevelopment projects or programs.'' 43 FR 47154 (promulgating 12 CFR 563e.7(h)).

While the factors covered lending, investment, and service among other aspects of the institution's performance, the factors did not mandate any particular level of performance on any particular factor or factors. Indeed, as indicated in the preamble to the 1978 rule, the Agencies considered, but specifically rejected, giving specific weights or imposing a scoring system on the factors. The preamble explained, ''[T]he Agencies believe that specific weights or scoring systems would not adequately address the diversity of institutions and communities [and] would prevent rather than encourage thoughtful response to community needs.'' 43 FR 47145.

C. Experience With the 1978 Rule

The experience with the 1978 rule was summarized in the preamble to the Agencies' 1995 CRA rule. 60 FR 22156 (May 4, 1995) (1995 rule). It stated:

> The CRA has come to play an increasingly important role in improving access to credit in communities—both rural and urban—across the country. Under the impetus of the CRA, many banks and thrifts opened new branches, provided expanded services, and made substantial commitments to increase lending to all segments of society.
>
> Despite these successes, the CRA examination system has been criticized. Financial institutions have indicated that policy guidance from the agencies on the CRA is unclear and that examination standards are applied inconsistently. Financial institutions have also stated that the CRA examination process encourages them to generate excessive paperwork at the expense of providing loans, services, and investments to their communities.
>
> Community, consumer, and other groups have agreed with the industry that there are inconsistencies in CRA evaluations and that current examinations overemphasize process and underemphasize performance. Community and consumer groups also have criticized the agencies for failing aggressively to penalize banks and thrifts for poor performance.
>
> Noting that the CRA examination process could be improved, President Clinton requested in July 1993 that the Federal financial supervisory agencies reform the CRA regulatory system. The President asked the agencies to consult with the banking and thrift industries, Congressional leaders, and leaders of community-based organizations across the country to develop new CRA regulations and examination procedures that ''replace paperwork and uncertainty with greater performance, clarity, and objectivity.''
>
> Specifically, the President asked the agencies to refocus the CRA examination system on more objective, performance-based assessment standards that minimize compliance burden while stimulating improved performance. He also asked the agencies to develop a well-trained corps of examiners who would specialize in CRA examinations. The President requested that the agencies promote consistency and even-handedness, improve CRA performance evaluations, and institute more effective sanctions against institutions with consistently poor performance.

60 FR 22156–57.

D. The 1995 Rule and Subsequent Guidance

The experience with the 1978 rule led the Agencies to replace it in 1995 with a rule designed to emphasize performance rather than process, promote consistency in evaluations, and eliminate unnecessary burden. 60 FR 22156. Among other things, it

established a large retail institution test comprised of three tests: one for lending, one for investment, and one for service.

OTS has previously summarized how the performance of large retail institutions has been assessed under the lending, investment, and service tests under the 1995 rule. *See, e.g.*, 69 FR 68258; 66 FR 37602 (July 19, 2001) (2001 Joint ANPR); 69 FR 5729 (February 6, 2004) (2004 Joint NPR). In sum, under OTS's CRA rule at 12 CFR 563e.28(b), OTS assigns ratings to savings associations assessed under the large retail institution test in accordance with the following three rating principles:

(1) A savings association that receives an ''outstanding rating on the lending test receives an assigned rating of at least ''satisfactory'';

(2) A savings association that receives an ''outstanding'' rating on both the service test and the investment test and a rating of at least ''high satisfactory'' on the lending test receives an assigned rating of ''outstanding''; and

(3) No savings association may receive an assigned rating of ''satisfactory'' or higher unless it receives a rating of at least ''low satisfactory'' on the lending test.

Interagency Questions and Answers Regarding Community Reinvestment, 66 FR 36620 (July 12, 2001), developed jointly by the Agencies, address how the Agencies weigh performance under the lending, investment, and service tests for large retail institutions to come up with one overall Composite Rating. Q&A 28(a)–3, 66 FR 36639, provides:

> A rating of ''outstanding,'' ''high satisfactory,'' ''low satisfactory,'' ''needs to improve,'' or ''substantial noncompliance,'' based on a judgment supported by facts and data, will be assigned under each performance test. Points will then be assigned to each rating as described in the first matrix set forth below. A large retail institution's overall rating under the lending, investment and service tests will then be calculated in accordance with the second matrix set forth below, which incorporates the rating principles in the regulation.

The Q&A then sets forth the following Component Test Rating chart (66 FR 36639):

POINTS ASSIGNED FOR PERFORMANCE UNDER LENDING, INVESTMENT AND SERVICE TESTS

	Lending	Service	Investment
Outstanding	12	6	6
High Satisfactory	9	4	4
Low Satisfactory	6	3	3
Needs to Improve	3	1	1
Substantial Noncompliance	0	0	0

This chart is followed by the following Composite Rating matrix (66 FR 36639–40):

COMPOSITE RATING POINT REQUIREMENTS

[Add points from three tests]

Rating	Total points
Outstanding	20 or over.
Satisfactory	11 through 19.
Needs to Improve	5 through 10.
Substantial Noncompliance	0 through 4.

Note: There is one exception to the Composite Rating matrix. An institution may not receive a rating of "satisfactory" unless it receives at least "low satisfactory" on the lending test. Therefore, the total points are capped at three times the lending test score.

As reflected in the Component Test Rating chart, lending receives approximately 50 percent weight, service receives approximately 25 percent weight, and investment receives approximately 25 percent weight. OTS applies the tests in a performance context that considers several factors specified in § 563e.21(b) of OTS's CRA rule.

As discussed in the preamble to the 2004 NPR, 69 FR 68260–61, the CRA regulation has been implemented to give some consideration to the unique statutory and regulatory structure of savings associations. This structure includes the qualified thrift lender test. 12 U.S.C. 1467a(m). It also includes lending and investment limits, such as on commercial loans and community development investments. 12 U.S.C. 1464(c)(2)(A), (c)(3)(A), and 1831e; 12 CFR 560.30 and 560.36. Because of these differences between savings associations and other financial institutions, the preamble to the 1995 CRA rule indicated that a savings association could receive at least a ''low satisfactory'' rating on the investment test without making qualified investments, depending upon its lending performance. 60 FR 22156, 22163 (May 4, 1995). Similarly, the 2001 interagency CRA Qs&As indicate that a savings association that has made few or no qualified investments due to its limited investment authority may still receive a low satisfactory rating under the investment test if it has a strong lending record. Q&A 21(b)(4), 66 FR 36631. In 2002, OTS issued examiner guidance further clarifying this policy.

III. OTS's Proposal and Solicitation of Comments

While the CRA rule, as interpreted, provides some flexibility, OTS solicited comment in the 2004 NPR on providing additional flexibility in the way it assigns CRA ratings. OTS explained that the purpose would be to reduce burden while encouraging large retail savings associations to focus their community reinvestment efforts on the types of activities the communities they serve need, consistent with safe and sound operations. Rather than mandating changes to the weights assigned to lending, investment, and service under the large retail institution test from the fixed 50 percent lending, 25 percent service, 25 percent investment formula currently applied, OTS solicited comment on providing flexibility in those weights. 69 FR 68261–63.

OTS explained that this approach would serve to clarify and build upon existing guidance. But for greater burden reduction, OTS also solicited comment on providing each savings association evaluated under the large retail institution test a choice, at its option, on the weight given to lending, investment, and service in assessing its performance. Consistent with the traditional and appropriate emphasis on lending, OTS would not allow less than a 50 percent weight to lending. The remaining 50 percent, however, would weigh lending, investment, or service, or some combination thereof, based on the savings association's election. As a result, each savings association could choose to have OTS weigh lending anywhere from 50 to 100 percent for that association's overall performance assessment, service anywhere from 0 to 50 percent, and investment anywhere from 0 to 50 percent. 69 FR 68262.

OTS explained that under this approach, as under the existing Component Test Rating chart, OTS

would continue to allocate a total of 24 possible points among the three tests. OTS would allocate 12 of these possible points to lending. OTS would allocate the remaining 12 possible points to lending, service, investment, or some combination thereof based on the savings association's weight election. For each test, the savings association would receive a percentage of the possible points it chose to have OTS allocate to that test, with the percentage varying depending on the rating it would receive on that test. 69 FR 68262–63. For any component rating of ''outstanding,'' the association would receive 100 percent of the possible points allocated to that test, 75 percent for a ''high satisfactory,'' 50 percent for a ''low satisfactory,'' 25 percent for a ''needs to improve,'' and 0 percent (*i.e.*, no points) for a ''significant noncompliance.'' These percentages correspond to the current point allocation on the lending test of 12 points for ''outstanding,'' nine points for ''high satisfactory,'' six points for ''low satisfactory,'' three points for ''needs to improve,'' and no points for ''substantial noncompliance.''

The preamble set out the method for creating a Component Test Rating chart for any possible weight combinations a savings association might select. It also set out an alternative Composite Rating matrix that would apply to any alternative weight combination selected. As with the current Composite Rating matrix, which would remain applicable to standard weights, the alternative Composite Rating matrix contained a note indicating that an institution may not receive a rating of ''satisfactory'' unless it receives at least ''low satisfactory'' rating on the lending test and, therefore, the total points are capped at three times the lending test score. 69 FR 68262–63.

OTS explained that continuing to include this note to the Composite Rating matrix, which is the same note as is contained in the Composite Rating matrix used since 1995, would have certain implications. For example, a savings association opting to allocate equal weight to lending as to the combination of services and investments could not receive a rating of ''satisfactory'' overall if it received a ''needs to improve'' or ''substantial noncompliance'' rating on its lending. 69 FR 68263.

The preamble also provided several examples of possible weights for illustrative purposes, including the applicable Component Test Rating chart for each of those examples.

The preamble indicated that if OTS were to offer this type of flexibility, a savings association evaluated under the large retail institution test could elect weights, much in the same way as it elects consideration of other components of the CRA examination that are left to the institution's option. These include whether OTS will consider as part of its examination lending by an affiliate or consortium, or investments or services by an affiliate. *See* 12 CFR 563e.22(c)–(d), 563e.23(c), and 563e.24(c). The Preliminary Examination Response Kit (PERK) currently contains optional questions permitting the savings association to elect to have information on such activities considered by providing relevant data and information pertaining to those activities. *See* PERK 008L (12/2004), ''Community Reinvestment Act Information—Large Institutions.'' Likewise, the PERK could be revised to provide an opportunity for a savings association to answer an optional question in which the association could specify alternative weights for lending, service, and investment. Through this process, a savings association could make a new weight election at the start of each CRA examination. A savings association that did not make an election through the PERK would be evaluated under the existing matrix contained in Q&A 28(a)–3. 69 FR 68263–64.

OTS also explained that conforming changes could be made to OTS's CRA rule. In particular, additional text could be added to § 563e.28 indicating that a savings association could, at its option, elect to have its rating assigned under alternative weights of lending, service, and investment (so long as at least 50 percent weight is given to lending). To the extent of any inconsistency between the three rating principles in § 563e.28(b) and the Composite Rating generated from the savings association's election of alternative weights, the standards set forth under the applicable matrix would govern. Thus, for example, the principle referring to ratings on the service test and investment test would not apply to a savings association that chose not to have OTS give weight to either or both of those factors. 69 FR 68264.

OTS explained that providing flexibility for a savings association to elect alternative weights would supplement the use of the performance context factors and serve many of the same functions. OTS already evaluates a savings association's performance in the context of factors such as the savings association's product offerings and business strategy, its institutional capacity and constraints, information about lending, investment, and service opportunities in the savings association's assessment area(s), and demographic and other relevant data pertaining to a savings association's assessment area. *See* 12 CFR 563e.21(b). Likewise, providing weight alternatives would enable the savings association to have its performance evaluated in a manner most appropriately tailored to the lending, investment, and service opportunities in its assessment area(s), demographic and other relevant data pertaining to its assessment area(s), its product offerings and business strategy, and its institutional capacity and constraints. This approach would be designed to encourage large retail savings associations to focus their community reinvestment efforts on the types of activities the communities they serve need, consistent with safe and sound operations.

IV. The Comments

A. Overview

OTS received approximately 4,200 comments. The vast majority (about 4,000) came from consumer and community organizations and representatives (Consumer Comments). These included community development advocates, Community Development Corporations, Community Development Financial Institutions, housing authorities, consumer protection and civil rights organizations, faith-based organizations, and educators, as well as a large number of individuals whose personal or professional interest in CRA was not indicated. Most of these comments were form letters; some organizations submitted multiple letters. These comments opposed the proposal, though a significant number did not address the portion of the proposal on assigned ratings. OTS also received several comments from members of Congress as well as state and local officials, also opposed to the proposal, including the portion on assigned ratings.

In contrast, OTS received a couple of hundred comments from financial institutions and industry trade associations (Financial Institution Comments). Almost all of these supported the proposal, including the portion on assigned ratings. Many of these also were form letters; some institutions submitted multiple letters. Given that of the nearly 900 savings associations OTS regulates, only about 100 are large and would be directly affected by the proposed changes to the assignment of ratings, OTS considers the level of support significant.

A summary of comments received on the portion of the proposal addressing

the assignment of ratings follows. Comments on the portion of the proposal addressing the definition of ''community development'' are not summarized in this **SUPPLEMENTARY INFORMATION** section since, as explained in Part I of this **SUPPLEMENTARY INFORMATION** section, OTS is deferring action on that aspect of the proposal.

B. Commenters Opposing Proposal

The Consumer Comments, in opposing the proposal, stated that CRA examinations have been very useful in encouraging investment in housing and services for low-income people. Generally, they predicted that if the proposal were finalized, it would result in a decrease in services and investments by large thrifts. Some of the main arguments presented were:

• OTS should not allow large thrifts to ''design their own watered-down CRA exams.'' If OTS were to permit this, it would fail in its responsibility to enforce CRA.

• Thrifts would opt to receive a CRA rating based 100 percent on lending performance, leading to a decrease in services and investments by savings associations. For example, allowing thrifts to eliminate the investment test would mean that they would not have to finance affordable rental housing through Low Income Housing Tax Credits or small businesses through equity investments. Allowing thrifts to eliminate the service test would mean that they would not have to place or maintain branches in low- and moderate-income communities and could ignore the need for remittances and other low-cost banking services.

• CRA has been effective because the Agencies have issued regulations in a careful and uniform manner. OTS acted alone in making the streamlined examination for small institutions available to institutions between $250 million and $1 billion in assets without regard to holding company size. They asserted that OTS was again acting unilaterally and without the benefit of interagency debate, this time to weaken the examination requirements for institutions over $1 billion in assets.

The Consumer Comments elaborated in various ways on these arguments:

• Some emphasized the harmful national impact they expect the proposal would have if finalized. One commenter estimated that the large thrifts impacted by the proposal control 87 percent of thrift assets and that thrifts with assets over $1 billion hold CRA investments of $1.3 billion. It projected that the assigned ratings proposal would reduce the level of CRA investments by more than 50 percent. It indicated that if other regulators followed suit, the impact would be even more dramatic.

• Some argued that large institutions have substantial room for improvement on their CRA performance and criticized OTS's oversight of large institutions. One reported performing a sampling of thrifts from which it concluded that a sizeable minority of thrifts does not engage in community development lending at all. It speculated that, but for the investment test, these thrifts would offer no community development financing. Another provided data from which it concluded that large institutions proportionally offer fewer full service offices in low-or moderate-income (LMI) communities than smaller institutions in certain service areas. Some expressed concern that because the current rules give equal consideration to purchased loans and directly originated loans under the lending test, an institution that would elect to base its rating 100 percent on lending could receive an ''outstanding'' or ''satisfactory'' rating without any direct presence in LMI markets, further noting that the same loans can be bought several times by numerous institutions to boost their perceived CRA performance.

• Some asserted that the change was unnecessary, since OTS has already established a mechanism to account for the home loan focus of thrifts through their ability to concentrate on community development lending. One further concluded that the Home Owners' Loan Act's investment limits do not disadvantage thrifts under the investment component because even thrifts that receive ''outstanding'' ratings on investments have investment levels below the investment limits.

• Some recommended alternative ways OTS could change CRA performance evaluations. One suggested that OTS could revise the current structure of the investment test to award more points for difficult investments that require patient capital or earn below market rates of interest. It also argued that the service test should be made more rigorous by requiring data disclosures on the number and percentage of checking and savings accounts for LMI borrowers and communities and use it as a straightforward measure of responsiveness to deposit needs.

Many Consumer Comments also addressed an issue covered in the EGRPRA interim final rule. They asserted that it would reduce vital opportunities for community groups and thrifts to meet with OTS to discuss CRA and anti-predatory lending matters when thrifts are merging because it would allow OTS the discretion to hold only one meeting, instead of two. Since this issue pertains to a separate rulemaking, it is not further discussed in this Supplementary Information section.

Comments from elected officials included one from 28 members of the House of Representatives (including 13 members of the Committee on Financial Services), who filed a joint letter urging OTS to withdraw the proposal. They called upon OTS to continue to fully evaluate all large retail institutions on their lending, service, and investment performance. They expressed concern that permitting institutions to choose whether to provide services to, or make investments in, the communities in which they are located will encourage them to concentrate on whatever is ''easiest'' to do, regardless of the communities' needs. They recommended that OTS instead expand the range of appropriate activities that qualify for CRA credit, such as remittances under the service test, and complex housing investments under the investment test. Several Representatives and a Senator wrote separately to voice their opposition to the proposal, raising similar concerns.

Several state and local government officials also wrote to oppose the proposal, citing similar reasons. These included a joint comment letter from 45 mayors and another from 50 members of the New York State legislature.

A few financial institutions and one industry trade association also opposed the proposal (or various aspects of it), explaining that the current rule strikes the appropriate balance between regulatory burden and compliance under the CRA. They expressed particular concern about the lack of uniformity among regulators. One industry trade group supported the ''spirit'' of the proposal and the goal of increasing flexibility, but opposed the proposal based on this lack of uniformity. It asserted that the lack of uniformity would increase regulatory costs and burdens, particularly at institutions that have multiple charters, necessitate revisions to the interagency CRA Qs&As, introduce artificial distinctions between the activities conducted by institutions with different charters, and hinder the ability to compare CRA performance among institutions.

One large holding company with both thrift and bank subsidiaries argued that providing a choice of weights would decrease an institution's ability to internally monitor its performance and would make comparisons among institutions more difficult through the

lack of uniformity. A couple of other financial institutions that are not chartered by OTS and not subject to its version of the CRA rule also opposed the proposal.

C. Commenters Supporting Proposal

Most financial institutions and industry trade groups commenting, on the other hand, strongly supported the proposal and praised OTS's efforts to innovate. They explained that the proposal would inject flexibility into the CRA process, allow thrifts to better serve their communities by allowing them to focus resources where they are most needed, and eliminate unnecessary regulatory burden.

Some explained how the assigned ratings changes would be consistent with CRA. They pointed out that the primary focus of the CRA is on the provision of credit, as reflected in the wording of the statute itself, and pointed out that the CRA statute itself does not mandate the service and investment tests. Some cited legislative history to further support a lending focus.

Some of the main arguments presented were:

- The weights in the current CRA rule are inappropriate. The 50 percent weight for lending is too low for traditional thrifts and forces depository institutions into other activities where they may not have sufficient expertise. The 25 percent weight for investments forces institutions to seek out risky or complex investments and other investments beyond their expertise.
- The way ratings are currently assigned is not sufficiently flexible. The current service test does not offer sufficient flexibility to thrifts that do not offer transaction-based accounts. CRA does not adequately accommodate institutions that exclusively employ alternative, non-branch delivery systems as their primary distribution channel. The proposal would be consistent with CRA by allowing OTS to give due consideration to the unique factors applicable to each depository institution, taking into account regional differences, and the varied business models and product offerings.

Several Financial Institution Comments addressed the specific questions that OTS had also included in the preamble to highlight particular aspects of the proposal:

- Several trade associations projected that allowing alternative weights would increase the importance of lending and increase the provision of credit to the community, consistent with the CRA statute.
- Some projected that allowing alternative weights would not change the level of lending, investment, and service in the community. Some reasoned that community banks of all sizes are committed to meeting the needs of their communities through community service—not because it is necessary to satisfy CRA compliance requirements—but because it is good business. Several argued that, notwithstanding the fears expressed by consumer commenters, it is extremely unlikely that any large institution would adopt a matrix based solely on lending. One form letter submitted by many financial institutions asserted that community banks would not change the way they do business or reduce the volume of loans, but what they could do, particularly those in rural areas, would be to stop investing in statewide or regional projects that actually take resources away from the institution's local community.
- Several supported continuing to require at least a 50 percent weight for lending, as being consistent with the purposes of the CRA, though one opposed this requirement in the interest of greater flexibility. A few trade associations commented that they did not think it would be necessary for OTS to otherwise impose restrictions on the weight choices, since doing so would reduce the rule's flexibility. A few Financial Institutions Comments specifically encouraged OTS to provide examples as guidance, as in the proposal.
- A couple supported continuing to require that an institution must receive at least a ''low satisfactory'' rating in lending to receive an overall ''satisfactory'' rating. They indicated that this requirement is consistent with the emphasis on returning to the core requirements of the CRA, *i.e.*, the institution's record of helping to meet the *credit* needs of the entire community.
- None preferred eliminating the investment test to the alternative weight proposal. Several specifically opposed the elimination of the investment test as an alternative, noting that the alternative weights proposal would provide flexibility to all large retail savings associations, including those that may wish to make investments and have their performance evaluated under the investment test. One argued that eliminating the investment test would reduce the variety of mechanisms available to institutions to meet their CRA responsibilities. As a result, this change would actually decrease the flexibility that institutions have to serve their communities.
- Some trade associations suggested that concerns about uniformity were overstated, noting that the Agencies are not required to have uniform rules on CRA. One benefit of departing from uniformity might prove to be that differences produce successful and innovative solutions to community reinvestment issues. Others favored obtaining greater uniformity by having the other regulators adopt OTS's approach.

V. Today's Final Rule

Having carefully considered the comments, OTS has decided to provide additional flexibility in assigning CRA ratings to encourage large retail savings associations to focus their community reinvestment efforts on the types of activities the communities they serve need, consistent with safe and sound operations. The final rule revises the manner in which ratings are assigned to reduce burden and restore the focus of CRA to lending.

As discussed in Part II.A. of this **SUPPLEMENTARY INFORMATION** section, the statutory language and legislative history of CRA confirm its appropriate lending focus. Given OTS's responsibility to evaluate an institution's performance in meeting *credit needs,* we believe it is appropriate to allow institutions to be evaluated with greater emphasis on *lending* than at present. At the same time, in recognition of the value to communities of investments and services, OTS is not mandating any decrease in the emphasis given to investments or services in an evaluation. In fact, today's final rule provides flexibility for savings associations evaluated under the large retail institution test to opt to be evaluated with the same or greater emphasis given to either investments or services than at present. Savings associations that do not want alternative weights do not have to do anything differently, as today's final rule contains no mandatory changes in the way savings associations are evaluated.

A. Regulatory Changes

The final rule adds a new paragraph to OTS's CRA rule (12 CFR 563e.28(d)) to reflect that savings associations subject to the large retail institution test may elect alternative weights for the lending, investment, and service components. In keeping with the proposal, a savings association may elect alternative weights for lending, service, and investment, so long as lending receives no less than 50 percent weight and, of course, the weights total 100 percent.

The requirement that lending receive 50 percent weight is not codified in the current CRA rule, only in implementing materials. Accordingly, OTS is continuing that approach with respect to the requirement that any alternative weights selected accord a minimum of 50 percent weight to lending. OTS will incorporate that specification and other technical details for implementing alternative weights into guidance that it will issue separately.

OTS believes that a minimum of 50 percent weight to lending is appropriate for purposes of the large retail institution test, consistent with the traditional and appropriate emphasis on lending. OTS notes, however, that savings associations that may wish to place a different emphasis on their CRA efforts might consider submitting a strategic plan under § 563e.27 of OTS's CRA rule. While that regulation provides that a savings association, other than a wholesale or limited purpose institution, generally is to address all three performance categories (lending, investments, and services) and emphasize lending and lending-related activities, it also indicates that a different emphasis is possible. The regulation states, ''[A] different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and credit needs of its assessment areas(s), considering public comment and the savings association's capacity and constraints, products offerings, and business strategy.'' 12 CFR 563e.27(f)(1)(ii).

New § 563e.28(d) further provides that the principles in § 563e.28(b) will not apply to the extent of any inconsistency with alternative weights selected. Thus, for example, the principle in § 563e.28(b)(2) stating that a savings association that receives an ''outstanding'' rating on both the service test and the investment test and a rating of at least ''high satisfactory'' on the lending test will receive an assigned rating of ''outstanding'' will not apply to a savings association that chooses not to have OTS give weight to services and investments. (Likewise, the CRA Qs&As will not apply to savings associations regulated by OTS to the extent of any inconsistency with today's final rule or any implementing guidance.)

OTS is also making a conforming change to § 563e.21(a)(1) of its CRA rule to avoid any misimpression that OTS will continue to always apply all three components of the large retail institution test to savings associations assessed under that test. Under today's final rule, OTS will continue to apply the lending test to all savings associations evaluated under the large retail institution test. But whether OTS will apply the investment and service tests will depend upon whether the savings association elects optional weights and whether those weights entail consideration of these tests. Accordingly, OTS is revising § 563e.21(a)(1) to indicate that OTS applies the lending, investment, and service tests to the extent consistent with § 563e.28(d), the provision allowing savings associations to elect alternative weights. If no weight is selected for service and/or investment, OTS will not rate that component or components.

OTS is not making any change to the performance context regulation. However, OTS examiners will take the weights selected into consideration as part of each savings association's performance context. All else being equal, a savings association that opts for OTS to give greater weight to any particular component than would apply under standard weights will be expected to exhibit stronger performance on that component than it would under standard weights in order to receive the same rating. At the same time, a savings association that opts for OTS to give lesser weight to any particular component than would apply under standard weights will not be expected to exhibit performance as strong on that component as it would under standard weights in order to receive the same rating. The performance context is sufficiently flexible, without regulatory change, for OTS examiners to take into consideration differences in weight allocations that different savings associations may elect as part of existing performance context factors such as institutional capacity. *See* 12 CFR 563e.21(b).

For savings associations that do not elect alternative weights for lending, service, and investment, OTS will continue to apply the Component Test Rating chart in Part II.D. of this **SUPPLEMENTARY INFORMATION** section to assign component ratings that reflect the institution's lending, investment, and service performance and calculate the composite rating using the Composite Rating matrix in Part II.D. of this **SUPPLEMENTARY INFORMATION** section. These are the same Component Test Rating chart and Composite Rating matrix as have been in place since 1995. For savings associations that elect alternative weights, OTS will issue separate guidance detailing the methodology for assigning ratings.

OTS has considered that providing flexibility to savings associations to choose alternative weights will decrease uniformity if the other Federal banking agencies do not provide the same type of flexibility for the institutions they regulate. However, OTS does not anticipate that this decrease in uniformity will cause significant complications. For example, if a thrift and a bank are under the same holding company and both institutions want to continue to have the same weight allocations used in their examinations by their respective regulators, the thrift can simply refrain from opting for an alternative weight allocation.

B. Using Existing Procedures

A savings association evaluated under the large retail institution test will be able to elect weights, much in the same way as it may currently elect consideration of other activities under CRA, such as lending by an affiliate or consortium, or investments or services by an affiliate, as discussed in Part III of this **SUPPLEMENTARY INFORMATION** section. This has proven to be a simple and efficient procedure. OTS intends to revise the PERK package shortly to provide a specific optional question soliciting the institution's alternative weight designation, if any, just as there are currently optional questions for lending by an affiliate or consortium, or investments or services by an affiliate. Any necessary updates to examination procedures will also be made.

Savings associations that wish to opt for an alternative weight for lending, service, and investment, will be able to do so *effective with examinations beginning the second quarter of 2005*. Until the PERK is revised, savings associations with examinations noticed for the second quarter of 2005 or thereafter may still elect alternative weights through their responses to the existing PERK information requests. PERK 008L (12/2004), ''Community Reinvestment Act Information—Large Institutions,'' already provides that an institution is welcome to provide information not listed in the PERK relevant to demonstrating the institution's performance.

By enabling savings associations to elect optional weights through the PERK, CRA examinations will become more efficient. Savings associations that opt for no weight to the investment test and/or service test will not have to provide information pertaining to that component or components as part of the CRA examination and OTS examiners will not have to evaluate such information, except as the information may relate to the performance context.

C. Anticipated Effect on Community Development

Commenters have furnished little evidence on the proposal's effect on community development. The proposal's opponents predict that allowing alternative weights will result in a decrease in services and investments by large thrifts, and that this decrease will have an adverse impact on community development. These predictions are speculative. Supporters make contrary predictions that large savings associations will continue to provide community development services and investments and are extremely unlikely to adopt a matrix based solely on lending.

Rather than rely on such predictions by opponents or supporters of the proposal, we have focused on the common-sense economic principle that allowing a savings association greater freedom to specialize in those things at which it is relatively more efficient should result in more, not less, *real* community development being delivered. Part of the idea behind allowing alternative weights is to not force a savings association to provide a service or make an investment that it cannot do efficiently—or that may not even be a central part of its business plan—and to encourage it to engage in activities at which it is relatively more efficient (*i.e.*, where the savings association has a comparative advantage). By encouraging each savings association to meet its community development obligations through activities at which it excels, OTS anticipates gains in economic efficiency deriving from specialization. And these gains, in turn, will result in more effective, not less effective, community development.

This added flexibility—permitting a savings association to focus its community reinvestment efforts on activities that it does well—also serves the important goal of helping to assure that the savings association meets its community reinvestment obligations in a manner consistent with safe and sound operations. Common-sense dictates that experience and expertise contribute to safe and sound operations.

VI. Regulatory Analysis

A. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995, OTS may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. This collection of information is currently approved under OMB Control Number 1550–0012. This final rule does not change the collection of information.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that the final rule will not have a significant economic impact on a substantial number of small entities and will not impose any additional paperwork or regulatory reporting requirements. This final rule relates only to the treatment of savings associations under the retail test mandated only for large institutions.

C. Executive Order 12866 Determination

OTS has determined that this final rule is not a significant regulatory action under Executive Order 12866.

D. Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that this rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more. Accordingly, OTS has not prepared a budgetary impact statement nor specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 563e

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

Office of Thrift Supervision

12 CFR Chapter V

■ For the reasons outlined in the preamble, the Office of Thrift Supervision amends part 563e of chapter V of title 12 of the Code of Federal Regulations as set forth below:

■ 1. The authority citation for part 563e continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1814, 1816, 1828(c), and 2901 through 2907.

■ 2. Revise § 563e.21(a)(1) to read as follows:

§ 563e.21 Performance tests, standards, and ratings, in general.

(a) * * *

(1) *Lending, investment, and service tests.* The OTS applies the lending, investment, and service tests, as provided in §§ 563e.22 through 563e.24, in evaluating the performance of a savings association, except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section, and to the extent consistent with § 563e.28(d).

* * * * *

■ 3. Amend § 563e.28 by:

■ a. Removing ''paragraphs (b) and (c) of this section'' in paragraph (a) and by adding in lieu thereof ''paragraphs (b), (c), and (d) of this section''; and

■ b. Adding a new paragraph (d) to read as follows:

§ 563e.28 Assigned Ratings.

* * * * *

(d) *Savings associations electing alternative weights of lending, investment, and service.* A savings association subject to the lending, investment, and service tests may elect alternative weights for lending, service, and investment. The principles in paragraph (b) of this section do not apply to the extent of any inconsistency with the alternative weights selected.

Dated: February 24, 2005.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 05–4016 Filed 3–1–05; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19202; Directorate Identifier 2004–NM–95–AD; Amendment 39–13989; AD 2005–05–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 757 series airplanes. This AD requires identification of the part number for the cable assembly for the lower anti-collision light, and related

investigative and corrective actions if necessary. This AD is prompted by a report of damage caused by an electrical arc in a connector on the cable assembly for the lower anti-collision light. We are issuing this AD to prevent an electrical arc in the cable assembly for the lower anti-collision light, which could result in a fire in a flammable leakage zone of the airplane.

DATES: This AD becomes effective April 6, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of April 6, 2005.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. You can examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2004–19202; the directorate identifier for this docket is 2004–NM–95–AD.

FOR FURTHER INFORMATION CONTACT: Marcia Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6484; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with an AD for certain Boeing Model 757 series airplanes. That action, published in the **Federal Register** on September 29, 2004 (69 FR 58107), proposed to require identification of the part number for the cable assembly for the lower anti-collision light, and related investigative and corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment that has been submitted on the proposed AD.

Request for an Additional Method of Corrective Action

The commenter states that potting and/or sealing the backshells of the connectors on the existing cable, to preclude liquid contamination, could provide an equivalent level of safety. We infer that the commenter is requesting that we revise the proposed AD to include potting and/or sealing the backshells of the connectors on the existing cable as an additional method for correcting the unsafe condition.

We do not agree. Due to the variety of potting material and methodologies available, we would need to review each operator's proposed potting material and methodology on a case-by-case basis. Operators may apply for an alternative method of compliance under the provisions of paragraph (i) of this AD. We have not made any changes to this AD regarding this issue.

Clarification of Applicability of Paragraph (g)

We have revised paragraph (g) of this AD to clarify that only airplanes having a cable assembly with a certain Boeing or Grimes part number, or airplanes on which the part number of the cable assembly cannot be positively identified, are required to accomplish the actions specified in paragraph (g).

Conclusion

We have carefully reviewed the available data, including the comment that has been submitted, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

This AD affects about 974 airplanes worldwide, and 650 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection/Records Review	1	$65	None	$65	650	$42,250

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for

a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2005–05–01 Boeing: Amendment 39–13989. Docket No. FAA–2004–19202; Directorate Identifier 2004–NM–95–AD.

Effective Date

(a) This AD becomes effective April 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 757–200, –200CB, and –200PF series airplanes identified in Boeing Alert Service Bulletin 757–33A0048, dated March 28, 2002; and Boeing Model 757–300 series airplanes identified in Boeing Alert Service Bulletin 757–33A0049, dated March 28, 2002; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report of damage caused by an electrical arc in a connector on the cable assembly for the lower anti-collision light. We are issuing this AD to prevent an electrical arc in the cable assembly for the lower anti-collision light, which could result in a fire in a flammable leakage zone of the airplane.

Compliance

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

Identification of Cable Assembly Part Number (P/N)

(f) Within 60 months after the effective date of this AD: Do an inspection or a review of airplane maintenance records to identify the P/N of the cable assembly for the lower anti-collision light. If Boeing P/N S283T012–15 or Grimes P/N 60–3414–9 is identified, or if the part number of the cable assembly cannot be positively identified, do the related investigative and corrective actions required by paragraph (g) of this AD.

Related Investigative and Corrective Actions

(g) For airplanes having Boeing P/N S283T012–15 or Grimes P/N 60–3414–9, or airplanes on which the P/N of the cable assembly cannot be positively identified: Within 60 months after the effective date of this AD, replace the cable assembly for the lower anti-collision light with a new, improved cable assembly, or modify the existing cable assembly; and do the related investigative actions; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–33A0048 (for Model 757–200, –200CB, and –200PF series airplanes); or 757–33A0049 (for Model 757–300 series airplanes); both dated March 28, 2002; as applicable.

Parts Installation

(h) As of the effective date of this AD, no person may install a cable assembly, Boeing P/N S283T012–15 or Grimes P/N 60–3414–9, in a flammable leakage zone on any airplane.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(j) You must use the service information that is specified in Table 1 of this AD to perform the actions that are required by this AD, as applicable, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of those documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC.

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Boeing alert service bulletin	Revision level	Date
757–33A0048 ..	Original	March 28, 2002.
757–33A0049 ..	Original	March 28, 2002.

Issued in Renton, Washington, on February 16, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–3784 Filed 3–1–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19768; Directorate Identifier 2004–NM–184–AD; Amendment 39–13990; AD 2005–05–02]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all McDonnell Douglas Model MD–90–30 airplanes. This AD requires a general visual inspection in the electrical/electronics (E/E) compartment for damage of the wire bundle and aft right radio rack structure at station 160.000, and corrective actions if necessary. This AD also requires modifying the radio rack structure and wire bundle routing. This AD is prompted by a report indicating that burnt wiring was discovered in the wire bundle at station 160.000 in the E/E compartment. We are issuing this AD to detect and correct chafing of the wire bundle at station 160.000 against the support bracket located on the aft right radio rack, which could lead to shorted or burnt wires and consequent smoke and fire in the E/E compartment.

DATES: This AD becomes effective April 6, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of April 6, 2005.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). You can examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9

a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2004–19768; the directorate identifier for this docket is 2004–NM–184–AD.

FOR FURTHER INFORMATION CONTACT: George Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with an AD for all McDonnell Douglas Model MD–90–30 airplanes. That action, published in the **Federal Register** on December 14, 2004 (69 FR 74463), proposed to require a general visual inspection in the electrical/electronics (E/E) compartment for damage of the wire bundle and aft right radio rack structure at station 160.000, and corrective actions if necessary. That action also proposed to require modifying the radio rack structure and wire bundle routing.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Change to This AD

We have changed the manufacturer name on the service bulletin citation in this AD from McDonnell Douglas to Boeing to reflect current guidelines established by the Office of the Federal Register for material incorporated by reference.

Costs of Compliance

There are about 105 airplanes of the affected design in the worldwide fleet. This AD will affect about 21 airplanes of U.S. registry. The required actions will take about 5 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost about $3,479 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is $79,884, or $3,804 per airplane.

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2005–05–02 McDonnell Douglas: Amendment 39–13990. Docket No. FAA–2004–19768; Directorate Identifier 2004–NM–184–AD.

Effective Date

(a) This AD becomes effective April 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas Model MD–90–30 airplanes; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report indicating that burnt wiring was discovered in the wire bundle at station 160.000 in the electrical/electronics (E/E) compartment. We are issuing this AD to detect and correct chafing of the wire bundle at station 160.000 against the support bracket located on the aft right radio rack, which could lead to shorted or burnt wires and consequent smoke and fire in the E/E compartment.

Compliance

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

Inspection

(f) Within 18 months after the effective date of this AD, perform a general visual inspection in the E/E compartment for damage of the wire bundle and aft right radio rack structure at station 160.000; do any applicable corrective actions; and modify the radio rack structure and reroute the wire assembly; by accomplishing all of the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–24A080, Revision 1, dated August 5, 2004.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(h) You must use Boeing Alert Service Bulletin MD90–24A080, Revision 1, dated August 5, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on February 16, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–3785 Filed 3–1–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18678; Directorate Identifier 2001–NM–312–AD; Amendment 39–13991; AD 2005–05–03]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes. This AD requires repetitive detailed inspections of the center and rear fuselage skin including all the lap joints at stringers 2, 10, 19, and 30, and repair if necessary. This AD is prompted by evidence of cracking due to fatigue along the edges of certain chemi-etched pockets in the rear fuselage upper skin. We are issuing this AD to prevent a possible sudden loss of cabin pressure and consequent injury to passengers and flightcrew.

DATES: This AD becomes effective April 6, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of April 6, 2005.

ADDRESSES: For service information identified in this AD, contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. You can examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2004–18678; the directorate identifier for this docket is 2001–NM–312–AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer; International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with an AD for all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes. The proposed AD was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on December 16, 2004 (69 FR 75275). The supplemental NPRM proposed to require repetitive detailed inspections of the center and rear fuselage skin including all the lap joints at stringers 2, 10, 19, and 30, and repair if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the supplemental NPRM or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

This AD will affect about 55 airplanes of U.S. registry. The required actions will take about 4 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $14,300, or $260 per airplane, per inspection cycle.

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with

this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2005–05–03 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–13991. Docket No. FAA–2004–18678; Directorate Identifier 2001–NM–312–AD.

Effective Date

(a) This AD becomes effective April 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by evidence of cracking due to fatigue along the edges of certain chemi-etched pockets in the rear fuselage upper skin. We are issuing this AD to prevent a possible sudden loss of cabin pressure and consequent injury to passengers and flightcrew.

Compliance

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

Inspection and Repair

(f) Within the applicable compliance times specified in paragraph (f)(1) or (f)(2) of this AD, perform a detailed inspection to detect cracking of the center and rear fuselage skin, including all the lap joints at stringers 2, 10, 19, and 30, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–164, dated July 10, 2001.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) For Model Avro 146–RJ series airplanes: Inspect before the accumulation of 10,000 total landings, or within 2,000 landings after the effective date of this AD, whichever is later.

(i) For areas where no crack is found, repeat the inspection at intervals not to exceed 4,000 landings.

(ii) For areas where any crack is found, before further flight, perform repairs in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority (CAA) (or its delegated agent). No further inspection of any repaired area is required by this AD.

(2) For Model BAe 146 series airplanes: Inspect before the accumulation of 16,000 total landings, or within 4,000 landings after the effective date of this AD, whichever is later.

(i) For areas where no crack is found, repeat the inspection at intervals not to exceed 8,000 landings.

(ii) For areas where any crack is found, before further flight, perform repairs in accordance with a method approved by the Manager, International Branch, ANM–116; or the CAA (or its delegated agent). No further inspection of any repaired area is required by this AD.

No Reporting Requirement

(g) Although the referenced service bulletin specifies to submit Appendix 1 of the service bulletin with certain information to the manufacturer, this AD does not require that action.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(i) You must use BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–164, dated July 10, 2001, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on February 17, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–3786 Filed 3–1–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19562; Directorate Identifier 2004–NM–73–AD; Amendment 39–13992; AD 2005–05–04]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR 42–200, –300, and –320 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Aerospatiale Model ATR 42–200, –300, and –320 series airplanes. This AD requires inspecting to determine the part and serial number of the swinging lever of the main landing gears (MLG) and replacing the swinging lever if necessary. This AD is prompted by a report that, on an airplane lined up for takeoff, the swinging lever of the left MLG collapsed when engine power was applied. We are issuing this AD to prevent fracture of the MLG swinging lever, which could result in collapse of the swinging lever and reduced structural integrity and possible collapse of the MLG during operations on the ground.

DATES: This AD becomes effective April 6, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of April 6, 2005.

ADDRESSES: For service information identified in this AD, contact Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. You can examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/*

code_of_federal_regulations/ ibr_locations.html.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2004–19562; the directorate identifier for this docket is 2004–NM–73–AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for all Aerospatiale Model ATR 42–200, –300, and –320 series airplanes. That action, published in the **Federal Register** on November 10, 2004 (69 FR 65101), proposed to require inspecting to determine the part and serial number of the swinging lever of the main landing gears (MLG) and replacing the swinging lever if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

This AD will affect about 24 airplanes of U.S. registry. The required inspection will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $1,560, or $65 per airplane.

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2005–05–04 Aerospatiale: Amendment 39–13992. Docket No. FAA–2004–19562; Directorate Identifier 2004–NM–73–AD.

Effective Date

(a) This AD becomes effective April 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Aerospatiale Model ATR 42–200, –300, and –320 series airplanes; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report that, on an airplane lined up for takeoff, the swinging lever of the left main landing gear (MLG) collapsed when engine power was applied. We are issuing this AD to prevent fracture of the MLG swinging lever, which could result in collapse of the swinging lever and reduced structural integrity and possible collapse of the MLG during operations on the ground.

Compliance

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

Inspection to Determine Part and Serial Numbers

(f) Within 30 days after the effective date of this AD, inspect to determine the part number (P/N) and serial number (S/N) of the swinging lever of the MLG.

(1) If the P/N of the swinging lever is not D56771; or if the P/N of the swinging lever is D56771 but the S/N is not from 115 to 151 inclusive; no further action is required by this paragraph.

(2) If the P/N of the swinging lever is D56771 and the S/N is from 115 to 151 inclusive, within 90 days after the effective date of this AD: Remove the swinging lever and replace it with a new or serviceable lever in accordance with Job Instruction Card 32–11–00 RAI 10030–001, dated February 1, 2000, of the Avions de Transport Regional 42 Aircraft Maintenance Manual.

No Reporting Requirement

(g) Though French airworthiness directive 2003–376(B), dated October 1, 2003, specifies that operators shall report certain inspection findings to Messier-Dowty, this AD does not require this.

Disposition of Swinging Levers

(h) Though French airworthiness directive 2003–376(B), dated October 1, 2003, specifies that operators shall return swinging levers with applicable serial numbers to Messier-Dowty for discard, this AD does not require this.

Parts Installation

(i) As of the effective date of this AD, no person may install on any airplane an MLG swinging lever, P/N D56771, having a S/N from 115 to 151 inclusive.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(k) French airworthiness directive 2003–376(B), dated October 1, 2003, also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use Job Instruction Card 32–11–00 RAI 10030–001, dated February 1, 2000, of the Avions de Transport Regional 42 Aircraft Maintenance Manual to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on February 17, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–3787 Filed 3–1–05; 8:45 am]

BILLING CODE 4910–13–P

AIR TRANSPORTATION STABILIZATION BOARD

14 CFR Part 1310

Regulations for Air Transportation Stabilization Board Under Section 101(a)(1) of the Air Transportation Safety and System Stabilization Act

AGENCY: Air Transportation Stabilization Board.

ACTION: Final rule.

SUMMARY: This supplemental regulation is issued by the Air Transportation Stabilization Board under section 102(c)(2)(B) of the Air Transportation Safety and System Stabilization Act, which authorizes the Air Transportation Stabilization Board (the ''Board'') to issue supplemental regulations for the issuance of federal credit instruments. The purpose of this supplemental regulation is to allow the Board to charge a fee for each amendment to, or waiver of, any term or condition of any guaranteed loan document or related instrument approved by the Board relating to its air carrier guarantee loan program. These regulations are effective upon publication.

EFFECTIVE DATE: March 2, 2005.

FOR FURTHER INFORMATION CONTACT: Mark R. Dayton, Executive Director, Air Transportation Stabilization Board, 1120 Vermont Avenue, NW., Suite 970, Washington, DC 20005, at (202) 622–3550 or by e-mail to *atsb@do.treas.gov.*

SUPPLEMENTARY INFORMATION: On October 12, 2001, the Office of Management and Budget (the ''OMB'') published a final rule (66 FR 52270), as amended on April 9, 2002 (67 FR 17258), under section 102(c)(2)(B) of the Air Transportation Safety and System Stabilization Act (the ''Act''). That section states that ''the Director of the Office of Management and Budget shall issue regulations setting forth procedures for application and minimum requirements * * * for the issuance of Federal credit instruments under Section 101(a)(1)'' of the Act. Section 101(a)(1) authorizes the Board, which is established by section 102(b)(1) of the Act, to issue certain Federal credit instruments to assist air carriers who suffered losses due to the terrorist attacks of September 11, 2001, and to whom credit is not otherwise reasonably available, in order to facilitate a safe, efficient, and viable commercial aviation system in the United States.

Section 102(c)(2)(B) of the Act authorizes the Board to supplement the regulations issued by OMB. On April 9, 2002, the Board published a supplemental final rule (67 FR 17258) under Section 102(c)(2)(B) of the Act establishing administrative rules and procedures. The Board has determined that it is appropriate to issue supplemental rules and procedures to facilitate requests for amendments or waivers to terms and conditions of guaranteed loan documents or related instruments approved by the Board.

Because this final rule relates to public loan guarantees and does not affect the substantive rights or obligations of any person, notice and public procedure are not required pursuant to 5 U.S.C. 553(a). For the same reasons, a delayed effective date is not required pursuant to 5 U.S.C. 553(a) and (d). This rule is not a ''significant regulatory action'' for purposes of Executive Order 12866, and because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

List of Subjects in Part 1310

Air carriers, Disaster assistance, Loan programs-transportation, Reporting and recordkeeping requirements.

Dated: February 22, 2005.

Mark R. Dayton,

Executive Director, Air Transportation Stabilization Board.

■ For the reasons set forth in the preamble and under the authority of 49 U.S.C. 40101 note, the Air Transportation Stabilization Board amends subchapter B of 14 CFR Chapter VI as follows:

■ 1. The heading of Part 1310 is revised to read as follows:

Subchapter B—Air Transportation Stabilization Board

PART 1310—AIR CARRIER GUARANTEE LOAN PROGRAM ADMINISTRATIVE REGULATIONS AND AMENDMENT OR WAIVER OF A TERM OR CONDITION OF GUARANTEED LOAN

■ 2. The authority citation for part 1310 continues to read as follows:

Authority: Title I of Pub. L. 107–42, 115 Stat. 230 (49 U.S.C. 40101 note).

■ 3. Section 1310.15 is added to read as follows:

§ 1310.15 Amendment or Waiver of a term or condition of a guaranteed loan.

The Board may, in its discretion, charge the borrower a fee, in an amount and payable as determined by the Board, for each amendment to, or waiver of, any term or condition of any guaranteed loan document or related instrument approved by the Board.

[FR Doc. 05–4005 Filed 2–25–05; 12:15 pm]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9186]

RIN 1545–BD42

Qualified Amended Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that modify the rules relating to qualified amended returns by providing additional circumstances that end the period within which a taxpayer may file an

amended return that constitutes a qualified amended return. These regulations provide that the period for filing a qualified amended return is terminated once the IRS has served a John Doe summons on a third party with respect to the taxpayer's tax liability. In addition, for taxpayers who have claimed tax benefits from undisclosed listed transactions, the regulations provide that the period for filing a qualified amended return is terminated once the IRS contacts a promoter, organizer, seller, or material advisor concerning the listed transaction. The regulations also provide that the date on which published guidance is issued announcing a settlement initiative for a listed transaction in which penalties are compromised or waived is an additional date by which a taxpayer must file a qualified amended return. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject published elsewhere in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective March 2, 2005.

Applicability Dates: For dates of applicability, see § 1.6664–1T(b)(3).

FOR FURTHER INFORMATION CONTACT: Nancy M. Galib, 202–622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations under 26 CFR part 1 relating to qualified amended returns. Section 1.6664–2(c) provides that the amount reported on a qualified amended return will be treated as an amount shown as tax on the taxpayer's return for purposes of determining whether there is an underpayment of tax subject to an accuracy-related penalty. Section 1.6664–2(c)(3) provides that an amended return, or request for administrative adjustment under section 6227 of the Internal Revenue Code, is a qualified amended return if it is filed before the earliest of: (1) The date on which the IRS first contacts the taxpayer concerning an examination of the return; (2) the date on which the IRS first contacts a person described in section 6700(a) concerning the examination of an activity described in section 6700(a) with respect to which the taxpayer claimed any tax benefit on the return directly or indirectly through the entity, plan or arrangement described in section 6700(a)(1)(A); or (3) for certain pass-through items, the date on which the IRS first contacts the pass-through entity in connection with an examination of the return to which the pass-through item relates. These provisions are intended to encourage voluntary compliance by permitting taxpayers to avoid accuracy-related penalties by filing an amended return before the IRS begins an investigation of the taxpayer or the promoter of a transaction in which the taxpayer participated.

The Treasury Department and the IRS have determined that additional rules providing for the termination of the period for filing a qualified amended return are necessary because existing rules may encourage taxpayers to delay filing amended returns until after the IRS has taken steps to identify taxpayers as participants in potentially abusive transactions. To discourage the wait-and-see approach of some taxpayers and to encourage voluntary compliance, the Treasury Department and the IRS announced in Notice 2004–38, 2004–24 I.R.B. 949, that regulations modifying the definition of *qualified amended return* in § 1.6664–2(c)(3) would be issued. Notice 2004–38 announced that the regulations would provide that the period for filing a qualified amended return is terminated when the IRS serves a John Doe summons under section 7609(f) with respect to the taxpayer's tax liability. Notice 2004–38 also announced that the regulations would provide that the period for filing a qualified amended return would terminate when the IRS contacts an organizer, seller, or material advisor concerning a listed transaction for which the taxpayer has claimed a tax benefit. Notice 2004–38 provided that the regulations would be effective for amended returns or requests for administrative adjustment filed on or after April 30, 2004.

Explanation of Provisions

These regulations provide the rules announced in Notice 2004–38 that identify additional circumstances that terminate the period within which a taxpayer may file a qualified amended return. Temporary regulation § 1.6664–2T(c)(3)(i) provides that a qualified amended return must be filed before the IRS serves on a third party a John Doe summons relating to the tax liability of a person, group, or class that includes the taxpayer or pass-through entity of which the taxpayer is a partner, shareholder, beneficiary, or holder of a residual interest in a REMIC with respect to a return that reflects the activity that is the subject of the summons. Any taxpayer so identified also is precluded from filing a qualified amended return in a year not identified in the summons if the original return for that year reflected the taxpayer's participation in the transaction or activity to which the summons relates.

Temporary regulation § 1.6664–2T(c)(3)(ii) provides special rules with respect to undisclosed listed transactions. An *undisclosed listed transaction* is a transaction that: (1) is the same or substantially similar to a listed transaction as defined in § 1.6011–4(b)(2) (regardless of whether § 1.6011–4 requires the taxpayer to disclose the transaction); and (2) was not previously disclosed by the taxpayer within the meaning of § 1.6011–4 or § 1.6011–4T, or had not been disclosed under Announcement 2002–2 by the deadline therein. In the case of an undisclosed listed transaction for which a taxpayer claims any direct or indirect tax benefits on its return, a taxpayer may not file a qualified amended return on or after the earlier of: (1) The date on which the IRS first contacts any person regarding an examination of that person's liability under section 6707(a) with respect to the undisclosed listed transaction of the taxpayer; or (2) the date on which the IRS issues to any person a request for information required to be included on a list under section 6112 relating to a type of listed transaction regarding which that person made a tax statement to or for the benefit of the taxpayer (regardless of whether the taxpayer's information is required to be included on the list requested by the IRS). For purposes of this section, an examination of a person's liability under section 6707(a) includes examinations under section 6707, in effect prior to and after the amendments made by section 816 of the American Jobs Creation Act of 2004, Pub. L. 108–357 (118 Stat. 1418).

An amended return that is filed to disclose a transaction, but that does not show an additional amount due, is treated as a qualified amended return for purposes of § 1.6662–3(c) or § 1.6662–4(e) and (f). These temporary regulations also provide that a qualified amended return includes an amended return filed solely to disclose information pursuant to § 1.6011–4, provided that the taxpayer also makes the required disclosure to the Office of Tax Shelter Analysis.

In addition to these rules, temporary regulation § 1.6664–2T(c)(3)(i) also provides that the date on which published guidance is issued providing for a settlement initiative for a listed transaction is an additional date by which a taxpayer who participated in the listed transaction must file a qualified amended return for the taxable years in which the taxpayer claimed any

direct or indirect tax benefits from the listed transaction. The Commissioner may waive the requirements of this provision or identify a later date by which a taxpayer who participated in the listed transaction must file a qualified amended return in the published guidance announcing the listed transaction settlement initiative.

These temporary regulations also clarify the existing rules applicable to qualified amended returns. Temporary regulation § 1.6664–2T(c)(3)(i)(B) clarifies that the period for filing a qualified amended return terminates on the date the IRS first contacts a person concerning an examination under section 6700, regardless of whether the IRS ultimately establishes that such person violated section 6700. Temporary regulation § 1.6664–2T(c)(3)(i) also clarifies that a taxpayer must file a qualified amended return before the IRS first contacts the taxpayer concerning a criminal investigation of the taxpayer that includes the tax period covered by the return.

Effective Date

Paragraphs (c)(1), (c)(2), (c)(3)(i)(A), (c)(3)(i)(B), (c)(3)(i)(C), (c)(3)(i)(D) (second sentence), (c)(3)(i)(E), and (c)(4) of § 1.6664–2T are applicable for amended returns and requests for administrative adjustment filed on or after March 2, 2005. Paragraphs (c)(3)(i)(D) (first sentence) and (c)(3)(ii) of § 1.6664–2T are applicable for amended returns and requests for administrative adjustment filed on or after April 30, 2004.

Effect on Other Documents

Notice 2004–38 (2004–24 I.R.B. 949) is obsolete as of March 2, 2005.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), this Treasury decision will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Nancy M. Galib, Office of Associate Chief Counsel (Procedure & Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.6664–1T is added to read as follows:

§ 1.6664–1T Accuracy-related and fraud penalties; definitions and special rules (temporary).

(a) through (b)(2) [Reserved]. For further guidance, see § 1.6664–1.

(b)(3) *Qualified amended returns.* Sections 1.6664–2T(c)(1), (c)(2), (c)(3)(i)(A), (c)(3)(i)(B), (c)(3)(i)(C), (c)(3)(i)(D) (second sentence), (c)(3)(i)(E), and (c)(4) are applicable for amended returns and requests for administrative adjustment filed on or after March 2, 2005. Sections 1.6664–2T(c)(3)(i)(D) (first sentence) and (c)(3)(ii) are applicable for amended returns and requests for administrative adjustment filed on or after April 30, 2004.

■ **Par. 3.** Section 1.6664–2 is revised to read as follows:

§ 1.6664–2 Underpayment.

* * * * *

(c) [Reserved]. For further guidance, see § 1.6664–2T.

* * * * *

■ **Par. 4.** Section 1.6664–2T is added to read as follows:

§ 1.6664–2T Underpayment (temporary).

(a) through (b) [Reserved]. For further guidance, see § 1.6664–2.

(c) *Amount shown as the tax by the taxpayer on his return*—(1) *Defined.* For purposes of paragraph (a) of this section, the ''amount shown as the tax by the taxpayer on his return'' is the tax liability shown by the taxpayer on his return, determined without regard to the items listed in § 1.6664–2(b) (1), (2), and (3), except that it is reduced by the excess of—

(i) The amounts shown by the taxpayer on his return as credits for tax withheld under section 31 (relating to tax withheld on wages) and section 33 (relating to tax withheld at source on nonresident aliens and foreign corporations), as payments of estimated tax, or as any other payments made by the taxpayer with respect to a taxable year before filing the return for such taxable year; over

(ii) The amounts actually withheld, actually paid as estimated tax, or actually paid with respect to a taxable year before the return is filed for such taxable year.

(2) *Effect of qualified amended return.* The ''amount shown as the tax by the taxpayer on his return'' includes an amount shown as additional tax on a qualified amended return (as defined in paragraph (c)(3) of this section), except that such amount is not included if it relates to a fraudulent position on the original return.

(3) *Qualified amended return defined.* (i) *General rule.* A qualified amended return is an amended return, or a timely request for an administrative adjustment under section 6227, filed after the due date of the return for the taxable year (determined with regard to extensions of time to file) and before the earliest of—

(A) The date the taxpayer is first contacted by the Internal Revenue Service concerning any examination (including a criminal investigation) with respect to the return;

(B) The date any person is first contacted by the Internal Revenue Service concerning an examination of that person under section 6700 (relating to the penalty for promoting abusive tax shelters) of an activity with respect to which the taxpayer claimed any tax benefit on the return directly or indirectly through the entity, plan or arrangement described in section 6700(a)(1)(A);

(C) In the case of a pass-through item (as defined in § 1.6662–4(f)(5)), the date the pass-through entity (as defined in § 1.6662–4(f)(5)) is first contacted by the Internal Revenue Service in connection with an examination of the return to which the pass-through item relates;

(D) The date on which the Internal Revenue Service serves a summons described in section 7609(f) relating to the tax liability of a person, group, or class that includes the taxpayer (or pass-through entity of which the taxpayer is a partner, shareholder, beneficiary, or holder of a residual interest in a REMIC) with respect to an activity for which the taxpayer claimed any tax benefit on the return directly or indirectly. This rule applies to any return on which the taxpayer claimed a direct or indirect tax benefit from the type of activity that is the subject of the summons, regardless of whether the summons seeks the

production of information for the taxable period covered by such return; and

(E) The date on which the Commissioner announces by revenue ruling, revenue procedure, notice, or announcement, to be published in the Internal Revenue Bulletin (see § 601.601(d)(2)), a settlement initiative to compromise or waive penalties with respect to a listed transaction. This rule applies only to a taxpayer who participated in the listed transaction and for the taxable year(s) in which the taxpayer claimed any direct or indirect tax benefits from the listed transaction. The Commissioner may waive the requirements of this paragraph or identify a later date by which a taxpayer who participated in the listed transaction must file a qualified amended return in the published guidance announcing the listed transaction settlement initiative.

(ii) *Undisclosed listed transactions.* An *undisclosed listed transaction* is a transaction that is the same as, or substantially similar to, a listed transaction within the meaning of § 1.6011–4(b)(2) (regardless of whether § 1.6011–4 requires the taxpayer to disclose the transaction) and was not previously disclosed by the taxpayer within the meaning of § 1.6011–4 or § 1.6011–4T, or had not been disclosed under Announcement 2002–2, 2002–1 C.B. 304, by the deadline therein. In the case of an undisclosed listed transaction for which a taxpayer claims any direct or indirect tax benefits on its return (regardless of whether the transaction was a listed transaction at the time the return was filed), an amended return or request for administrative adjustment under section 6227 will not be a qualified amended return if filed on or after the earliest of—

(A) The dates described in § 1.6664–2(c)(3)(i);

(B) The date on which the Internal Revenue Service first contacts any person regarding an examination of that person's liability under section 6707(a) with respect to the undisclosed listed transaction of the taxpayer; or

(C) The date on which the Internal Revenue Service requests, from any person who made a tax statement to or for the benefit of the taxpayer, or who is a material advisor (within the meaning of section 6111) with respect to the taxpayer, the information required to be included on a list under section 6112 relating to a transaction that is the same as, or substantially similar to, the undisclosed listed transaction, regardless of whether the taxpayer's information is required to be included on that list.

(4) *Special rules.* (i) A qualified amended return includes an amended return that is filed to disclose information pursuant to § 1.6662–3(c) or § 1.6662–4 (e) and (f) and that does not report any additional tax liability. A qualified amended return also includes an amended return filed solely to disclose information pursuant to § 1.6011–4, if the taxpayer also makes the required disclosure to the Office of Tax Shelter Analysis under § 1.6011–4(e). See § 1.6662–3(c), § 1.6662–4(f), and § 1.6664–4(c) for rules relating to adequate disclosure.

(ii) The Commissioner may by revenue procedure prescribe the manner in which the rules of paragraph (c) of this section regarding qualified amended returns apply to particular classes of taxpayers.

(5) *Examples.* The following examples illustrate the provisions of paragraphs (c)(3) and (c)(4) of this section:

Example 1. T, an individual taxpayer, claimed tax benefits on its 2002 Federal income tax return from a transaction that is substantially similar to the transaction identified as a listed transaction in Notice 2002–65, 2002–2 C.B. 690 (Partnership Entity Straddle Tax Shelter). T did not disclose his participation in this transaction on a Form 8886, Reportable Transaction Disclosure Statement, as required by § 1.6011–4. On June 30, 2004, the IRS requested from P, T's material advisor, an investor list required to be maintained under section 6112. The section 6112 request, however, related to the type of transaction described in Notice 2003–81, 2003–2 C.B. 1223 (Tax Avoidance Using Offsetting Foreign Currency Option Contracts). T did not participate in (within the meaning of § 1.6011–4(c)), and claimed no tax benefits from, a transaction described in Notice 2003–81. T may file a qualified amended return relating to the transaction described in Notice 2002–65 because T did not claim a tax benefit with respect to the listed transaction that is the subject of the section 6112 request.

Example 2. The facts are the same as in Example 1, except that T's 2002 Federal income tax return reflected T's participation in the transaction described in Notice 2003–81. As of June 30, 2004, T may not file a qualified amended return for the 2002 tax year.

Example 3. Corporation X claimed tax benefits from a transaction on its 2002 Federal income tax return. In October 2003, the IRS and Treasury identified the transaction as a listed transaction. In December 2003, the IRS contacted P concerning an examination of P's liability under section 6707(a) (as in effect prior to the amendment to section 6707 by section 816 of the American Jobs Creation Act of 2004, P.L. 108–357, 118 Stat. 1418). P is the organizer of a section 6111 tax shelter who provided representations to X regarding tax benefits from the transaction, and the IRS has contacted P about the failure to register that transaction. Three days later, X filed an amended return.

X's amended return is not a qualified amended return, because X did not disclose the transaction before the IRS contacted P. X's amended return would have been a qualified amended return if it was submitted prior to the date on which the IRS contacted P.

Example 4. The facts are the same as in Example 3 except that, instead of contacting P concerning an examination under section 6707(a), in December 2003, the IRS served P a summons described in section 7609(f). X cannot file a qualified amended return after the summons has been served regardless of when, or whether, the transaction becomes a listed transaction.

Example 5. On November 30, 2003, the Internal Revenue Service served Corporation Y, a credit card company, a summons described in section 7609(f). The summons requested the identity of, and information concerning, United States taxpayers who, during the taxable years 2001 and 2002, had signature authority over Corporation Y's credit cards issued by, through, or on behalf of certain offshore financial institutions. In obtaining court approval for the summons, the IRS provided reports and declarations that established a reasonable basis for believing that this ascertainable group of taxpayers may have been using these offshore credit card accounts to avoid complying with the internal revenue laws of the United States. Corporation Y complied with the summons, and identified, among others, Taxpayer B. On May 31, 2004, before the IRS first contacted Taxpayer B concerning an examination of Taxpayer B's federal income tax return for the taxable year 2002, Taxpayer B filed an amended return for that taxable year, that showed an increase in Taxpayer B's federal income tax liability. Under paragraph (c)(3)(i)(D) of this section, the amended return is not a qualified amended return because it was not filed before the summons was served on Corporation Y.

Example 6. The facts are the same as in Example 5. Taxpayer B continued to maintain the offshore credit card account through 2003 to avoid compliance with the internal revenue laws. On March 21, 2005, Taxpayer B filed an amended return for the taxable year 2003, that showed an increase in Taxpayer B's federal income tax liability. Under paragraph (c)(3)(i)(D) of this section, the amended return is not a qualified amended return because it was not filed before the summons for 2001 and 2002 was served on Corporation Y, and the return reflects an activity that is the subject of the same summons.

Example 7. On November 30, 2003, the Internal Revenue Service served Corporation Y, a credit card company, a summons described in section 7609(f). The summons requested the identity of, and information concerning, United States taxpayers who, during the taxable years 2001 and 2002, had signature authority over Corporation Y's credit cards issued by, through, or on behalf of certain offshore financial institutions. In obtaining court approval for the summons, the IRS established a reasonable basis for believing that this ascertainable group of taxpayers may have been using these offshore credit card accounts to avoid complying with

the internal revenue laws of the United States. Taxpayer C did not have signature authority over any of Corporation Y's credit cards during either 2001 or 2002 and, therefore, was not a person described in the summons.

In 2003, Taxpayer C first acquired signature authority over a Corporation Y credit card issued by an offshore financial institution. Taxpayer C's ability to file a qualified amended return for 2003 is not limited by paragraph (c)(3)(i)(D) because Taxpayer C's return does not reflect an activity that was the subject of the summons that was served on Corporation Y for 2001 and 2002.

Example 8. On April 15, 2004, Taxpayer D timely filed his 2003 federal income tax return. The return reported tax benefits from a transaction that had previously been identified as a listed transaction. The tax treatment of the transaction also reflected a position that was contrary to a revenue ruling. D did not include with his return a Form 8275, Disclosure Statement, as required by § 1.6662–3(c), or a Form 8886, Reportable Transaction Disclosure Statement, as required by § 1.6011–4. On March 21, 2005, D filed a qualified amended return that disclosed the listed transaction on an attached Form 8886, but that did not report any additional tax. D also filed the Form 8886 with the Office of Tax Shelter Analysis as required by § 1.6011–4. D has not adequately disclosed the transaction under § 1.6662–3(c) because D failed to file a Form 8275. (d) through (g) [Reserved]. For further guidance, see § 1.6664–2.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: February 23, 2005.

Eric Solomon,

Acting Assistant Secretary of the Treasury.

[FR Doc. 05–3950 Filed 3–1–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–7877–9]

Ocean Dumping; De-designation of Ocean Dredged Material Disposal Sites and Designation of New Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing its proposal to de-designate four existing ocean dredged material disposal sites located off of the mouth of the Columbia River near the states of Oregon and Washington and to designate two new sites, the Shallow Water site (SWS) and the Deep Water site (DWS). The new sites are needed for long-term use by authorized Columbia River navigation projects and may be available for use by others meeting the criteria for ocean disposal of dredged material. EPA published its proposal to designate the two new ocean disposal sites and to de-designate the four existing ocean disposal sites in the **Federal Register** on March 11, 2003 (68 FR 11488). The de-designation of existing sites is necessary to discontinue their use where the impact of disposal has resulted in changed and adverse site conditions. The newly designated sites are necessary for current and future dredged material ocean disposal needs and will be subject to ongoing monitoring and management to ensure continued protection of the marine environment from adverse effects to the greatest extent practicable.

DATES: *Effective Date*: This final site designation and de-designation becomes effective on April 1, 2005.

ADDRESSES: The administrative record for this final action is available for inspection at the Region 10 Library, 10th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. For access to the administrative record, contact the Region 10 Library Reference Desk at (206) 553–1289, between 9 a.m. and 4 p.m., Monday through Friday, excluding legal holidays, for an appointment. The EPA public information regulations (40 CFR part 2) provide that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: John Malek, Ocean Dumping Coordinator, U.S. Environmental Protection Agency, Region 10 (ETPA–083), 1200 Sixth Avenue, Seattle, WA 98101–1128, telephone (206) 553–1286, e-mail: malek.john@epa.gov.

SUPPLEMENTARY INFORMATION:

1. Regulated Entities

Entities potentially affected by this action include those who seek or might seek permits or approval by EPA to dispose of dredged material into ocean waters pursuant to the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401 to 1445, (MPRSA). The action would be relevant to entities, including the U.S. Army Corps of Engineers (Corps), seeking to dispose of dredged materials in ocean waters off the mouth of the Columbia River near the states of Oregon and Washington. Potentially affected categories and entities include:

Category	Examples of potentially regulated entities
Federal Government	U.S. Army Corps of Engineers Civil Works Projects, Regulatory Program, Other Federal Agencies.
Industry and General Public	Port Authorities, Marinas and Harbors, Shipyards and Marine Repair Facilities, Berth Owners.
State, local and tribal governments	Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. For any questions regarding the applicability of this action to a particular entity, please consult the person listed in the section of this action titled **FOR FURTHER INFORMATION CONTACT.**

2. Background

The EPA published a proposal in the **Federal Register** on March 11, 2003, (68 FR 11488), to de-designate four ocean dredged material disposal sites and to designate two new ocean dredged material disposal sites under Section 102(c) of the MPRSA and its implementing regulations at 40 CFR subchapter H. Under the MPRSA, the Administrator of EPA has the authority, which is delegated to the Regional Administrator of the Region in which the sites are located, to designate sites where ocean disposal may be permitted. The sites that are designated in today's action and the sites that are de-designated in today's action are located near the mouth of the Columbia River, within Region 10. Figure 1 displays the de-designated sites. Figure 2 displays the newly designated sites. [Figures 1 and 2 are attached at the end of this document.]

The proposed designations and de-designations were accompanied by a joint EPA and Corps ''Integrated Feasibility Report and Environmental Impact Statement for Channel Improvements,'' August 1999 (1999 IFR/

EIS), and a ''Supplemental Integrated Feasibility Report and Environmental Impact Statement,'' January 28, 2003 (SEIS), consistent with EPA's voluntary Environmental Impact Statement (EIS) policy (63 FR 58054, October 29, 1998). These documents incorporated a Biological Assessment as submitted to the National Marine Fisheries Service (NMFS), now known as NOAA Fisheries, pursuant to Section 7 of the Endangered Species Act (ESA) (16 U.S.C. 1536). The proposal was also accompanied by an Essential Fish Habitat (EFH) evaluation jointly prepared by EPA and the Corps and submitted to NOAA Fisheries pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801, *et seq.*, as amended (MSA). A draft Site Management and Monitoring Plan (SMMP) was prepared as required by section 102(c)(3) of the MPRSA and was made available for review and comment at the time EPA published the proposal in the **Federal Register**. The draft SMMP has been finalized. The ''*Public Comment*'' section of this action discusses changes made to this document. Copies of the Final SMMP are available from EPA and the Corps Portland District. To obtain copies contact the individual listed in the section of this action titled **FOR FURTHER INFORMATION CONTACT**.

The sites proposed for de-designation were sites A, B, E and F as currently codified at 40 CFR 228.15(n)(6), (7), (8) and (9). Sites A, B and F, designated in 1986, experienced adverse mounding after many years of disposal use. In 1993 and again in 1997, EPA and the Corps temporarily expanded the sites and changed the disposal patterns. These efforts were intended to provide short-term capacity while studies were conducted by the EPA and Corps to develop a long-term solution. Formal designation of the expanded sites was considered but found not to be a solution for the long term because of increased mounding at the sites and the use of these sites was curtailed. The past disposal activities at these sites place them in Impact Category II in EPA's evaluation of disposal impacts. See 40 CFR 228.10(c)(2). These sites are de-designated in today's action. With respect to Site E, disposal impacts at the site indicate Site E is under-sized for the dispersive conditions experienced at the site. Site E is de-designated in today's action based on this assessment.

Two sites were proposed for designation in EPA's proposed action. These sites are the Shallow Water Site (SWS), a near-shore dispersive site, and the Deep Water Site (DWS), a deep-water, off-shore, non-dispersive site. These sites were assessed against the statutory and regulatory criteria for ocean site designations. EPA's evaluation of the SWS and DWS against the designation criteria was presented in the 1999 IFR/EIS, Appendix H, and in the SEIS. Both sites meet the general criteria for designation.

The proposed SWS and the DWS were also assessed against the specific criteria for ocean site designations at 40 CFR 228.6. The specific criteria include: geographical position; location relative to breeding, spawning, nursery, feeding or passage areas for adult and juvenile phases for living resources; location relative to beaches and other amenity areas; types and quantities of waste to be disposed of and proposed methods of release, feasibility of surveillance and monitoring; dispersal, horizontal transport and vertical mixing characteristics of the area to be designated including prevailing current direction and velocity; existence and effects of current and previous discharges and dumping in the area; interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance, and other legitimate uses of the ocean; existing water quality and ecology of the site as determined by available data or by trend assessment or baseline survey; potentiality for the development or recruitment of nuisance species in the disposal site; and proximity to significant natural or cultural features of historical significance. EPA's consideration of the specific criteria for site selection was presented in the 1999 IFR/EIS, Appendix H, and in the SEIS. As considered against the specific criteria, the SWS and the DWS mitigate adverse impact on the environment to the greatest extent practicable.

Today's final action is also supported by several reports that were finalized during or after publication of the proposed designations and de-designations. These include: ''Environmental Studies at Proposed Ocean Disposal Sites off the Mouth of the Columbia River,'' prepared by MEC Analytical Systems, Inc. and Science Applications International Corporation (SAIC), June 2003 (Biological Baseline Study); ''Mouth of the Columbia River Shallow Water Ocean Dredged Material Disposal Site Supplemental Evaluation of Optimized Site Utilization and Assessment of Potential Wave-Related Impacts,'' prepared by the Corps, March 2003 (MCR Optimized Site Utilization Report); ''Estimated Entrainment of Dungeness Crab During Maintenance Dredging of the Mouth of the Columbia River, Summer 2002,'' prepared by Pearson and Skalski, March 2003 (Crab Entrainment Study); and ''Comparison of the Sampling Efficiency of Three Benthic Trawls At the Deep Water Site off the Mouth of the Columbia River,'' (Trawl Comparison Study) prepared by MEC Analytical Systems, Inc., Weston Solutions, Inc. and Science Applications International Corporation, April 2004. EPA considered the data used in the preparation of these reports. The data and the reports themselves confirm EPA's conclusions at the time of the proposal concerning the biology and capacity at the sites proposed.

The Ocean Dumping Regulations at 40 CFR 228.11 govern the withdrawal of designated sites from use by promulgation of an amendment to the disposal site designations. EPA may withdraw designated sites from use based on an evaluation of disposal impacts or changed circumstances concerning the use of the sites.

EPA finds that the de-designation of sites A, B, and F is necessary based on changed circumstances at the sites. Continued disposal at the sites could result in further formation of mounds that would eventually contribute to adverse wave conditions and resultant navigation concerns. The past activities at sites A, B and F placed these sites in Category II impacts (40 CFR 228.10(c)(2)). The sites cannot be modified or expanded without causing conflicts with marine traffic and in their current state they are subject to adverse wave conditions.

The de-designation of site E is based on the need to modify and reconfigure the site. Reconfiguration of the site will allow dredged material disposed at the site to naturally disperse into the littoral zone during the dredging season without the creation of mounding conditions that could contribute to adverse wave conditions at the site.

The proposed action (68 FR 11488) provided an analysis of the EPA's compliance with the site designation criteria of Section 102 of the MPRSA and with 40 CFR part 228. This final action promulgates, without change from the proposal, the amendment of 40 CFR 228.15(n) to de-designate sites A, B and F. The coordinates (North American Datum 1983; NAD 83) of the three EPA-designated sites which this final action de-designates are as follows:

Site A

Corner Coordinates

46°13′03″ N, 124°06′17″ W.
46°12′50″ N, 124°05′55″ W.
46°12′13″ N, 124°06′43″ W.
46°12′26″ N, 124°07′05″ W.

Site B

Corner Coordinates

46°14′37″ N, 124°10′34″ W.
46°13′53″ N, 124°10′01″ W.
46°13′43″ N, 124°10′26″ W.
46°14′28″ N, 124°10′59″ W.

Site F

Corner Coordinates

46°12′12″ N, 124°09′00″ W.
46°12′00″ N, 124°08′42″ W.
46°11′48″ N, 124°09′00″ W.
46°12′00″ N, 124°09′18″ W.

The coordinates (NAD 83) of Site E (original Site E) which this final action de-designates through reconfiguration are as follows:

Site E

Corner Coordinates

46°15′43″ N, 124°05′21″ W.
46°15′36″ N, 124°05′11″ W.
46°15′11″ N, 124°05′53″ W.
46°15′18″ N, 124°06′03″ W.

This action finalizes the designation of the SWS without change from the proposal. The SWS incorporates the footprints of the original Site E and the Corps-selected 103 expanded Site E. It is configured so that the new site is large enough to allow for the temporary storage of placed material as it is naturally dispersed into the littoral zone during the disposal season avoiding the creation of conditions that could interfere with navigation safety. The coordinates for the newly designated sites utilize ''decimal seconds.'' The old coordinates just used ''seconds'' and were slightly less precise. The coordinates (NAD 83) of the newly designated SWS, consisting of a disposal site with defined placement area and drop zone, are as follows:

Shallow Water Placement Area and Disposal Site

Corner Coordinates

46°15′31.64 N, 124°05′09.72 W.
46°14′17.66 N, 124°07′14.54 W.
46°15′02.87 N, 124°08′11.47 W.
46°15′52.77 N, 124°05′42.92 W.

Dimensions

3,100 to 5,600 feet wide by 11,500 feet long. Azimuth (long axis): 229°T, Depth 45 feet to 75 feet, No Buffer.

Shallow Water Drop Zone

Corner Coordinates

46°15′35.36 N, 124°05′15.55 W.
46°14′31.07 N, 124°07′03.25 W.
46°14′58.83 N, 124°07′36.89 W.
46°15′42.38 N, 124°05′26.65 W.

Dimensions

1,054 feet wide to 3,600 feet wide by 10,000. Azimuth (long axis): 229°T, Depth 45 feet to 75 feet.

This action also finalizes the designation of the DWS without change from the proposal. The designation of this site is necessary to provide sufficient capacity for the disposal of dredged materials to meet current and anticipated future ocean disposal needs at the mouth of the Columbia River. The coordinates (NAD 83) of the newly designated DWS, consisting of a disposal site (including buffer and placement area), are as follows:

Deep Water Disposal Site (Including Buffer)

Corner Coordinates

46°11′03.03 N, 124°10′01.30 W.
46°13′09.78 N, 124°12′39.67 W.
46°10′40.88 N, 124°16′46.48 W.
46°08′34.22 N, 124°14′08.07 W.

Dimensions

17,000 feet wide by 23,000 feet long. Depth 190 feet to 300 feet, Buffer 3,000 feet wide.

Deep Water Placement Area

Corner Coordinates

46°11′06.00 N, 124°11′05.99 W.
46°12′28.01 N, 124°12′48.48 W.
46°10′37.96 N, 124°15′50.91 W.
46°09′15.99 N, 124°14′08.40 W.

Dimensions

11,000 feet wide by 17,000 feet long. Depth 190 feet to 290 feet.

The de-designations are shown in Figure 1. The designations are shown in Figure 2.

3. Public Comments

In the preamble to the proposed action, EPA requested that public comments be submitted by no later than April 25, 2003. EPA received approximately fifteen sets of written comments on the proposed action. While many of the comments expressed support for EPA's proposal, the greater number raised issues concerning the proposed designations and de-designations. In developing the final action, EPA reviewed and considered all the written comments. This final action addresses the most significant of the comments received and groups EPA's responses to similar significant comments together. EPA prepared a separate ''Response to Comments'' to respond to every comment received and copies of the complete response to all comments may be obtained by contacting the individual listed in the section of this action titled **FOR FURTHER INFORMATION CONTACT**. The following discussion in this section summarizes and responds to the most significant comments received on the proposed action.

Need for Ocean Dredged Material Disposal Sites under the MPRSA—One commenter stated that EPA must ''specifically find that there are no practicable improvements that will reduce the adverse impacts of the dredged materials on the total environment'' before designating an ocean dredged material disposal site. There is no requirement that EPA make this specific finding. Site designations are governed by the MPRSA and its implementing regulations. The general requirements for the designation of sites are as follows: ''The Administrator shall, in a manner consistent with the criteria established pursuant to subsection (a) of this section, designate sites or time periods for dumping. The Administrator shall designate sites or time periods for dumping that will mitigate adverse impact on the environment to the greatest extent practicable.'' 33 U.S.C. 1412(c)(1); MPRSA 102(c)(1). Sites are to be designated in a manner consistent with the criteria for permitting under the Act. The factors to be considered for site designation include the need for dumping; the effects of such dumping on human health and welfare, on fisheries resources and on marine ecosystems; the persistence and permanence of the effects of dumping; the volumes and concentrations of materials dumped; the appropriate locations for such dumping, including land-based alternatives; and the effect on alternate uses of oceans, and utilization wherever feasible of locations beyond the continental shelf. In assessing the need for ocean dredged material disposal sites, EPA focused on the need for ocean dumping and looked to factors such as relative environmental risks, and impact and cost for ocean dumping as compared to other feasible alternatives. EPA did not find feasible alternatives for the disposal of the millions of cubic yards of sediment dredged annually at the Mouth of the Columbia River. There was no practicable improvement in process technology for such sediments and there were no suitable and reliable estuarine, upland, flow-lane or other alternatives for near-shore disposal or storage that did not present potentially greater adverse environmental impacts than ocean disposal.

Zone of Siting Feasibility—One commenter questioned the justification for the non-feasibility of designating a

site off of the continental shelf based on a 4.5 mile operational limit of the Mouth of the Columbia River project. The MPRSA and its implementing regulations express a preference for designating sites located off of the continental shelf. See Section 102(a)(I) of the MPRSA and 40 CFR 228.5(d). Recent oceanographic research has demonstrated fragile and complex ecosystems in these deep ocean environments throughout the world. In the case of the Mouth of the Columbia River, the 1999 IFR/EIS explained that disposal of dredged materials in an off-shelf location would likely adversely impact the thriving, densely populated benthic and pelagic ecosystems in water depths of 600 feet or greater. Bottom gradients off-shelf are steep, between 5 and 25 percent on the continental slope, and accumulation of disposal materials which are unconsolidated would be likely to result in slumping and off-site impacts. Data from NOAA Fisheries indicate that the nearest off-shelf area, the Astoria Canyon, located 11 miles offshore, is unique habitat. NOAA Fisheries commented to that effect during scoping of site designation studies and again in response to the proposal. In looking at a zone of siting feasibility (ZSF), EPA and the Corps considered that information and those concerns and also considered other factors. Other factors included the authorized depth of the river channel, the availability of dredging equipment, and operational concerns, such as adverse weather conditions and the time needed to dredge material and haul it to disposal sites during the dredging season. The dredging season at the Mouth of the Columbia River is limited to the time period from June to October because of rough seas and adverse weather conditions that are the norm from November to May. Siting feasibility also took into account norms for the heaviest shoaling times at the Mouth of the Columbia River (generally July) and the need to avoid commercial fishing use areas during periods of high use. All of these factors contributed to the identification of the area within an arc 4.5 nautical miles seaward from river mile −1.0 as the extent of the location in which to seek to designate a site for disposal of dredged materials for the Mouth of the Columbia River.

Baseline—EPA received numerous comments on EPA's baseline analysis for the site designations. EPA fully complied with the baseline requirements for site designation set forth in 40 CFR subchapter H, part 228 B ''Criteria for the management of disposal sites for ocean dumping.'' 40 CFR 228.13 ''Guidelines for ocean disposal site baseline or trend assessment surveys under section 102 of the Act,'' provides the following pertinent statements on baseline: ''The purpose of a baseline or trend assessment survey is to determine the physical, chemical, geological, and biological structure of a proposed or existing disposal at the time of the survey. A baseline or trend assessment survey is to be regarded as a comprehensive synoptic and representative picture of existing conditions; each survey is to be planned as part of a continual monitoring program through which changes in conditions at a disposal site can be documented and assessed.''

This regulation also states: ''An initial disposal site evaluation or designation study should provide an immediate baseline appraisal of a particular site, but it should also be regarded as the first of a series of studies to be continued as long as the site is used for waste disposal.''

The baseline studies at the DWS and SWS did provide a comprehensive synoptic and representative picture of the existing conditions at the time the sites were proposed for designation. The baseline appraisal monitoring is an ongoing, continuous process for the life of the site. This ongoing process is addressed through the restrictions on the use of each site in this designation and through the site monitoring and management plan (SMMP). Data contributing to the baseline are contained in the appendices to 1999 IFR/EIS, 2003 SEIS, and MEC's Biological Baseline Study and are supplemented by the Crab Entrainment Study and Trawl Comparison Study. EPA has met baseline data requirements for purposes of designating both the SWS and DWS. Physical, chemical, geological, and biological baseline surveys are considered to be complete for both the SWS and DWS. The SMMP contains a synopsis of the available physical and biological data. For the DWS, EPA believes that special studies may enhance EPA's understanding of the site. The types of special studies EPA requires are described in the final SMMP. Special studies may lead to additional management constraints on the use of the DWS depending on the results of such special studies. Routine monitoring as described in the final SMMP could also lead to additional site use constraints. The final SMMP includes monitoring and reporting to help manage conditions at designated sites through a continuous program of assessing changes in conditions at the sites. Annual use planning and reporting will supplement the information collected by EPA and the Corps through the SMMP.

Commenters expressed the opinion that the baseline biological analysis for the DWS was flawed and that it failed to consider the DWS as an area of importance to flatfish nurseries and crab. The commenters contended that it's location in the shipping and ''tow lane'' makes the DWS usable as a nursery but not as a fishery. The ''tow lane'' referred to is the navigation route depicted on navigation charts as the route to be used by vessels towing other vessels such as barges or ships. EPA notes that the DWS was recommended as a potential disposal site by crab fishermen because the site was generally not fished and was not considered unique or special habitat as a nursery site. The biological baseline shows that the DWS provides some nursery habitat for fish and crab populations but establishes that the DWS is not unique or significant nursery habitat. The biological baseline for the DWS included a detailed assessment of living organisms and complied with the requirement to measure the benthic biota, including a quantitative and qualitative evaluation of benthic communities. These communities included macroinfauna and macroepifauna, meiobenthos, and microbenthos and an appraisal, based on existing information, of the sensitivity of the indigenous species to the dredged sediments proposed to be disposed at the site. In addition, trawl studies, conducted in 2003 further assessed the fish and crab population at the DWS. Refer to the final SMMP for the description of the baseline.

The baseline for ocean dredged material site designation as required by the regulations is intended to present a ''snapshot'' in time of biological conditions at the site so that changes to those existing conditions can be monitored over time.

Site Monitoring and Management Plan (SMMP)—EPA agrees with the recommendations from many commenters to revise the draft SMMP to include an adaptive management strategy and further assessment of biological impacts. The final SMMP specifies ''special studies'' intended to verify predicted material placement and mound configuration development and biological impacts at the DWS by measuring benthic infaunal succession, groundfish and macroinvertebrate (*e.g.*, crab) use, as well as assessing specific placement techniques at the mound that will eventually be created over time at the DWS. The final SMMP has been completed by EPA and the Corps and

becomes effective with this designation. The SMMP and annual use plans will provide for periodic monitoring of the fish and crab population at the DWS in addition to other specific information collection. The annual use plans will be available to the public from EPA upon request. The SMMP and annual use plans will also provide for similar management of the SWS. The final SMMP was modified to enhance information collection related to impact analysis, monitoring and future management actions to sustain the aquatic environment. The information collected will be used to re-assess the nature and severity of the impacts of disposal at the sites and to make changes to how the sites are used, if necessary, and to assess whether the sites need to be changed.

Some commenters expressed a preference for revising the SMMP to change the management of the DWS to confine disposed material at the DWS to as small an area as possible by the use of a ''pinpoint, repetitive dump method'' with an adaptive management approach to evaluate mound height after a single drop point at the DWS reached a mound height of 30 to 40 feet. EPA did not revise the final SMMP to provide for repetitive pinpoint dumping at the DWS because EPA disagrees with the commenters on this point and favors a more minimal impact to the ocean floor over the larger footprint of the site. EPA does not intend to allow for a rapid creation of individual 30 to 40 foot mounds anywhere within the placement area but expects that gradual, uniform mounding at the DWS could reach such heights over fifty years of use or longer. Immediate mounding through repetitive pinpoint dumping would be expected to more severely impact benthic organisms through a rapid and dramatic change in floor height. Spreading the disposal material more widely and causing a slow change in ocean floor height is expected to be less disruptive to adjustment and recolonization efforts of indigenous benthic organisms at the site. However, the routine monitoring and special studies identified in the final SMMP will provide more definitive information on this issue and, if warranted, site use management will be adjusted.

With respect to monitoring the DWS, EPA expects to use the SMMP, which addresses management and monitoring of both the SWS and the DWS, as the basis for annual use planning and reporting by site users. As part of the biological baseline work, four locations outside of the DWS were identified and sampled. Under the SMMP, these locations will be periodically revisited as part of ongoing monitoring and management of the site. EPA expects the buffer zone at the DWS to act as a reference site for monitoring. The four reference locations outside the DWS boundaries provide adequate backup to the buffer. Sloughing or spillover into the buffer is unlikely to occur until after many years of use of the site. However, EPA has decided to include an evaluation of the need for additional reference monitoring at any time the SMMP is reviewed.

Columbia River Plume—EPA received several comments suggesting that site designations near the mouth of the Columbia River would have an impact on the Columbia River plume. The plume dynamics of the Columbia River plume were studied during the site selection process. A discussion in the ''Oceanographic Processes'' Sections 6 and 7 of Exhibit B ''Physical Processes and Geological Resources'' to Appendix H of the 1999 IFR/EIS explains that most of the dynamics of the Columbia River plume are confined to the upper 16 feet of the water column but can extend to a depth of 66 feet. Plume-induced currents are normally observed at or near the plume surface and decrease with depth. In addition to the depth-influenced limitation of the plume, there is significant seasonal change in ocean circulation affecting the plume. For example, the summer/fall (July to October) variation in the plume is influenced by low discharge from the Columbia River and a southerly circulation of the shelf waters.

Because of comments received on the proposed site designations concerning the Columbia River plume, EPA reviewed the study by David Jay, C. Cudaback and T. Chisholm, ''Draft Report: Evaluation of Impacts of Maintenance Dredging at the Mouth of the Columbia River on Plume Salinity,'' June 2004 (Plume Study). The Plume Study identified the Columbia River Plume as a surface-advected plume and looked at the important implications of this plume type. The Plume Study found that ''localized changes in flow depth caused by dredged material disposal will not directly affect the plume, as long as the changes in depth remain small relative to the total depth of the water underlying the plume.'' Significantly, the Plume Study results suggested: ''Changes in entrance depth [at the Mouth of the Columbia River] cannot change the total export of freshwater to the plume. The impacts of MCR maintenance on the plume are quite limited. Also, initial differences in the freshwater fraction produced in the MCR area are largely preserved as water parcels transit the plume near-field.'' Conclusions reached by the Plume Study included the following: ''Because the plume is highly mobile, variations in plume salinity, plume depth, and water parcel trajectories related to changes in coastal winds and currents are far larger than differences related to initial conditions in the MCR region. The effects of river-flow and tidal variability are also larger than those of MCR depth variability.'' And: ''Regardless of plume orientation (and dredging cycle), a continuum of salinities exists within a relatively small area between low initial plume salinities and ocean salinities, which vary only modestly with winds and currents.'' (Plume Study)

Based on available data concerning the Columbia River plume environment, EPA does not expect the designation and use of the DWS or SWS to adversely impact the plume environment. Placement of dredged material within the SWS is not expected to affect circulation of the Columbia River plume within or outside of the site boundaries. Dredged material in the SWS will be spread over the site and limited in height. Dredged material placed in the SWS is expected to be dispersed within 1–3 years, depending upon the volume placed per year and the flow from the Columbia River.

A vertical accumulation of 4–6 feet of dredged material within a water depth of 45–65 feet will affect less than 10 percent of the water column. This is not expected to modify currents influencing the Columbia River plume.

The Deep Water Site is designated on the floor of the mid-continental shelf where water depths vary between 200 and 300 feet. At the top of the water column in the vicinity of the DWS, the surface water from the Columbia River plume is significantly modified by ambient coastal water. At the seafloor and at depth, these surface influences are not experienced although bottom currents are present. Over time, the size of the mound that may result from accumulated dredged material disposed at the DWS (expected to be in the range of 20–40 feet high after many years of use) creates a potential for ocean bottom currents at the DWS to be slightly affected by the deposition of dredged material. Since some portion of the mixing zone for the plume of the Columbia River passes over the DWS, but is expected to remain separated vertically from the highest anticipated elevation of the DWS by at least 100 feet at all times, any change in circulation at the DWS is unlikely to affect the distribution of the Columbia River plume. The plume remains an area of interest and EPA and the Corps intend

to continue to assess the effects, if any, of maintenance of the Mouth of the Columbia River and lower Columbia River channel projects on the plume dynamics.

Sediment Re-suspension and Transport—A commenter questioned whether sediment placed at the DWS remained immobile and questioned whether any movement of sediment might compromise use of the buffer as a reference area. Evaluation of sediment movement in the 1999 IFR/EIS and MCR Optimized Site Utilization Report for the MCR area provided strong evidence that bottom sediment movement is limited on the ocean floor at the DWS and would be unlikely to compromise the buffer as a reference area. However, EPA agrees with the recommendation to assess the movement of sediments at the DWS and has included this element in the SMMP. EPA intends to use the routine site management and monitoring, as described in the final SMMP, to assess potential remobilization of sediments placed at the DWS. The buffer zone at the DWS is an area within the designated boundaries to ensure that the sediment mass remains within the designated site boundaries. Because the buffer zone at the DWS will not be impacted immediately by the placement of dredged material, the buffer zone is considered a suitable reference area for monitoring potential remobilization for the foreseeable future. If routine monitoring reveals unanticipated changes to the sediment regime of the buffer zone, a more focused special study could be required. As part of the biological baseline work, four locations outside of the DWS were identified and sampled. These locations will be periodically revisited as part of routine monitoring. EPA expects the buffer zone at the DWS to act as a reference site for monitoring with the four reference locations outside the DWS boundaries providing adequate backup.

Timing on Use of Sites—Commenters suggested that the time of year designated sites were used might be relevant to various fish life cycles given potential turbidity increases at the time of disposal. One commenter suggested that public notice and an opportunity for comment be allowed prior to disposal. EPA responds that public notice is required before sites can be used. The statute and regulations, as well as the procedural requirements the Corps follows to meet the substantive requirements for site use, all require public notice. EPA anticipates that the primary user of the DWS and SWS will be the Corps. For non-Corps use, ocean dumping cannot occur unless a permit is issued under the MPRSA. In the case of dredged material, the decision to issue a permit is made by the Corps Regulatory Program using EPA's environmental criteria and subject to EPA's concurrence. While the Civil Works and Operations Programs of the Corps do not issue themselves ''permits,'' Section 103(c) of the MPRSA requires that Corps projects apply the same criteria, factors to be evaluated, procedures, and requirements that apply to the issuance of permits. The Corps already has an established and comprehensive public involvement process in place for its Civil Works, maintenance and regulatory programs, including notice and an opportunity for comment. In all cases, specific concurrence is required from EPA.

Timing at the SWS—Commenters asked that the location of the SWS relative to feeding, spawning, and migration areas for adult and juvenile salmonids address fish habitat and life cycle requirements and avoid habitat degradation through appropriate timing and volume of dumping of dredged materials. Commenters also asked that specific timing restrictions be established at the SWS to avoid impacts to soft shell crab. EPA does not conclude that a seasonal deadline for ending disposal use of the SWS is warranted based on existing data for the SWS. An August deadline for ending disposal each year at the SWS had been agreed to by the Corps in 1998 as part of a settlement agreement with the Columbia River Crab Fishermen Association (CRCFA). That agreement terminated by its provisions in mid-2004. Currently, there are no data to suggest that the August deadline bore a significant relationship to actual crab life cycles or fishery needs. Dredging times, and other site use conditions necessary to allow EPA to monitor and manage the site as described in the SMMP, will be established in an annual use plan for the site. Annual use plans will be developed by each site user as a mechanism to implement any conditions or practices necessary for management of the site. The dredge season for the SWS will be based on many factors. Indirectly, a time limit on site use already exists. The natural weather, wind, wave, current and tidal patterns create an optimal window for use of the site. This optimal window normally runs from the beginning of June to early October. These natural processes impact dredge operations and ship movement significantly.

The location of the SWS relative to breeding, spawning, nursery, feeding, or passage areas in adult and juvenile phases was carefully assessed. The Corps has been using designated Site E and Expanded Site E, respectively, for the last 30 years and has disposed of approximately 50 million cubic yards (mcy) of dredged material at those sites within those years. The SWS is located in a highly dynamic area where current and waves allow the sediment to rapidly disperse into the littoral zone. Monitoring of the area over time has shown that the bottom elevations have not been adversely altered by disposal of dredged material. This means the water column available to adult fish for migration into spawning grounds or to juvenile fish for migration into the ocean environment has generally remained a constant. The timing of disposal activities to avoid habitat degradation will be factored into the use and management of the site.

Size of the SWS—Several commenters asked that EPA clarify the size of the SWS. EPA provided the 1983 NAD coordinates for the SWS in section B, above, of this designation and is finalizing the site configuration at those coordinates. It appears from the comments that there was confusion over the description of the SWS in the proposed designation. The coordinates for the ''new Site E'' as presented in the voluntary NEPA documentation became the coordinates for the Shallow Water Drop Zone in the proposed designation. The Drop Zone occupies the *identical* footprint as the Corps 103-selected Expanded Site E, which incorporated the former Site E (de-designated in today's action). The SWS Placement Area represents the outer boundary of the site where dredged material, when released within the Drop Zone, will temporarily accumulate during active disposal, and from which dredged material is expected to erode back into the littoral system. The vertical configuration of the SWS is a trapezoid that is wider at the seabottom (Placement Area) and tapering inward to the surface (Drop Zone). The site, consisting of both the Drop Zone and Placement Area, encompasses 1,198 acres or approximately 1.4 square nautical miles of *seafloor.* See Figure 2. EPA and Corps monitoring of the discharged sediment behavior, augmented by computer modeling, allowed EPA and the Corps to identify the accumulation pattern and specify the Placement Area (*see* MCR Optimized Site Utilization Report). Specification of the Drop Zone ensures that temporarily accumulating material remains within the same footprint affected by the use of the Expanded Site E. The Drop Zone will allow EPA to monitor and manage the dispersion of

disposed material throughout the site and will enable maximum site capacity to be used while avoiding the potential for adverse mounding.

Size of the DWS—Several commenters urged EPA to minimize the bottom footprint of the DWS and to concentrate disposal in the smallest area possible until maximum acceptable mound height is reached at each pinpoint dump spot. EPA has seriously evaluated this concern. In reviewing the site designations at the Mouth of the Columbia River it is clear that the original sites—Sites A, B, E, and F—were each too small to accommodate the disposal needs at the Mouth of the Columbia River or to manage material allocations between the different sites in an effective manner. EPA is finalizing today's designations to plan for the long-term needs for disposal at the Mouth of the Columbia River. By sizing the DWS as proposed, EPA will be able to manage disposal at both the SWS and the DWS to avoid excessive mounding conditions with resultant potential for adverse impacts. The size of the DWS also allows the site to be managed to minimize the impact to the bottom biological environment. Allowing for a larger, rather than smaller, ocean floor footprint at the DWS should enable the biological environment to have the greatest opportunity to adapt to changes to the seafloor resulting from dredged material disposal over time. The larger footprint should also ensure long-term capacity negating the need for additional ocean sites for fifty years or more based on EPA and Corps projections for ocean disposal needs. EPA is finalizing the DWS as proposed. As part of its designation studies, EPA considered numerous locations and configurations of sites to meet the current and long-term needs of dredged material disposal near the MCR and surrounding locale.

One commenter stated that EPA failed to meet MPRSA requirements by failing to justify the size of the DWS and incompletely analyzing the economic impact of the site designation. Ocean dumping regulations require that ocean disposal sites be sized so as to localize for identification and to control any immediate adverse impacts and to permit the implementation of effective monitoring and surveillance programs to prevent adverse long-range impacts. See 40 CFR 228.5(d). EPA has met this obligation under the regulations. The DWS is localized for identification and control, and the NAD 83 coordinates are provided to establish the parameters of the site. Clear identification of the site allows for the control of any immediate adverse impacts to the maximum extent practicable. Monitoring and site surveillance are feasible at the DWS. Site designations under section 102 of the MPRSA are generally intended to be long-term as compared to site selections under section 103 of the MPRSA, which have a five-year to maximum ten-year life span. EPA's site designations are intended to minimize conflicts between disposal activities and other activities in the marine environment and are to avoid areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation where practicable. The DWS has been located and sized with significant input from stakeholders, in particular commercial and recreational fishermen, to avoid those areas of existing fisheries that are most significant to those individuals, companies and organizations.

Mounding at the SWS—Some of the commenters stated that mounding was an important issue for the proposed SWS and asked EPA to strictly limit mound-induced wave amplification to 10 percent and to consider the effects of large and long period swells as they interact with the site. These commenters referred to the area as ''the path of the last historic navigation route to the north site fishing grounds.'' EPA and the Corps have been concerned with the potential for mound-induced wave amplification at the SWS and have invested considerable effort in surveying the site and in computer modeling of the site under many scenarios to consider the effects of wind, wave (period, height, steepness, breaking), current and swell. *See* MCR Optimized Site Utilization Report.

EPA and the Corps looked at the potential change in the wind-wave environment as it related to a change in the bathymetry (*i.e.* the seabed topography) when dredged material was disposed at the SWS. The assessment indicated that the complex interaction of forces at the site all had the potential to contribute to wave amplification and that mound-induced wave amplification alone could not account for total wave amplification at the site. The assessment suggests that selective uniform placement of dredged material at the site will eliminate undesirable impacts to the local wave environment by eliminating or significantly decreasing the potential to create mounds at the site. *See* MCR Optimized Site Utilization Report. Careful management of the timing and placement of dredged materials at the SWS should ensure that adverse conditions are not created.

With respect to this area being used as an historic navigation route to northern fishing grounds, EPA notes that the U.S. Coast Guard considers the area near Peacock Spit to be an historically dangerous area that should be avoided by all vessels. Vessels transiting this area have always done so at great risk. No study or investigation of the disposal site in this area has ever found that the site or use of the site contributed to a hazardous situation for any mariner. The natural conditions themselves are very hazardous and there is no evidence to suggest that disposal in this area has increased those risks.

Placement of the DWS—One commenter expressed general support for placement of the DWS in the ''towlane'' at the Columbia River but suggested that ''towlane'' coordinates should be used to ensure that active fishing grounds currently available to the commercial fishing fleet would be avoided. As referenced earlier, the ''tow lane'' referred to is the navigation route depicted on navigation charts as the route to be used by vessels towing other vessels, for example, barges or ships. EPA does not agree that ''towlane'' (or ''towboat lane'') coordinates should be used to define the DWS. The overall position of the DWS is generally in the towboat lane to avoid commercial and recreational fishing areas as much as possible; however, the offset of coordinates between the DWS and the towboat lane is necessary to avoid direct interference with navigation lanes. The potential for conflicts at the DWS with vessels transiting the area can be avoided by careful management and coordination with Columbia River bar pilots, the U.S. Coast Guard and others. Commercial and recreational fishery conflicts can be avoided and minimized through careful management of the site.

Impact on Benthos at the DWS and SWS—One commenter suggested that disposal at the designated sites would have a potential permanent effect on benthic species, particularly crab. EPA does not agree that disposal activities will have a permanent effect on benthic species at either the SWS or the DWS given the adaptability of the species. Although crab are present at the SWS and the DWS, these sites do not differ in any substantive way from the ocean floor outside of the site boundaries available to crab and other benthic species. At the request of fishermen and fishing organizations, EPA avoided traditionally rich fishing grounds as the agency assessed the various alternatives in the 1999 IFR/EIS. Special studies identified in the final SMMP will assess recolonization after disposals and (periodically) benthic populations. Depending on the results of the special studies, a biological component may be

added to the routine monitoring in the SMMP.

One commenter observed that the full potential effects of dumping various volumes at the DWS and SWS had not been sufficiently reviewed and evaluated to include the concentration of the material at the sites. EPA did assess the potential effects of dumping various volumes of material at the DWS and SWS (*see* 1999 IFR/SEIS; *see also* MCR Optimized Site Utilization). EPA and the Corps used computer modeling to provide estimates of the potential volumes the SWS could accommodate under numerous scenarios to ensure that use of the site would not potentially contribute to adverse conditions similar to those experienced at Sites A, B and F. A report was produced from these studies. The MCR Optimized Site Utilization report concludes that while the capacity for the SWS is much higher than originally anticipated, the dispersive conditions are dependent on the placement of sediment at the site. Generally there is seasonal dispersion from the site into the littoral zone but storm conditions can impact the rate and trend of the dispersion. The DWS is sized to handle volumes for the long-term needs for disposal of sediments from dredging operations near the MCR and the channel of the Columbia River. This includes capacity for those times during dredge seasons when the SWS is not available. The full effects have been reviewed as required for site designations. At the DWS, these effects include the anticipated loss of benthic organisms that are directly disposed upon but little to no impact on benthic organisms not directly disposed on. The DWS will be managed to avoid impacting the entire site at one time. This use of the site is expected to provide the best opportunity for benthic organisms at the site to adapt to new conditions and to recolonize those areas that are disposed on directly.

Cumulative Effects—Commenters stated that cumulative effects had not been fully assessed to account for environmental and economic effects including a consideration of the SWS and DWS, the Mouth of the Columbia River maintenance project, the Columbia River channel improvement project, effects of jetties, dams, wetland diking, and other substantial human alterations to the sediment budget and transport of the area, as well as past temporary ocean disposal by the Corps. Cumulative effects were addressed in the 1999 IFR/EIS and 2003 SEIS. One commenter also contended cumulative sediment fate analysis was not adequate to determine sediment movement in and around Columbia River with any degree of certainty. Although EPA did use sediment fate analysis in its analysis, EPA did not rely solely on sediment fate analysis to determine sediment movement. EPA's analysis included an assessment of oceanographic processes, including offshore regional scale circulation, inner shelf circulation, seasonal changes in circulation, long-period waves, offshore rotary currents and littoral sediment supply and transport. Measured oceanographic data included hydrographic survey data, textural characteristics of sediments, seasonal variation of bottom sediments and measured current and seabed change data which provided sufficient data to allow for an adequate analysis of cumulative effects.

Safety at the SWS—Some commenters asked whether potential mounding and wave amplification had been adequately studied at the SWS. The SWS has been studied in detail both via surveys and modeling. Suggestions that mariners historically used this area without any navigational problems prior to dumping are not accurate. Studies done for EPA by the Corps, the Coast Guard, and independent safety teams strongly agree that the area near Peacock Spit is a naturally rough surf-zone area generally to be avoided by vessels at all times. EPA is designating the SWS without changes from the proposed designation but agrees that management of disposal at the SWS needs to include placement of dredged sediments to ensure that mounding conditions are not created that might contribute to adverse conditions at this dynamic site. By nature, the site is not suitable for navigation by small vessels; however, there are no known situations where disposal at Site E or Expanded Site E contributed to the navigational difficulties of this naturally risky area. Recent computer modeling at the site at EPA's request resulted in an optimized use pattern for disposal taking seasonal variation of current and storm conditions into account. This optimized use strategy is included in the SMMP and will be included in annual use plans developed by site users.

Crab Impact at the SWS and DWS—Several commenters addressed the issue of crab impacts from sediment disposal at the SWS. One commenter suggested that past dumping activities at the SWS interfered with fishing and depleted the crab populations. EPA disagrees and has found no data to substantiate such an impact nor has any such data been provided. EPA studied crab as part of the designation studies (1999 IFR/EIS, Appendix H) and biological baseline studies. The biological baseline study using trawls and crab pots provides population estimates, seasonal variation in crab population, and comparisons of crab numbers at the proposed sites to the area generally. The laboratory crab burial studies evaluated the impact of dredged material disposal on soft-shelled crab.

The extremely dynamic SWS showed relatively constant percentages of male crab in pots from July to September 2002. Additionally, crabs were larger in September at the end of the molting season. No pattern of differential site use was detected even though active placement of dredged material was taking place at the site during the 2002 dredging season. The trawls at the SWS exhibited an increase in the number of males from July to October 2002 along with an increase in hard crab. Crab were not found in the DWS in great numbers in the July 2002 survey but were abundant during the September 2002 sampling episode. Increased abundance of crab in the trawls and pots was observed primarily at the shallower portion of the site in September 2002. This is consistent with previous studies. EPA will continue to assess the need to evaluate the crab resource at the SWS and DWS as part of its management and monitoring activities.

Commenters asked about the crab data at the DWS. Some commenters suggested that the data collected showed crab abundance was dense at the DWS in the late summer with recently molted soft-shelled crabs. Field surveys were conducted in 2002 and fish and macroinvertebrate sampling was expanded in 2003 to include both beam trawls and commercial sized otter trawls. Sampling a given population with multiple methods is done to ensure that an adequate assessment of a population structure and composition has been completed. In this case the results obtained indicated that the DWS was typical of most inner to middle continental shelf communities found off Oregon and Washington and did not provide unique habitat or species. Comparing this sampling event with over 20 years of historic data (*see* 1999 IFR/EIS, Appendix H) further substantiates the conclusion that the habitat and community structure of the DWS is typical of most ocean areas offshore of the States of Oregon and Washington. EPA's ongoing management and monitoring should help to ensure that any adverse effects to this species are minimized.

Navigation Maintained—One commenter stated that the designation of the SWS and DWS, with their combination of dispersive and non-dispersive characteristics, met the need for proper channel maintenance

allowing safe passage for all vessels crossing the bar at the Mouth of the Columbia River. This commenter also said that EPA demonstrated responsiveness to local concerns about navigation impacts by proposing to de-designate sites A, B and F and to address local navigation concerns by designating the proposed SWS using material dispersal patterns in the site design. EPA's site designations and de-designations finalized today are intended to best meet the concerns for navigation impacts and management of dredged material. Another commenter stressed the importance of safety for all types and sizes of marine vessels entering and exiting the Mouth of the Columbia River and commented that the proposed actions would provide safe passage for maritime use and preserve the Mouth of the Columbia River's role as a ''gateway to the world for international trade'' and a ''vital part of the nations'' transportation system.'' EPA agrees that providing new designated sites for dredged materials and de-designating existing sites will contribute to safety for vessels of all types and sizes.

Monitoring at the DWS—Commenters expressed concerns about the feasibility of monitoring the site given its size and depth. EPA appreciates this concern and has structured the SMMP to ensure that monitoring activities at the site will be feasible.

DWS Buffer—Several commenters questioned the need for the DWS buffer. EPA is finalizing the DWS with the buffer. The buffer will serve primarily as a reference location. Over time, a 40-foot-high trapezoidal mound will likely be created through disposal activities. EPA has conservatively assumed that the mound will at times be subject to slippage on the edges and that some spillover, over time, must be expected into the DWS buffer. The buffer will act to ensure that sediments placed at the DWS will not move beyond the site boundaries. Data collected at the DWS indicate extremely minimal bottom sediment movement once the sediments have deposited on the bottom. Disposal sequencing into the DWS will be conducted and evaluated to keep any potential spillover minimal. EPA believes that disposal immediately and over time should not impact the buffer's role as a primary reference location. EPA expects that future and routine modeling will detect the potential for sediment encroachment into the buffer well before it might occur. This should allow the adaptive management process in the SMMP to make corrections or to implement contingencies. During the designation studies, four locations outside of the DWS were sampled. These locations could serve as suitable references should any of the stations within the buffer become compromised. These four locations will be periodically re-sampled and reassessed as part of ongoing monitoring at the DWS, either as part of a routine monitoring event or as a special study, but it is not expected that the four stations would be reoccupied each and every year.

DWS as a Contingency Site—Some commenters asked EPA to designate the DWS as a contingency site to be used only when all other options were exhausted. EPA is not designating the DWS specifically as a contingency site. It should be clear from the 1999 IFR/EIS and 2003 SEIS that beneficial uses of the dredged material at near-shore sites are preferred before material is placed in deep water. This preference does not negate the need for the DWS as a necessary site to manage dredged material at the Mouth of the Columbia River and lower Columbia River. The few available near-shore sites do not have the capacity to accommodate the millions of cubic yards of material dredged annually and needing to be disposed of. The DWS provides a location for materials that cannot be otherwise accommodated. This final designation of the DWS will make the site available for use for dredged materials meeting the ocean dredged material disposal requirements.

Sediment Size at the DWS—Commenters expressed concern that the disposal of sediment at the DWS would involve coarser sediment than occurs naturally and that benthic species at the site, especially crab, may be unlikely to recover from burial by the coarser sediments. The difference in sediment size between the grain size currently on the ocean floor at the DWS was identified as a ''Potential Conflict'' during the site assessment phase of the site evaluation study (1999 IFR/EIS, Appendix H). Grain size sampling, as documented in the 1999 IFR/EIS and 2003 SEIS, has shown that the sediments being dredged are generally in the size range of 0.12 mm at the outer shoal at the Mouth of the Columbia River to less than 0.35 mm in the Columbia River channel. The grain size at the DWS, pre-disposal, generally decreases with depth. Grain size observed during the biological baseline also fluctuated with the season. Sediments were finer during the September 2002 sampling compared to the July 2002 sampling event. Finer sediment appears to be deposited during the calmer months and then appears to be winnowed and redistributed during rougher sea conditions. Various studies at the Mouth of the Columbia River found that material placed in depths greater than 80 feet are rapidly (within 6 months to a year) covered by ''native material.'' This has been documented for coarse grained and fine grained dredged material placed offshore of the Mouth of the Columbia River.

The placement of coarser grained material at the DWS is not expected to cause an adverse impact to the environment. Grain size and disposal impacts to the benthic community will be among the parameters monitored at the DWS once the site is used. EPA has explained that species will be impacted by initial burial. Part of site management will involve spreading the sediment load to allow impacted benthic organisms, such as crab, to unbury when possible and to allow other species to recolonize.

One commenter said that EPA failed to adequately characterize the sediments to be disposed at the DWS. EPA did fully characterize the sediments and water quality of dredging and dredged material disposal sites. This information is located in Exhibit C, ''Sediment and Water Quality'' to Appendix H of the 1999 IFR/EIS, 2003 SEIS, Exhibit N, Attachments A, B and C, and the Biological Baseline study. These documents presented sediment data collected from the Mouth of the Columbia River, the Columbia River navigation projects, and the Zone of Siting Feasibility. Periodic reassessment of dredged material will occur. Permitted dredged material and dredged material to be disposed by the Corps needs to be fully tested under the regulations and applicable guidance.

De-designation of Sites A, B, and F—Some commenters recommended against the de-designation of sites A, B, E and F based on a belief that the sites had some capacity to allow for minimal use and that such minimal use would allow EPA to avoid designating a site for deep water disposal which, in turn, would make material available for beach nourishment and beneficial use projects. EPA is finalizing these site de-designations because there is no available capacity at sites A, B or F given the potential for interference with navigation for vessels of all sizes. It is expected that any additional material disposed at these sites would aggravate potentially adverse conditions. Mounding is a concern for small vessels trying to navigate the Mouth of the Columbia River because they are vulnerable to any adverse wave conditions created by the shallower bottom. Larger vessels are at risk for grounding on the shallower bottom in addition to being exposed to the steeper

and earlier breaking waves. Site E, based on disposal impacts, is de-designated so that the old site can be incorporated into the footprint of the SWS. The SWS will allow for increased management options to ensure that materials can be disposed so as not to create the potential for adverse conditions. EPA agrees with commenters that navigation safety is a primary consideration.

Coastal Zone Management Act (CZMA)—Two commenters questioned EPA's consistency analysis under the Coastal Zone Management Act (CZMA) at the time of the proposed designations and de-designations. Subsequent to the publication of the proposed action, EPA provided the states of Oregon and Washington with negative determinations of coastal effects for EPA's proposal to designate and de-designate ocean dredged material disposal sites near the Mouth of the Columbia River near the coastal states of Oregon and Washington, under Section 102 of the MPRSA. EPA notes that it received no adverse comments from the relevant state coastal zone management program offices. In making a negative determination, EPA clarified that the determination was based primarily on a distinction, for purposes of the CZMA, between site designation and site use. Designation of sites, as well as de-designation, provides the public and potential users with locations for allowable disposal of dredged material, but, unlike a lease or sale does not grant conditional property rights of any nature to potential users of the sites. Consequently, no coastal effect is possible merely through the provision of such a location. However, use of an ocean disposal site has the potential to have a coastal effect. Designated sites may not be used until applicants for site use have been granted permission through a permitting process or, in the case of the Corps, have met the substantive permitting process. EPA would expect a CZMA analysis discussing those potential effects to be undertaken by any person desiring to use a disposal site.

EPA, in the alternative, also finds that the ocean site designations and de-designations are consistent to the maximum extent practicable with any enforceable policy of a state's approved coastal zone management program. EPA did not receive any adverse comment from either the State of Oregon or the State of Washington on EPA's negative determinations for the site designations and de-designations. EPA did not receive adverse comment from either State on EPA's interpretation of the enforceable policies of each State's approved coastal zone management program. EPA's negative determinations were limited to EPA's assessment of coastal effects on the designation of the SWS and the DWS and the de-designation of Sites A, B, E, and F. The negative determinations were further limited to EPA's assessment that the applicable enforceable policies of the approved CZMA programs in Oregon and Washington did not apply to the SWS or the DWS. Finally, EPA agrees with the commenters that greater coordination on CZMA issues would be beneficial for the states, EPA and the Corps.

National Environmental Policy Act (NEPA)—Two commenters stated that the proposed action did not comply with NEPA because the 1999 IFR/1999 IFR/EIS covered channel deepening and did not adequately analyze ocean disposal options. The Agency met its voluntary NEPA obligations (63 FR 58045, ''Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act (NEPA) Documents,'' October 29, 1998) by jointly preparing the 1999 IFR/EIS and the 2003 SEIS with the Corps. ''Appendix H, Volume I: Ocean Dredged Material Disposal Sites Main Report and Technical Exhibits'' of the 1999 IFR/EIS provided a comprehensive discussion of the ocean disposal options and considered 10 candidate sites as possible alternatives for ocean disposal. Although four of the 10 candidate sites were eliminated from detailed consideration in the draft EIS, the remaining six candidate sites were retained. Discussions and negotiations among stakeholders, EPA and the Corps after the draft EIS was published and before publication of the 1999 IFR/EIS led to a further reduction of candidate sites. This sequence of events is fully documented in Appendix H to the 1999 IFR/EIS. EPA discussed the alternatives considered, the available alternatives, including the alternatives available to other permitting agencies, and identified the preferred alternative. EPA also analyzed the preferred alternative against the ocean dumping criteria. The analysis of candidate sites against the mandatory ocean dumping site criteria led to the selection of the SWS and DWS as the preferred sites. The NEPA process leads to a preferred alternative which is advanced for consideration after the consequences of the reasonable alternatives have been comprehensively evaluated. This is the process EPA followed to reach the proposed designation of the SWS and DWS. EPA remains hopeful that the numerous stakeholders interested in alternatives to ocean disposal can use the stakeholders forums (particularly the Regional Sediment Management Initiative) created under the Regional Dredging Team (RDT) sponsorship.

Endangered Species Act (ESA)—One commenter commented that the proposed DWS designation did not comply with the Endangered Species Act (ESA) and requested that use of the proposed DWS be delayed until current consultation and close coordination with NOAA Fisheries was completed and conservation measures established. EPA responded to this comment by taking the opportunity to re-examine its ''Determination of No Effect with Respect to the Requirements of the Endangered Species Act for De-Designation of Existing and Designation of New Ocean Dumping Sites Offshore of the Mouth of the Columbia River, OR & WA, for Listed and Candidate Species' (August 3, 1999). EPA re-initiated informal consultation with NOAA Fisheries and with the USFWS for this purpose. Species lists were revisited and updated and EPA prepared an updated determination which concluded that its action was not likely to adversely affect ESA-listed, proposed, or candidate species or their critical habitat.

EPA received letters from the U.S. Fish and Wildlife Service (dated December 27, 2004) and NOAA-Fisheries (dated January 6, 2005) concurring with EPA's determination that the de-designations and designations ''may affect, but were not likely to adversely effect'' ESA-listed and proposed species. The U.S. Fish and Wildlife Service concurred, based on the information provided by EPA, with EPA's ''may affect, but not likely to adversely effect'' determinations for brown pelicans, marbled murrelets and short-tailed albatross. The U.S. Fish and Wildlife Service concluded that the requirements under section 7(a)(2) and 7(c) of the ESA were met, concluding the consultation process.

NOAA Fisheries concurred with EPA's determination that EPA's proposed action is ''not likely to adversely effect'' the listed or proposed wildlife species, including Stellar sea lion, loggerhead sea turtle, leatherback sea turtle, green sea turtle, olive (Pacific) Ridley turtle, blue whale, sei whale, humpback whale, sperm whale, Puget Sound killer whale (proposed for listing as threatened on December 16, 2004), or the following salmonid species: Snake River steelhead, Upper Columbia River steelhead, Middle Columbia River steelhead, Upper Willamette River steelhead, Lower Columbia River steelhead, Snake River spring/summer-run Chinook salmon, Snake River fall-

run Chinook salmon, Upper Columbia River spring-run Chinook salmon, Upper Willamette River Chinook salmon, Lower Columbia River Chinook salmon, Columbia River chum salmon, Snake River sockeye salmon, and Lower Columbia River coho salmon. This concurrence was based on the following rationale: ''(1) While turbidity will be generated from the disposal, project-related turbidity concentrations are well below known salmonid impact levels; (2) for the DWS in particular, it is unlikely that the area currently provides any unique feeding or resting habitat for ESA-listed salmonids or ESA-listed wildlife species; (3) the designation and use of the DWS is unlikely to affect the plume environment; (4) impacts to prey of ESA-listed wildlife species are likely to be limited to the footprint of the DWS site; and (5) habitat at the SWS has already been degraded through use, so continued use is not going to further degrade it beyond its present condition.'' NOAA Fisheries encouraged EPA to share the results of EPA's monitoring plan to allow for a joint evaluation of impacts from disposal. NOAA Fisheries further concurred that none of the disposal sites are located within proposed or designated critical habitat.

Essential Fish Habitat—One comment concerned the evaluation of essential fish habitat (EFH) under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the potential impacts on EFH from the use of the DWS. EPA had concluded that designating the SWS and DWS would not significantly affect EFH for any of the managed species under the MSA, but that use of the sites could result in the potential to impact EFH for some of the ground fish and coastal pelagic species, as well as salmon species. The impact to habitat for all species was expected to be very small relative to the total EFH identified for any of the species evaluated. In no instance did data indicate that the habitat provided by the SWS or the DWS was unique or particularly critical for any EFH species. No species was expected to be significantly adversely affected. EPA and NOAA Fisheries worked through an EFH consultation process and NOAA Fisheries provided EPA with limited conservation recommendations to implement. EPA agreed to implement the conservation recommendations made by NOAA Fisheries. These recommendations included further analysis of the DWS, a revision of the draft SMMP to assess biological impacts of disposal at the DWS, and expanding the monitoring area to assess remobilization of sediments placed at the DWS. EPA's response to the conservation recommendations is included in the administrative record for this action. EPA agreed to additional sampling and analysis at the DWS and collected additional information in 2003. EPA revised the draft SMMP to include reference site monitoring and management of the DWS as well as monitoring of the eventual mound that will be created over time and to add routine site monitoring and management for the DWS.

Mitigation—Several commenters raised the issue of mitigation. Although they did not define the term, their comments suggested that they generally considered ''mitigation'' to mean monetary compensation. Some commented that mitigation is required under NEPA and the CZMA for ongoing and increased impacts to ocean resources. The MPRSA, NEPA and the CZMA do not provide for monetary compensation as a way to mitigate the affects of a Federal action. Mitigation, in particular as that term is used in the MPRSA, means to lessen or moderate the ''adverse impact on the environment to the greatest extent practicable.'' *See* Section 102(c)(1) of the MPRSA. EPA's obligation to lessen or moderate the impact of the action is by avoidance measures and minimization of potential impacts through careful designation of ocean dredged material disposal sites and through the development of a monitoring and management program for the sites as described in EPA's final SMMP.

Loss of Coastal Property—Some commenters expressed the concern that dredging and disposal activities were directly resulting in the loss of coastal property along the Southwest Washington coast. Other commenters recognized that management of dredged material disposal sites could be an essential component in limiting coastal erosion along the Southwest Washington coast. The issue of coastal erosion is not unique to this area of coastline but is a natural dynamic in any coastal environment. All coastal systems are influenced to some extent by wind, wave, current and storm conditions as well as by sediment contribution from inland and ocean sources. No single factor is accountable for coastal erosion in any coastal system. The complexity of this particular coastal system renders it very unlikely that specific dredging and disposal activities could cause the direct loss of coastal property along the southwest Washington coast. No study has suggested that loss of coastal property along the southwest Washington coast would occur as a result of dredging and disposal activities related to projects currently undertaken by the Corps.

Littoral Zone—Several commenters questioned whether disposing of dredged materials at the SWS actually contributed to the littoral zone as discussed by EPA in the proposed designation. The Corps' and EPA's studies at the SWS indicate that the site has the potential for great capacity and for contributing sediment back to the littoral zone. In waters less than 60 feet deep along the Washington and Oregon Coasts, wind- and wave-induced currents dominate the transport of sediment along the seabed. This area is called the littoral (or nearshore) zone. The zone is characterized by abundant dissolved oxygen, sunlight, nutrients, generally high wave energies and water motion. The SWS is located within the littoral zone. No study indicates that disposal into the SWS will directly feed sediment back onto Washington beaches but feeding the littoral zone from the SWS is predicted to be beneficial for overall sediment enrichment of the system. EPA's designation and management of the SWS is directly responsive to the desire and historic requests to use dredged material beneficially by enriching the littoral zone near the southern coast of Washington. All of the available data, computer modeling, and physical surveys show that material placed at the SWS disperses out of the site and into the littoral zone. Enriching the littoral zone is unlikely to directly replenish a particular beach because the processes are too complex. However, the potential benefit, in terms of sediment loading augmenting the littoral system, is that it is likelier that the sediment enriched load will be carried in the direction of prevailing wave and current activity, which in this instance is toward Peacock Spit. This is the reason EPA found that placement of dredged material at the SWS is a beneficial use of dredged material. EPA intends, through its monitoring and management program, as explained in the Final SMMP, to preferentially manage material dredged at the Mouth of the Columbia River and dredged from other lower Columbia River projects so that the dredged material will be considered for placement at the SWS before being considered for placement at the DWS.

Beneficial Use and Land Based Options—Many commenters commented on the proposed action to express support for using the Benson Beach site, North Jetty site, and SWS before using the DWS and for practices that retain sediments in the littoral zone

for the beneficial uses they provide. They also urged EPA to consider land-based alternatives and beneficial use of dredged sediments before disposal into the DWS. Such evaluations were conducted as part of the designation process, and will be revisited as appropriate, during future permitting, site management, and efforts addressing regional sediment issues. EPA intends to continue to explore options through the RDT and will seek additional opportunities to retain sediments in the near-shore zone. The DWS is a necessary option for dredged material management at the Mouth of the Columbia River. EPA is supportive of keeping dredged material in the near-shore littoral zone but, without other immediately available sites on-shore or in the near-shore to accept dredged sediment from this area, finds that designation of the DWS is necessary. EPA does not expect that the need for ocean disposal sites will entirely disappear near the Mouth of the Columbia River given the annual volume of material that must be moved to maintain navigation. Beneficial uses and land-based options, to date, have been controversial, prohibitively expensive and not continuously available.

Some commenters urged EPA to forego designating the proposed 102 sites in favor of 103 Corps-selected temporary sites and to move forward with Benson Beach on-shore beach nourishment. EPA intends to designate 102 sites because there is clear need for long-term sites at the Mouth of the Columbia River. As was shown during the Corps' Mouth of the Columbia River maintenance dredging for 2003, when the local government of Pacific County did not allow on-shore placement of dredged sand at Benson Beach, land-based options can be subject to high degrees of uncertainty.

One commenter stated that land-based alternatives were preferred over ocean dumping and asserted that there was a mandatory preference against ocean dumping of any materials. While it is true that under the regulations such alternatives are to be considered, including ''the probable impact of requiring use of such alternate locations or methods upon considerations affecting the public interest,'' the statutory preference is for designating sites wherever feasible beyond the edge of the Continental Shelf. Section 102(a)(I) of the MPRSA, 33 U.S.C. 1412(a)(I). EPA, as cooperating agency with the Corps, rejected off-shelf locations because of the unique habitat of the Continental Shelf in this vicinity, but did consider numerous alternatives to possible ocean dumping sites as part of the joint 1999 IFR/EIS and 2003 SEIS. EPA did examine potential estuarine disposal sites and upland disposal sites as well as the continuing use of Benson Beach as an on-shore disposal site. These alternatives were not found to be viable for purposes of this designation given the lack of approvals by state authorities and the public sentiment against using estuarine and upland disposal sites.

Stakeholder Forum—Most commenters expressed a desire for a stakeholder forum to allow for continued information exchange on disposal activities involving disposal on the ocean floor off the Columbia River and for regional sediment management. EPA agrees and intends to focus such a forum through the Regional Sediment Management initiative, sponsored by the recently created RDT. EPA expects that parties heavily involved in this designation process will continue to be involved in discussions of regional dredged material management issues. EPA does not expect that such a forum would be a decision-making body but expects that input from a diverse group of stakeholders will allow significant issues to be addressed. The RDT will provide a focus for a comprehensive Region-wide discussion of management options that could lead to management solutions. EPA supports the use of the RDT as a forum to explore beneficial use opportunities for dredged material disposal. EPA's support for the RDT does not change today's action finalizing the site designations and de-designations.

In a related comment, one commenter stated that there was an ''acute disposal crisis'' in 2003 without the DWS. EPA believes that the 2003 dredging and disposal season, as well as the 2004 dredging and disposal, showed the need for 102 ocean dredged material site designations to ensure that sites with capacity are available for the long-term. For the 2003 dredge and disposal season, the Corps used the Corps-selected 103 Site E and the North Jetty site for disposal. The Corps-selected 103 deep water site was available if needed but was not used for the 2003 season, although it was used for the 2004 season. The commenter also stated that EPA was in part responsible for a ''crisis'' because of its handling of the ocean disposal taskforce. With respect to the ocean disposal taskforce, EPA decided that this forum needed to be changed to include the broader perspective of the Columbia River watershed. The planned stakeholder forum under the sponsorship of the RDT is intended to provide the broader perspective clearly desired by so many to consider long-term sand management needs, land-based disposal alternatives, and maintenance of fisheries in the area along the lower Columbia River and in coastal communities near the Mouth of the Columbia River. Stakeholder input has been of tremendous value in the designation process.

Historical Use Established—One commenter asserted that designation of the DWS would ''constitute *ex post facto* establishment of historical use, and would thereby unfairly influence the ultimate designation process.'' EPA does not agree. The regulatory criteria express a preference for designating sites that have historically been used but were, or are, not yet designated. See 40 CFR 228.5(e).

Economic Protection of the Coastal Community—One commenter asked whether EPA had considered the economic protection of the coastal community. EPA did consider this issue and is interested in the needs of coastal communities, including the protection of their economic base and cultural heritage. However, EPA does not have any evidence to indicate that designating and de-designating sites near the Columbia River will adversely impact the economic base or cultural heritage of any coastal community. EPA's action regulates the location of sites to be used for the disposal of dredged materials in ocean waters. The action does not regulate fishing or activities related to fishing and the associated coastal communities.

Public Trust Doctrine—A commenter stated that basic public trust guidelines must be followed in dredging and disposal to avoid, minimize and mitigate environmental damage and interference with the public's use of the water. The Public Trust Doctrine to which the commenter alludes is a common law legal principal, a doctrine that ''provides that submerged and submersible lands are preserved for public use in navigation, fishing, and recreation.'' See Black's Law Dictionary. The doctrine is carried out through a balancing of interests. EPA has followed the public trust doctrine in its very public, multi-year process, balancing interests in navigation, fishing, recreation, and environmental protection to reach the point of today's final action in designating the DWS and SWS and de-designating sites A, B, E and F. EPA considered the concerns of federal agencies, states and local governments, and private parties and organizations in reviewing alternatives for ocean site designation to avoid, minimize and mitigate environmental damage and to avoid as far as

practicable interfering in the public's use of mouth of the Columbia River. EPA collected and analyzed data on possible ocean disposal sites, including alternatives to ocean disposal; weighed the data and comments received in the preparation of the voluntary NEPA documents and the comments received on the proposed designations and de-designations; and examined the concerns voiced by the interested parties. EPA is locating new sites where environmental damage will be avoided, minimized and mitigated and where the public's use of the ocean waters will not be unduly impinged upon.

Fish Tumors—One commenter suggested that bioaccumulation pathways of contaminants in the lower Columbia River and near the mouth of the river, as evidenced by tumors on bottom fish collected at the DWS, were indicative of carcinogenic uptake at the sediment-water interface and need to be studied. The biological baseline study did identify epidermal tumors in Rex Sole at the DWS and English Sole at the SWS. The tumors identified were consistent with tumors observed throughout fish populations along the northeastern Pacific coast. Statistically, at the DWS and SWS, the fish presenting with tumors represented less than 10 percent of the Rex and English Sole collected at those sites as part of the biological baseline study. Two classes of tumors were identified. The first were epidermal papillomas, which are fairly common among *Pleuronectids* in the northeastern Pacific. These tumors have not been linked to anthropogenic inputs. The second class of tumors was similar to dark colored invasive tumors indicating an invasive squamous cell carcinoma. The cause of these tumors is unknown. Future studies should be directed to better determine the incident rate and intensity of these tumors along the Oregon and Washington coast. Although this is an issue that is not localized to the SWS or the DWS but is occurring all along the Oregon and Washington coasts, additional study of the incidence of fish tumors at the designated sites is an element included in groundfish surveys or studies conducted (*see* final SMMP).

Gear Removal—One commenter asked for greater coordination to allow for gear removal before disposal into designated sites occurred. While this issue is not specifically addressed in the final SMMP, EPA expects site users to plan their activities to allow for gear removal when site users seek permission to use the designated sites. EPA will review site use plans to insure that coordination with local fishermen associations is addressed.

Risk of Oil Spills—A commenter observed that the risk of oil spills at the Mouth of the Columbia River from dredging and dumping had not been assessed. This risk was addressed in the 1999 IFR/EIS and the 2003 SEIS. The risk, which is the possibility of oil spills from vessel groundings and navigation conflicts, is directly related to dredging and dumping operations and channel navigation use and is not a risk inherent to designating or de-designating an ocean dredged material disposal site. Maintenance of adequate navigation depths and aids at the MCR and throughout the Columbia River navigation system helps to reduce risk of oil spills from large vessel groundings and conflicts. Preparation and adherence to annual use plans for the dredging and disposals at EPA-designated sites will further help to avoid or minimize conflicts between the dredge(s) and incoming and outbound vessel traffic.

4. Statutory and Executive Order Reviews

a. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4,1993), the Agency must determine whether the regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This action, which simultaneously de-designates certain sites and designates the SWS and DWS, is not a significant regulatory action under Executive Order 12866.

b. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by OPM. Since this action does not establish or modify any information or record-keeping requirements, it is not subject to the provisions of the Paperwork Reduction Act.

c. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 601 et. seq., generally requires federal agencies to prepare a final regulatory flexibility analysis whenever the agency promulgates a final rule subject to notice and comment rulemaking requirements under 5 U.S.C. 553 after being required by that section (or by any other statute) to publish a general notice of proposed rulemaking. Section 605(b) provides an exception to this requirement if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The proposed action was certified as an action that would not have a significant economic impact on a substantial number of small entities and, therefore, the Agency did not prepare a regulatory flexibility analysis.

For purposes of assessing the impacts of today's action on small entities, the RFA provides default definitions for each type of small entity directly regulated by the rule. Small entities are defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

EPA received comments from the Columbia River Deepening Opposition Group (CDOG) and the Columbia River Crab Fisherman Association (CRCFA) on the RFA certification. EPA did not receive any adverse comments from small businesses or other entities that today's action regulates directly or indirectly. The comments received by EPA discussed impacts to small businesses such as crab fishers, ground fisheries and other fisheries, and coastal

communities involved in fishing. These entities are not directly regulated by this action. EPA's action regulates the location of sites to be used for the disposal of dredged materials in ocean waters. The action does not regulate fishing or activities related to fishing and the associated coastal communities. The action may have economic impacts in many sectors of the environment but the RFA does not require EPA to assess the impacts on all of the nation's small businesses indirectly affected by the action.

After considering the economic impacts of today's final action on small entities, I certify that this action will not have a significant impact on a substantial number of small entities directly regulated by this action.

d. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Public Law 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. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, the provisions of section 205 do not apply when they are inconsistent with applicable law.

Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why the alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This action contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Similarly, EPA has also determined that this action contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this action.

e. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the action in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective April 1, 2005.

f. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.''

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132. This action addresses the designation and de-designation of sites near the Columbia River suitable for disposal of dredged materials. Once designated, persons seeking to use the sites must obtain a permit, or, as with the Corps, meet the substantive permit requirements. Thus, Executive Order 13132 does not apply to this action. Although Section 6 of the Executive Order 13132 does not apply to this action, EPA did consult with representatives of State and local governments in developing this action.

g. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' One commenter asserted that EPA had not consulted with Indian Tribal Governments during the development of this action and that there were tribal implications because of the potential to affect Columbia River salmon and other resources. The ocean dredged material disposal site designations and de-designations do not have substantial direct effects 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. Thus, Executive Order 13175 does not apply to this action.

h. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The action concerns the designation and de-designation of ocean disposal sites and

would only have the effect of providing designated locations to use for ocean disposal of dredged material pursuant to section 102 (c) of the MPRSA.

i. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a ''significant regulatory action'' as defined under Executive Order 12866.

j. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. 272) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide to Congress, through OMB, explanations when the Agency decides to use ''government-unique'' standards in lieu of available and applicable voluntary consensus standards.

Although EPA stated that the proposed action did not directly involve technical standards, the proposed action and today's final action include environmental monitoring and measurement as described in EPA's Final Site Monitoring and Management Plan (SMMP). EPA will not require the use of specific, prescribed analytic methods for monitoring and managing the designated sites. Rather, the Agency plans to allow the use of any method, whether it constitutes a voluntary consensus standard or not, that meets the monitoring and measurement criteria discussed in the final SMMP.

k. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands. Because this action addresses ocean disposal site designations (away from inhabited land areas), no significant adverse human health or environmental effects are anticipated. The action is not subject to Executive Order 12898 because no adverse effects are expected for minority and low-income populations.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: February 18, 2005.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

■ For the reasons set out in the preamble, chapter I of title 40 is amended as set forth below:

PART 228—[AMENDED]

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

■ 2. Section 228.15 is amended by removing and reserving paragraphs (n)(6) and (n)(7), removing paragraph (n)(9), by revising paragraph (n)(8) and by adding a new paragraph (n)(9) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(n) * * *

(6) [Reserved]

(7) [Reserved]

(8) Mouth of the Columbia River, OR/WA Dredged Material Shallow Water site.

(i) *Location:* Overall Site Coordinates: 46°15′31.64″ N, 124°05′09.72″ W; 46°14′17.66″ N, 124°07′14.54″ W; 46°10′40.88″ N, 124°16′46.48″ W and 46°15′52.77″ N, 124°05′42.92″ W. Drop Zone: 46°15′35.36″ N, 124°05′15.55″ W; 46°14′31.07″ N, 124°07′03.25″ W; 46°14′58.83″ N, 124°07′36.89″ W and 46°15′42.38″ N, 124°05′26.65″ W (All NAD 83).

(ii) *Size:* 3.05 kilometers long and 0.32 to 1.10 kilometers wide or 1.4 square nautical mile.

(iii) *Depth:* Ranges from 14 to 23 meters.

(iv) *Primary Use:* Dredged Material determined to be suitable for ocean disposal.

(v) *Period of Use:* Continuing Use.

(vi) *Restriction:* Disposal shall be limited to dredged material determined to be suitable for unconfined disposal; Site use shall be consistent with the ability of the site to disperse disposed material into the littoral zone.

(9) Mouth of the Columbia River, OR/WA Dredged Material Deep Water site.

(i) *Location:* Overall Site Coordinates: 46°11′03.03″ N, 124°10′01.30″ W; 46°13′09.78″ N, 124°12′39.67″ W; 46°10′40.88″ N, 124°16′46.48″ W; 46°08′34.22″ N, 124°14′08.07″ W (which includes a 3,000-foot buffer); Site Placement Area: 46°11′06.00″ N, 124°11′05.99″ W; 46°12′28.01″ N, 124°12′48.48″ W; 46°10′37.96″ N, 124°15′50.91″ W; 46°09′15.99″ N, 124°14′08.40″ W (All NAD, 83).

(ii) *Size:* 7.01 kilometers long by 5.18 kilometers wide or 10.5 square nautical mile.

(iii) *Depth:* Ranges from 58 to 91 meters.

(iv) *Primary Use:* Dredged material determined to be suitable for ocean disposal.

(v) *Period of Use:* Continuing Use or until placed material has mounded to an average height of 40 feet within the placement area (*see* restriction 4 below).

(vi) *Restrictions:* Disposal shall be limited to dredged material determined to be suitable for unconfined disposal; Site use shall be consistent with the ability of the site to retain disposed material on-site; Direct disposal of dredged material into the identified buffer zone is prohibited; and The Corps and/or EPA shall undertake specific re-evaluation of site capacity once the site is used and an average mound height of 30 feet has accumulated throughout the placement area. This evaluation will either confirm the original 40-foot height restriction, or recommend a more technically appropriate one.

* * * * *

Note: The following Figures will not appear in the Code of Federal Regulations.

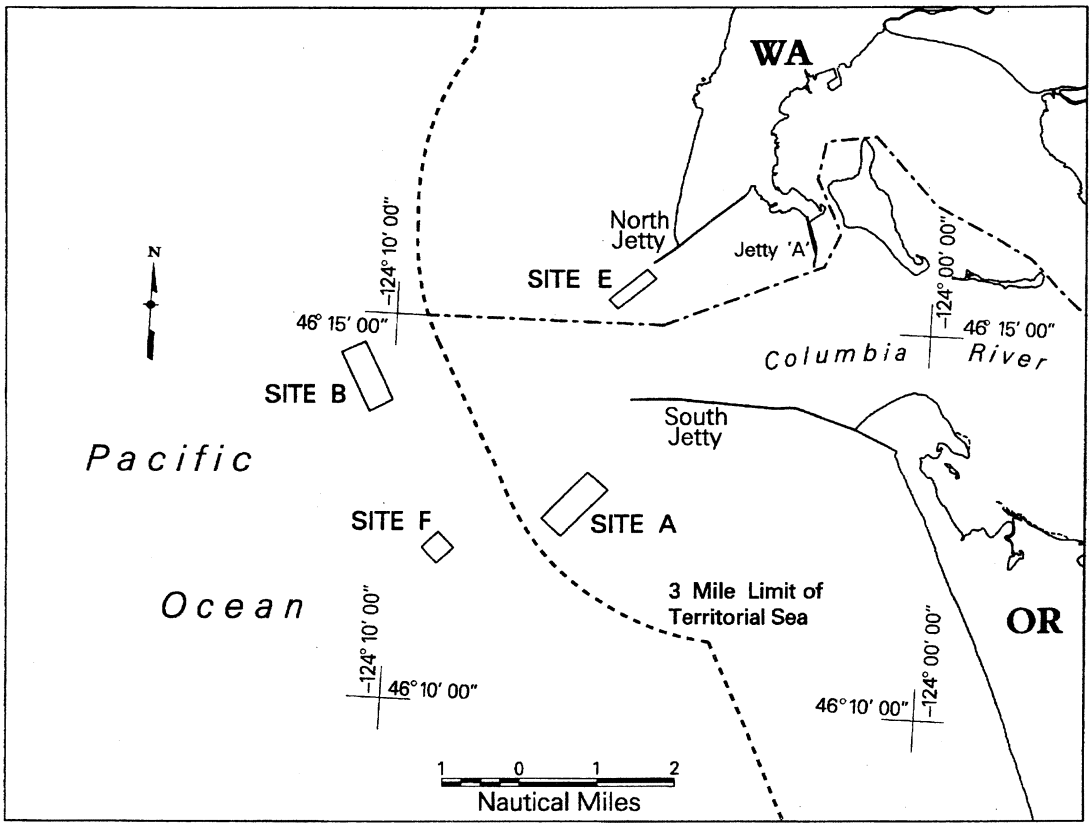

Figure 1: De-designated Ocean Dredged Material Disposal Sites by this Action

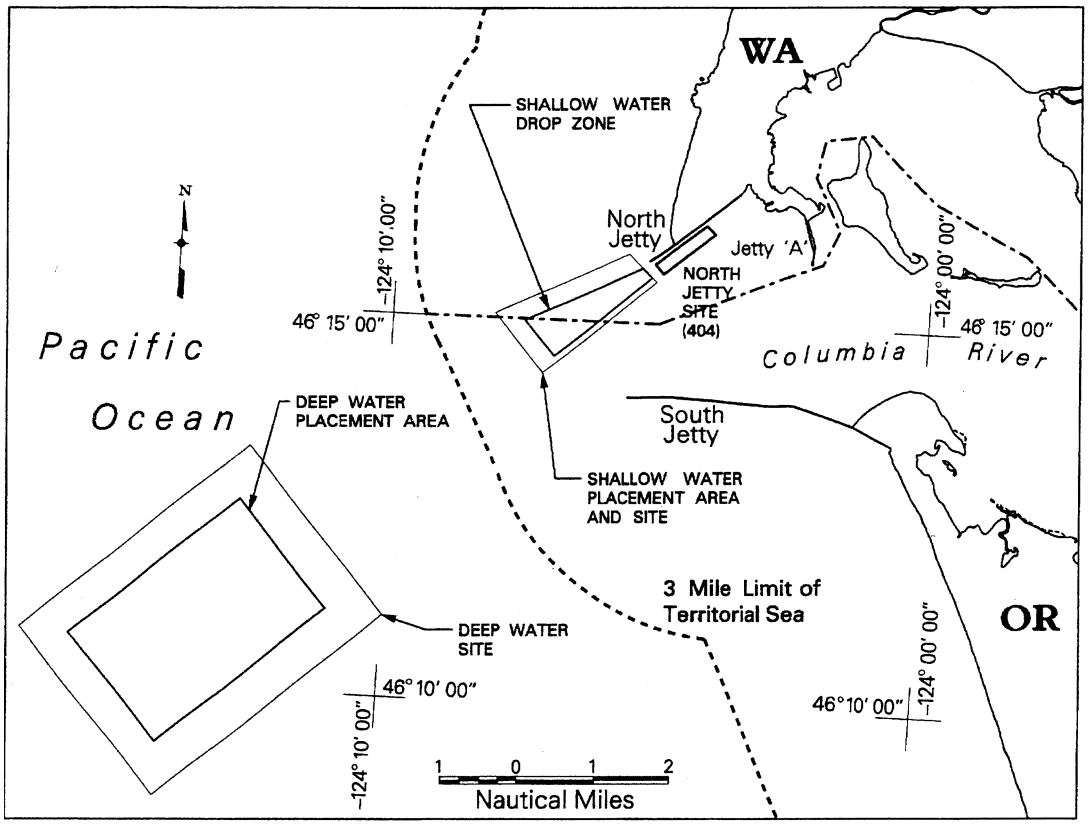

Figure 2: Designated Ocean Dredged Material

Disposal Sites by this Action

[FR Doc. 05–4002 Filed 3–1–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 05–1]

Federal-State Joint Board on Universal Service, National Telephone Cooperative Association

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Commission amends its rules so that certain sections do not apply to transfers of telephone exchanges between non-rural carriers following the phase-down of interim hold-harmless support, and the Commission addresses the request to reconsider portions of the Commission's order modifying the Commission's rules for providing high-cost universal service support based on the proposals made by the Rural Task Force by amending its rules to provide that rural carriers may receive ''safety valve'' support for investment made in the first year of operating acquired exchanges.

DATES: Effective April 1, 2005.

FOR FURTHER INFORMATION CONTACT: Katie King, Special Counsel, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order and Order on Reconsideration,* in CC Docket No. 96–45, FCC 05–1, released January 10, 2005. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

I. Introduction

1. In this *Order and Order on Reconsideration,* we amend § 54.305 of the Commission's rules so that it does not apply to transfers of exchanges between non-rural carriers after the phase-down of interim hold-harmless support, as proposed in the *Further Notice of Proposed Rulemaking,* 65 FR 79047, December 18, 2000. In addition, we address the request by the National Telephone Cooperative Association (NTCA) to reconsider portions of the Commission's rules adopted in the *Rural Task Force Order,* 66 FR 30080, June 5, 2001. Specifically, we amend our rules to provide that rural carriers may receive ''safety valve'' support for investment made in the first year of operating acquired exchanges. Based on the record before us, these actions better satisfy our policy goals of ensuring that acquiring carriers receive sufficient high-cost support and preserving the purpose of section 54.305 of discouraging carriers from transferring exchanges merely to increase their share of high-cost universal service support.

II. Discussion

2. We amend § 54.305 of the Commission's rules so that it does not apply to transfers of exchanges between non-rural carriers after the phase-down of interim hold-harmless support. The Commission adopted § 54.305 ''as a stopgap measure to prevent carriers receiving support based on the size of their study areas and embedded costs from 'placing unreasonable reliance upon potential universal service support in deciding whether to purchase exchanges[.]' '' The Commission anticipated that the rule would no longer be necessary once all carriers receive support based on forward-looking economic costs. When all non-rural carriers receive support based on forward-looking economic costs once the phase-down of interim hold-harmless support is complete, we find that the need for § 54.305 will no longer exist with regard to transfers between non-rural carriers. Accordingly, after the complete phase-down of interim hold-harmless support, § 54.305 will not be applicable to the sale or transfer of exchanges between non-rural carriers.

3. We agree with NTCA that we should amend § 54.305 of our rules to provide that rural carriers that acquire high-cost exchanges may receive safety valve support for the investment made in the first year of operating the acquired exchanges. We conclude that this modification to the existing safety valve mechanism is necessary to provide appropriate incentives for rural carriers operating recently acquired exchanges to invest in rural infrastructure. Accordingly, we amend § 54.305 to provide that the index year expense adjustment for purposes of determining safety valve support for the first year of operation shall be defined as the seller's expense adjustment for the twelve-month period prior to the transfer of the exchanges.

4. While we continue to believe that § 54.305 serves the important purpose of discouraging carriers from transferring exchanges merely to increase their share of high-cost support, we are persuaded that the current safety valve rules may have the unintended effect of discouraging investment in newly acquired exchanges during the first year of operation. The current rules not only prevent carriers from receiving safety valve support for any investments made in their first year of operation, but also may encourage carriers to keep first year investment as low as possible in order to maximize safety valve support in subsequent years. Because safety valve support is calculated by taking fifty percent of the difference between the expense adjustment in the index year and the expense adjustment in subsequent years, a lower index year expense adjustment would result in more safety valve support than a higher index year expense adjustment.

5. We are persuaded that the current safety valve formula may prevent rural carriers that make substantial investment in acquired exchanges from receiving the full benefits intended under the safety valve mechanism. One commenter notes that state commissions may require companies to make needed investments and upgrade facilities as a condition of approval of the transfer. If a state commission requires investment in the first year, the acquiring carrier may make substantial investments to enhance the network infrastructure, but would be unable to receive any additional support for that first-year investment.

6. We conclude that making safety valve support available for investment made in the first year of operation is more consistent with the purpose of the safety valve mechanism to provide additional support to rural carriers that acquire high-cost exchanges and make post-transaction investments to enhance network infrastructure than the current rule. Providing safety valve support for first year investment will provide the proper incentives, and carriers will not delay investment solely because our rules would provide more safety valve support in subsequent years. Carriers that make investments in the first year of operation will receive safety valve support for the investments they make in the acquired exchanges.

7. We find that NTCA's proposal to use the selling carrier's expense adjustment for the index year expense adjustment is a reasonable way to calculate safety valve support for the first year. Although the Commission previously said that it would be inappropriate to rely on the cost data of selling carriers in establishing the index year expense adjustment, upon reconsideration, we find that the benefits of providing safety valve support for first year investment outweigh any risks of using the seller's expense adjustment in this limited manner. We agree with NTCA that concerns regarding reliance on the seller's cost data are mitigated because the selling carrier's expense adjustment would be used only for the first year. We also note that the Commission based its concerns on the fact that ''rural carriers most often acquire high-cost exchanges from non-rural carriers operating in large study areas with lower average costs.'' Because non-rural support is targeted to high-cost wire centers, however, the selling carrier's expense adjustment for transferred high-cost exchanges will be higher than the average support per line in the non-rural study area.

8. We disagree with commenters that claim that this limited use of the seller's expense adjustment to provide safety valve support for investment in the first year of operating an acquired exchange would create a ''substantial risk that the acquiring carrier would receive more support than necessary,'' and would ''drive up the price of the exchange.'' Section 54.305 will continue to limit the acquiring carrier's support to the per line amount the selling carrier received and the additional safety valve support for post-acquisition investment, which is limited to fifty percent of the difference between the index year and subsequent year expense adjustments. Such limitation effectively prevents the acquiring carrier from receiving more support than necessary. Moreover, the total amount of safety valve support available to all eligible study areas is limited to no more than five percent of rural incumbent local exchange carrier support available from the annual high-cost loop fund. We do not believe that the additional safety valve support provided in the first year will encourage carriers to transfer exchanges merely to increase their share of high-cost support.

9. Moreover, we find that NTCA's proposal to use the selling carrier's expense adjustment for the index year expense adjustment is an administratively efficient way to calculate safety valve support for the first year and preferable to other proposed alternatives. Using the selling carrier's expense adjustment prior to the sale will not impose any additional filing requirements on carriers and should be readily available from the Universal Service Administrative Company (USAC).

10. In response to AT&T's argument that it is not appropriate to use the seller's expense data because non-rural carriers report their expenses at the study area level, NTCA proposed an alternative method of calculating safety valve support. Specifically, NTCA suggests that the methodologies used to adjust the rate bases of regulated rate of return companies after a sale could be used to determine the rate base of the plant sold, and this amount could be used to determine safety valve support. We find that this alternative would impose considerable administrative burdens on the Commission. Rural carriers most often acquire high-cost exchanges from price-cap regulated non-rural carriers that are not likely to be

regulated as rate-of-return carriers by the state commission. Many states do not regulate the rates of small rural carriers. If the Commission had to determine the rate base of the sold exchanges, it would have to engage in a lengthy process of verifying the reasonableness of the companies' cost allocations, unless it simply accepted the data the companies provided at face value. It also is not clear that using the seller's embedded costs to estimate the index year expense adjustment would be preferable to using the seller's actual expense adjustment, even if the information were readily available and verifiable. The expense adjustment for most non-rural carriers is based on forward-looking economic cost as estimated by the Commission's universal service model. Although some non-rural carriers received hold-harmless support based on embedded costs, the support was targeted to high-cost wire centers based on the model's cost estimates. Safety valve support is designed to provide support in addition to that ''transferred'' from the seller pursuant to § 54.305; it is more appropriate to use the seller's actual expense adjustment to determine safety valve support for the first year than to use an estimate of the what the seller's embedded cost support may have been under rules that are no longer applicable to non-rural carriers.

11. Our action does not modify the existing safety valve mechanism as set forth in the *Rural Task Force Order,* 66 FR 30080, June 5, 2001, for support beginning in an acquiring carrier's second year of operation. For the second year of operation, the acquiring carrier will use its first-year costs to determine a new index year expense adjustment, and from its second year onwards will receive 50 percent of the differential between its new index year expense adjustment and subsequent year expense adjustments, as per the current safety valve mechanism. In addition, the total amount of safety valve support available to all eligible study areas will continue be limited to no more than five percent of rural incumbent local exchange carrier support available from the annual high-cost loop fund. To the extent that rural carriers receive less than the indexed cap on the high-cost loop fund, the five percent cap on the safety valve mechanism shall continue to be based on the lesser amount. In effect, we conclude that the existing safety valve mechanism for acquiring carriers should be preserved and shall function as before, with the sole modification being that rural acquiring carriers can receive safety valve support in their first year of operation, as set forth in this order.

III. Procedural Matters

A. Paperwork Reduction Act

12. This Order does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small businesses with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107–198, see 44 U.S.C. 3506(c)(4).

B. Supplemental Final Regulatory Flexibility Analysis

13. In compliance with the Regulatory Flexibility Act (RFA), this Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the Final Regulatory Flexibility Analysis (FRFA) included in the *Rural Task Force Order,* to the extent that changes to that Order adopted here on reconsideration require changes in the conclusions reached in the FRFA. As required by the RFA, that previous FRFA was preceded by an Initial Regulatory Flexibility Analysis (IRFA) incorporated in the Further Notice of Proposed Rulemaking, which sought public comment on the proposals in the Further Notice.

1. Need for, and Objective of, the Order

14. Section 254 of the Communications Act of 1934, as amended by the 1996 Act, requires the Commission to promulgate rules to preserve and advance universal service support. In the *Rural Task Force Order*, the Commission modified § 54.305 of the Commission's rules to provide safety valve support to rural carriers that make substantial investment after acquiring exchanges. For purposes of determining a rural carrier's safety valve support, the index year expense adjustment was defined as the high-cost loop support expense adjustment for the acquired exchanges calculated at the end of the company's first year of operating the exchanges. In this Order, we amend § 54.305 of the Commission's rules to provide that rural carriers may receive safety valve support for investment made in the first year of operating acquired exchanges.

2. Summary of Significant Issues Raised by the Public

15. No petition for reconsideration was submitted directly in response to the previous FRFA. On reconsideration, however, NTCA argued that reconsideration of § 54.305 of the Commission's rules was needed to create the proper incentive for rural carriers to invest in acquired exchanges in the first year after acquisition. NTCA proposed that the selling carrier's expense adjustment at the time of the sale be used as the index year expense adjustment to determine safety valve support for the first year of operation of the acquired exchanges.

3. Description and Estimate of the Number of Small Entities to Which This Order Will Apply

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

17. In the FRFA at paragraphs 218–229 of the *Rural Task Force Order*, we described and estimated the number of small entities that would be affected by the new universal service rules for rural carriers. These entities consisted of local exchange carriers, competitive access providers, cellular licensees, broadband personal communications service (PCS), rural radiotelephone service specialized mobile radio (SMR), fixed microwave services, and 39 GHz licensees. The rule amendment adopted herein may apply to the same entities affected by the rules adopted in that order. We therefore incorporate by reference paragraphs 218–229 of the *Rural Task Force Order*.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

18. The rule amendment adopted in this Order contains no new reporting, recordkeeping, or other compliance requirements.

5. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

19. In the *Rural Task Force Order*, we described the steps taken to minimize the significant economic impact on small entities consistent with the stated objectives associated with the adopted plan for providing high-cost support to rural carriers. Because many of the same

issues are presented in this Order, we incorporate by reference paragraphs 233–235 of the *Rural Task Force Order*. In this Order, we amend § 54.305 of our rules consistent with the intent of the Commission in adopting the safety valve mechanism to provide additional support to rural carriers that make substantial investment after acquiring exchanges. The adopted rule, however, may have prevented rural carriers that make substantial investment in acquired exchanges from receiving the full benefits intended under the safety valve mechanism. As discussed above, the alternative option of denying the request for reconsideration on this issue was considered and deemed to be inconsistent with Commission's intent in adopting the safety valve mechanism.

6. Report to Congress

20. The Commission will send a copy of this Order, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this Order, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

IV. Ordering Clauses

21. Pursuant to the authority contained in sections 1, 4(i), 4(j), 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C 151, 154(i), 154(j), 214, and 254, and 1.425 of the Commission's rules, 47 CFR 1.425, this *Order and Order on Reconsideration* is adopted.

22. Pursuant to the authority contained in sections 1, 4(i), 4(j), 214, 218–220, 254, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 214, 218–220, 254, and 405, and 1.429 of the Commission's rules, 47 CFR 1.429, the petition for reconsideration filed by National Telephone Cooperative Association on July 5, 2001 is granted in part, to the extent discussed herein.

23. Part 54 of the Commission's rules, 47 CFR 54.305, is amended, as set forth effective April 1, 2005.

24. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Order and Order on Reconsideration*, including the Final Supplemental Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR part 54

Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ Part 54 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214 and 254 unless otherwise noted.

■ 2. Section 54.305 is revised to read as follows:

§ 54.305 Sale or transfer of exchanges.

(a) The provisions of this section are not applicable to the sale or transfer of exchanges between non-rural carriers after the complete phase-down of interim hold-harmless support, pursuant to § 54.311, for the non-rural carriers subject to the transaction.

(b) Except as provided in paragraph (c) of this section, a carrier that acquires telephone exchanges from an unaffiliated carrier shall receive universal service support for the acquired exchanges at the same per-line support levels for which those exchanges were eligible prior to the transfer of the exchanges. If the acquired exchanges are incorporated into an existing rural incumbent local exchange carrier study area, the rural incumbent local exchange carrier shall maintain the costs associated with the acquired exchanges separate from the costs associated with its pre-acquisition study area. The transferred exchanges may be eligible for safety valve support for loop related costs pursuant to paragraph (d) of this section.

(c) A carrier that has entered into a binding agreement to buy or acquire exchanges from an unaffiliated carrier prior to May 7, 1997 will receive universal service support for the newly acquired lines based upon the average cost of all of its lines, both those newly acquired and those it had prior to execution of the sales agreement.

(d) Transferred exchanges in study areas operated by rural telephone companies that are subject to the limitations on loop-related universal service support in paragraph (b) of this section may be eligible for a safety valve loop cost expense adjustment based on the difference between the rural incumbent local exchange carrier's index year expense adjustment and subsequent year loop cost expense adjustments for the acquired exchanges. Safety valve loop cost expense adjustments shall only be available to rural incumbent local exchange carriers that, in the absence of restrictions on high-cost loop support in § 54.305(b), would qualify for high-cost loop support for the acquired exchanges under § 36.631 of this chapter.

(1) For carriers that buy or acquire telephone exchanges on or after January 10, 2005 from an unaffiliated carrier, the index year expense adjustment for the acquiring carrier's first year of operation shall equal the selling carrier's loop-related expense adjustment for the transferred exchanges for the 12-month period prior to the transfer of the exchanges. At the acquiring carrier's option, the first year of operation for the transferred exchanges, for purposes of calculating safety valve support, shall commence at the beginning of either the first calendar year or the next calendar quarter following the transfer of exchanges. For the first year of operation, a loop cost expense adjustment, using the costs of the acquired exchanges submitted in accordance with §§ 36.611 and 36.612 of this chapter, shall be calculated pursuant to § 36.631 of this chapter and then compared to the index year expense adjustment. Safety valve support for the first period of operation will then be calculated pursuant to paragraph (d)(3) of this section. The index year expense adjustment for years after the first year of operation shall be determined using cost data for the first year of operation of the transferred exchanges. Such cost data for the first year of operation shall be calculated in accordance with §§ 36.611, 36.612 and 36.631 of this chapter. For each year, ending on the same calendar quarter as the first year of operation, a loop cost expense adjustment, using the loop costs of the acquired exchanges, shall be submitted and calculated pursuant to §§ 36.611, 36.612, and 36.631 of this chapter and will be compared to the index year expense adjustment. Safety valve support for the second year of operation and thereafter will then be calculated pursuant to paragraph (d)(3) of this section.

(2) For carriers that bought or acquired exchanges from an unaffiliated carrier before January 10, 2005, and are not subject to the exception in paragraph (c) of this section, the index year expense adjustment for acquired exchange(s) shall be equal to the rural incumbent local exchange carrier's high-cost loop expense adjustment for the acquired exchanges calculated for the carrier's first year of operation of the

acquired exchange(s). At the carrier's option, the first year of operation of the transferred exchanges shall commence at the beginning of either the first calendar year or the next calendar quarter following the transfer of exchanges. The index year expense adjustment shall be determined using cost data for the acquired exchange(s) submitted in accordance with §§ 36.611 and 36.612 of this chapter and shall be calculated in accordance with § 36.631 of this chapter. The index year expense adjustment for rural telephone companies that have operated exchanges subject to this section for more than a full year on the effective date of this paragraph shall be based on loop cost data submitted in accordance with § 36.612 of this chapter for the year ending on the nearest calendar quarter following the effective date of this paragraph. For each subsequent year, ending on the same calendar quarter as the index year, a loop cost expense adjustment, using the costs of the acquired exchanges, will be calculated pursuant to § 36.631 of this chapter and will be compared to the index year expense adjustment. Safety valve support is calculated pursuant to paragraph (d)(3) of this section.

(3) Up to fifty (50) percent of any positive difference between the transferred exchanges loop cost expense adjustment and the index year expense adjustment will be designated as the transferred exchange's safety valve loop cost expense adjustment and will be available in addition to the per-line loop-related support transferred from the selling carrier to the acquiring carrier pursuant to § 54.305(b). In no event shall a study area's safety valve loop cost expense adjustment exceed the difference between the carrier's study area loop cost expense adjustment calculated pursuant to § 36.631 of this chapter and transferred support amounts available to the acquired exchange(s) under paragraph (b) of this section. Safety valve support shall not transfer with acquired exchanges.

(e) The sum of the safety valve loop cost expense adjustment for all eligible study areas operated by rural telephone companies shall not exceed five (5) percent of the total rural incumbent local exchange carrier portion of the annual nationwide loop cost expense adjustment calculated pursuant to § 36.603 of this chapter. The five (5) percent cap on the safety valve mechanism shall be based on the lesser of the rural incumbent local exchange carrier portion of the annual nationwide loop cost expense adjustment calculated pursuant to § 36.603 of this chapter or the sum of rural incumbent local exchange carrier expense adjustments calculated pursuant to § 36.631 of this chapter. The percentage multiplier used to derive study area safety valve loop cost expense adjustments for rural telephone companies shall be the lesser of fifty (50) percent or a percentage calculated to produce the maximum total safety valve loop cost expense adjustment for all eligible study areas pursuant to this paragraph. The safety valve loop cost expense adjustment of an individual rural incumbent local exchange carrier also may be further reduced as described in paragraph (d)(3) of this section.

(f) Once an acquisition is complete, the acquiring rural incumbent local exchange carrier shall provide written notice to the Administrator that it has acquired access lines that may be eligible for safety valve support. Rural telephone companies also shall provide written notice to the Administrator defining their index year for those years after the first year of operation for purposes of calculating the safety valve loop cost expense adjustment.

[FR Doc. 05–4018 Filed 3–1–05; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 70, No. 40
Wednesday, March 2, 2005

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 THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–122847–04]

RIN 1545–BD40

Qualified Amended Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the definition of qualified amended returns. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronically generated comments and requests for a public hearing must be received by May 31, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–122847–04), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–122847–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (indicate IRS and REG–122847–04).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Nancy M. Galib, (202) 622–4940; concerning submissions of comments and requests for a public hearing, Sonya Cruse of the Regulations Unit at (202) 622–4693 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) regarding rules relating to qualified amended returns. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) and electronic comments that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Nancy M. Galib of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.6664–1, paragraph (b)(3) is added to read as follows:

§ 1.6664–1 Accuracy-related and fraud penalties; definitions and special rules.

* * * * *

[The text of proposed § 1.6664–1(b)(3) is the same as the text of § 1.6664–1T(b)(3) published elsewhere in this issue of the **Federal Register**].

Par. 3. In § 1.6664–2, paragraph (c) is revised to read as follows:

§ 1.6664–2 Underpayment.

* * * * *

[The text of proposed § 1.6664–2(c) is the same as the text of § 1.6664–2T(c) published elsewhere in this issue of the **Federal Register**].

* * * * *

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–3945 Filed 3–1–05; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–152354–04]

RIN 1545–BE05

Designated Roth Contributions to Cash or Deferred Arrangements Under Section 401(k)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulations under section 401(k) and (m) of the Internal Revenue Code. These

proposed regulations would provide guidance concerning the requirements for designated Roth contributions to qualified cash or deferred arrangements under section 401(k). These proposed regulations would affect section 401(k) plans that provide for designated Roth contributions and participants eligible to make elective contributions under these plans.

DATES: Written or electronic comments and requests for a public hearing must be received by May 31, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–152354–04), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–152354–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at *http://www.irs.gov/regs* or the Federal eRulemaking Portal at *http://www.regulations.gov* (indicate IRS and REG–152354–04).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, R. Lisa Mojiri-Azad or Cathy A. Vohs, 202–622–6060; concerning submissions and requests for a public hearing, contact Treena Garrett, 202–622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP; Washington, DC 20224. Comments on the collection of information should be received by May 2, 2005. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in 26 CFR 1.401(k)–1(f)(1)&(2). This information is required to comply with the separate accounting and recordkeeping requirements of section 402A. This information will be used the IRS and employers maintaining section 401(k) plans to insure compliance with the requirements of section 402A. The collection of information is required to obtain a benefit. The likely recordkeepers are state or local governments, business or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

Estimated total annual recordkeeping burden: 157,500 hours.

Estimated average annual burden hours per recordkeeper: 1 hour.

Estimated number of respondents recordkeepers: 157,500.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 401(k) and (m) of the Internal Revenue Code of 1986 (Code). The amendments would provide guidance on designated Roth contributions under section 402A of the Code, added by section 617(a) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107–16, 115 Stat. 38) (EGTRRA).

Section 401(k) provides that a profit-sharing, stock bonus, pre-ERISA money purchase or rural cooperative plan will not fail to qualify under section 401(a) merely because it contains a cash or deferred arrangement. Contributions made at the election of an employee under a qualified cash or deferred arrangement are known as elective contributions. Generally, such elective contributions are not includible in income at the time contributed and are sometimes referred to as pre-tax elective contributions.

Under section 402A, beginning in 2006, a plan may permit an employee who makes elective contributions under a qualified cash or deferred arrangement to designate some or all of those contributions as Roth contributions. Although designated Roth contributions are elective contributions under a qualified cash or deferred arrangement, unlike pre-tax elective contributions, they are currently includible in gross income. However, a qualified distribution of designated Roth contributions is excludable from gross income.

On December 29, 2004, final regulations under section 401(k) were issued (69 FR 78144). Those regulations apply to plan years beginning on or after January 1, 2006. Under those final regulations, § 1.401(k)-1(f) was reserved for special rules for designated Roth contributions. These proposed regulations would amend those final regulations to fill in that reserved paragraph and provide additional rules applicable to designated Roth contributions.

Explanation of Provisions

Rules Relating to Designated Roth Contributions

The proposed regulations provide special rules relating to designated Roth contributions under a section 401(k) plan. The proposed regulations would amend § 1.401(k)–1(f) to provide a definition of designated Roth contributions and special rules with respect to such contributions. Under these proposed regulations, designated Roth contributions are defined as elective contributions under a qualified cash or deferred arrangement that are: (1) Designated irrevocably by the employee at the time of the cash or deferred election as designated Roth contributions; (2) treated by the employer as includible in the employee's income at the time the employee would have received the contribution amounts in cash if the employee had not made the cash or deferred election (*e.g.*, by treating the contributions as wages subject to applicable withholding requirements);

and (3) maintained by the plan in a separate account. The proposed regulations provide that contributions may only be treated as designated Roth contributions to the extent permitted under the plan.

The proposed regulations provide that, under the separate accounting requirement, contributions and withdrawals of designated Roth contributions must be credited and debited to a designated Roth contribution account maintained for the employee who made the designation and the plan must maintain a record of the employee's investment in the contract (*i.e.*, designated Roth contributions that have not been distributed) with respect to the employee's designated Roth contribution account. In addition, gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to the designated Roth contribution account and other accounts under the plan. However, forfeitures may not be allocated to the designated Roth contribution account. The separate accounting requirement applies at the time the designated Roth contribution is contributed to the plan and must continue to apply until the designated Roth contribution account is completely distributed.

Other Rules

A designated Roth contribution must satisfy the requirements applicable to elective contributions made under a qualified cash or deferred arrangement. Thus, designated Roth contributions are subject to the nonforfeitability and distribution restrictions applicable to elective contributions and are taken into account under the ADP test of section 401(k) in the same manner as pre-tax elective contributions. Similarly, designated Roth contributions are subject to the rules of section 401(a)(9)(A) and (B) in the same manner as pre-tax elective contributions.

Section 1.401(k)–2 of the final section 401(k) regulations contains correction methods that a plan may use if it fails to satisfy the ADP test for a year. The proposed regulations would amend the rules relating to these correction methods to permit an HCE with elective contributions for a year that includes both pre-tax elective contributions and designated Roth contributions to elect whether excess contributions are to be attributed to pre-tax elective contributions or designated Roth contributions.

The proposed regulations provide that a distribution of excess contributions is not includible in income to the extent it represents a distribution of designated Roth contributions. However, the income allocable to a corrective distribution of excess contributions that are designated Roth contributions is includible in gross income in the same manner as income allocable to a corrective distribution of excess contributions that are pre-tax elective contributions. The proposed regulations also provide a similar rule under the correction methods that a plan may use if it fails to satisfy the ACP test in § 1.401(m)–2.

Additional Required Plan Terms

In addition to the rules relating to section 401(k) and (m) discussed above, there are other aspects of designated Roth contributions that must be reflected in plan terms and are not addressed in these proposed regulations. For example, while a plan is permitted to allow an employee to elect the character of a distribution (*i.e.*, whether the distribution will be made from the designated Roth contribution account or other accounts), the extent to which a plan so permits must be set forth in the terms of the plan. In addition, the plan must provide that, for purposes of section 401(a)(31), designated Roth contributions may be rolled over only to another plan maintaining a designated Roth contribution account or to a Roth IRA.

Certain Issues Not Addressed

These proposed regulations do not provide guidance with respect to the taxation of the distribution of designated Roth contributions. For example, the proposed regulations do not provide guidance with respect to the recovery of an employee's investment in the contract associated with his or her designated Roth contributions. The IRS and Treasury request comments on the issues on which guidance is needed with respect to the taxation of such distributions. Comments are also requested on any other issues arising under section 402A on which guidance is needed.

Effective Date

Section 402A is effective for taxable years beginning after December 31, 2005. These regulations are proposed to apply to plan years beginning on or after January 1, 2006.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that most small entities that maintain a section 401(k) plan use a third party provider to administer the plan. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are R. Lisa Mojiri-Azad and Cathy A. Vohs of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in the development of these regulations.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.401(k)–0 is amended by:

1. The entry for § 1.401(k)—1(f) is amended by removing ''[Reserved]'' and adding entries for § 1.401(k)–1(f)(1),(2) and (3).

2. Adding an entry for § 1.401(k)–2(b)(2)(vi)(C).

The additions read as follows:

§ 1.401(k)–0 Table of contents.

* * * * *

§ 1.401(k)–1 Certain cash or deferred arrangements.

* * * * *

(f) * * *

(1) In general.

(2) Separate accounting required.

(3) Designated Roth contributions must satisfy rules applicable to elective contributions.

* * * * *

§ 1.401(k)–2 ADP test.

* * * * *

(b) * * *

(2) * * *

(vi) * * *

(C) Corrective distributions attributable to designated Roth contributions.

* * * * *

Par. 3. Section 1.401(k)–1(f) is revised as follows:

§ 1.401(k)–1 Certain cash or deferred arrangements.

* * * * *

(f) *Special rules for designated Roth contributions*—(1) In general. The term *designated Roth contribution* means an elective contribution under a qualified cash or deferred arrangement that, to the extent permitted under the plan, is—

(i) Designated irrevocably by the employee at the time of the cash or deferred election as a designated Roth contribution;

(ii) Treated by the employer as includible in the employee's income at the time the employee would have received the amount in cash if the employee had not made the cash or deferred election (*e.g.*, by treating the contributions as wages subject to applicable withholding requirements); and

(iii) Maintained by the plan in a separate account (in accordance with paragraph (f)(2) of this section).

(2) *Separate accounting required.* Under the separate accounting requirement of this paragraph (f)(2), contributions and withdrawals of designated Roth contributions must be credited and debited to a designated Roth contribution account maintained for the employee who made the designation and the plan must maintain a record of the employee's investment in the contract (*i.e.*, designated Roth contributions that have not been distributed) with respect to the employee's designated Roth contribution account. In addition, gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to the designated Roth contribution account and other accounts under the plan. However, forfeitures may not be allocated to the designated Roth contribution account. The separate accounting requirement applies at the time the designated Roth contribution is contributed to the plan and must continue to apply until the designated Roth contribution account is completely distributed.

(3) *Designated Roth contributions must satisfy rules applicable to elective contributions.* A designated Roth contribution must satisfy the requirements applicable to elective contributions made under a qualified cash or deferred arrangement. Thus, for example, a designated Roth contribution must satisfy the requirements of paragraphs (c) and (d) of this section and is treated as an employer contribution for purposes of sections 401(a), 401(k), 402, 404, 409, 411, 412, 415, 416 and 417. In addition, the designated Roth contributions are treated as elective contributions for purposes of the ADP test. Similarly, the designated Roth contribution account is subject to the rules of section 401(a)(9)(A) and (B) in the same manner as an account that contains pre-tax elective contributions.

* * * * *

Par. 4. Section 1.401(k)–2 is amended as follows:

1. A new sentence is added after the second sentence in paragraph (b)(1)(ii).

2. The last sentence in paragraph (b)(2)(vi)(B) is amended by removing the period and adding a clause at the end.

3. Paragraph (b)(2)(vi)(C) is added.

The additions read as follows:

§ 1.401(k)–2 ADP test.

* * * * *

(b) * * *

(1) * * *

(ii) * * * Similarly, a plan may permit an HCE with elective contributions for a year that includes both pre-tax elective contributions and designated Roth contributions to elect whether the excess contributions are to be attributed to pre-tax elective contributions or designated Roth contributions. * * *

* * * * *

(2) * * *

(vi) * * *

(B) * * * , except to the extent provided in paragraph (b)(2)(vi)(C) of this section.

(C) *Corrective distributions attributable to designated Roth contributions.* Notwithstanding paragraphs (b)(2)(vi)(A) and (B) of this section, a distribution of excess contributions is not includible in gross income to the extent it represents a distribution of designated Roth contributions. However, the income allocable to a corrective distribution of excess contributions that are designated Roth contributions is included in gross income in accordance with paragraph (b)(2)(vi)(A) or (B) of this section (*i.e.*, in the same manner as income allocable to a corrective distribution of excess contributions that are pre-tax elective contributions).

* * * * *

Par. 5. Section 1.401(k)–6 is amended as follows:

1. A new definition is added after the definition of *Current year testing method.*

2. A new definition is added after the definition of *Pre-ERISA money purchase pension plan.*

The additions read as follows:

§ 1.401(k)–6 Definitions.

* * * * *

Designated Roth contributions. Designated Roth contributions means designated Roth contributions as defined in § 1.401(k)–1(f)(1).

* * * * *

Pre-tax elective contributions. Pre-tax elective contributions means elective contributions under a qualified cash or deferred arrangement that are not designated Roth contributions.

* * * * *

Par. 6. Section 1.401(m)–0 is amended by adding an entry for § 1.401(m)–2(b)(2)(vi)(C) to read as follows:

§ 1.401(m)–0 Table of contents.

* * * * *

§ 1.401(m)–2 ACP test.

* * * * *

(b) * * *

(1) * * *

(vi) * * *

(C) Corrective distributions attributable to designated Roth contributions.

* * * * *

Par. 7. Section 1.401(m)–2 is revised as follows:

1. The last sentence in paragraph (b)(2)(vi)(B) is amended by removing the period and adding a clause.

2. Paragraph (b)(2)(vi)(C) is added.

The additions read as follows:

§ 1.401(m)–2 ACP test.

* * * * *

(b) * * *

(2) * * *

(vi) * * *

(B) * * * or as provided in paragraph (b)(2)(vi)(C) of this section.

(C) *Corrective distributions attributable to designated Roth*

contributions. Notwithstanding paragraphs (b)(2)(vi)(A) and (B) of this section, a distribution of excess aggregate contributions is not includible in gross income to the extent it represents a distribution of designated Roth contributions. However, the income allocable to a corrective distribution of excess aggregate contributions that are designated Roth contributions is taxed in accordance with paragraph (b)(2)(vi)(A) or (B) of this section (*i.e.*, in the same manner as income allocable to a corrective distribution of excess aggregate contributions that are not designated Roth contributions).

* * * * *

Par. 8. Section 1.401(m)–5 is amended by adding a new definition after the definition of *Current year testing method* to read as follows:

The addition reads as follows:

§ 1.401(m)–5 Definitions.

* * * * *

Designated Roth contributions. Designated Roth contributions means designated Roth contributions as defined in § 1.401(k)–1(f)(1).

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–4020 Filed 3–1–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA 2005–20278]

RIN 2127–AJ53

Preliminary Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of preliminary theft data; request for comments.

SUMMARY: This document requests comments on data about passenger motor vehicle thefts that occurred in calendar year (CY) 2003 including theft rates for existing passenger motor vehicle lines manufactured in model year (MY) 2003. The preliminary theft data indicate that the vehicle theft rate for CY/MY 2003 vehicles (1.84 thefts per thousand vehicles) decreased by 26.1 percent from the theft rate for CY/MY 2002 vehicles (2.49 thefts per thousand vehicles).

Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data, and publish the information for review and comment.

DATES: Comments must be submitted on or before May 2, 2005.

ADDRESSES: You may submit comments [identified by DOT Docket No. NHTSA–2005–20278 and or RIN number 2127–AJ53] by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR part 541. The standard specifies performance requirements for inscribing or affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data, and publish the data for review and comment. To fulfill the § 33104(b)(4) mandate, this document reports the preliminary theft data for CY 2003 the most recent calendar year for which data are available.

In calculating the 2003 theft rates, NHTSA followed the same procedures it used in calculating the MY 2002 theft rates. (For 2002 theft data calculations, see 69 FR 53354, September 1, 2004). As in all previous reports, NHTSA's data were based on information provided to the agency by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a governmental system that receives vehicle theft information from nearly 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources. The 2003 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 2003 vehicles of that line stolen during calendar year 2003, by the total number of vehicles in that line manufactured for MY 2003, as reported by manufacturers to the Environmental Protection Agency.

The preliminary 2003 theft data show a decrease in the vehicle theft rate when compared to the theft rate experienced in CY/MY 2002. The preliminary theft rate for MY 2003 passenger vehicles stolen in calendar year 2003 decreased to 1.84 thefts per thousand vehicles produced, a decrease of 26.1 percent from the rate of 2.49 thefts per thousand vehicles experienced by MY 2002 vehicles in CY 2002. For MY 2003 vehicles, out of a total of 217 vehicle lines, 21 lines had a theft rate higher than 3.5826 per thousand vehicles, the established median theft rate for MYs 1990/1991 (See 59 FR 12400, March 16, 1994). Of the 21 vehicle lines with a theft rate higher than 3.5826, 18 are passenger car lines, 2 are multipurpose passenger vehicle lines, and one is a light-duty truck line.

In Table I, NHTSA has tentatively ranked each of the MY 2003 vehicle lines in descending order of theft rate.

Public comment is sought on the accuracy of the data, including the data for the production volumes of individual vehicle lines.

Comments must not exceed 15 pages in length (49 CFR 553.21). Attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and two copies from which the purportedly confidential information has been deleted should be submitted to Dockets. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for this document will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on this document will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available for inspection in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Authority: 49 U.S.C. 33101, 33102 and 33104; delegation of authority at 49 CFR 1.50.

PRELIMINARY REPORT OF THEFT RATES FOR MODEL YEAR 2003 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2003

	Manufacturer	Make/model (line)	Thefts 2003	Production (Mfr's) 2003	2003 theft rate (per 1,000 vehicles produced)
1	DAIMLERCHRYSLER	DODGE STRATUS	682	62,496	10.9127
2	DAIMLERCHRYSLER	DODGE INTREPID	392	40,366	9.7111
3	MITSUBISHI	MONTERO	94	13,604	6.9097
4	MITSUBISHI	DIAMANTE	57	9,981	5.7109
5	TOYOTA	TUNDRA PICKUP	162	28,981	5.5899
6	DAIMLERCHRYSLER	SEBRING	180	35,599	5.0563
7	MITSUBISHI	MONTERO SPORT	174	35,508	4.9003
8	MITSUBISHI	GALANT	468	97,418	4.8040
9	JAGUAR	XJR	4	845	4.7337
10	DAIMLERCHRYSLER	DODGE NEON	590	127,902	4.6129
11	DAIMLERCHRYSLER	CHRYSLER SEBRING CONVERTIBLE	61	13,337	4.5737
12	DAIMLERCHRYSLER	CHRYSLER CONCORDE	61	13,690	4.4558
13	DAIMLERCHRYSLER	CHRYSLER 300M	61	13,719	4.4464
14	SUZUKI	AERIO	150	33,931	4.4207
15	FORD MOTOR CO	FORD MUSTANG	598	143,823	4.1579
16	NISSAN	SENTRA	293	71,734	4.0845
17	GENERAL MOTORS	OLDSMOBILE ALERO	333	86,229	3.8618
18	MITSUBISHI	LANCER	283	75,585	3.7441
19	JAGUAR	XK8	8	2,151	3.7192
20	VOLVO	S40	111	3,014	3.6496
21	MITSUBISHI	ECLIPSE	333	92,062	3.6171
22	GENERAL MOTORS	PONTIAC GRAND PRIX	249	70,395	3.5372
23	DAIMLERCHRYSLER	CHRYSLER VOYAGER VAN	72	20,642	3.4880
24	NISSAN	MAXIMA	211	62,537	3.3740
25	GENERAL MOTORS	CHEVROLET MONTE CARLO	228	67,610	3.3723
26	BMW	M3	30	8,964	3.3467
27	GENERAL MOTORS	PONTIAC GRAND AM	450	145,150	3.1002
28	FORD MOTOR CO.	LINCOLN LS	72	23,472	3.0675
29	HONDA	S2000	24	7,8623	3.0527
30	SUZUKI	VITARA/GRAND	108	35,437	3.0477
31	KIA MOTORS	OPTIMA	70	23,340	2.9991
32	DAIMLERCHRYSLER	DODGE CARAVAN/GRAND CARAVAN	725	248,733	2.9148
33	GENERAL MOTORS	CHEVROLET CAVALIER	633	218,340	2.8991
34	SUBARU	IMPREZA	67	23,333	2.8715
35	TOYOTA	ECHO	101	35,276	2.8631
36	GENERAL MOTORS	CHEVROLET MALIBU	507	179,565	2.8235
37	GENERAL MOTORS	CHEVROLET BLAZER S10/T10	152	54,165	2.8062
38	MERCEDES–BENZ	215 (CL–CLASS)	9	3,214	2.8002
39	BMW	M5	5	1,902	2.6288
40	NISSAN	ALTIMA	591	225,388	2.6221
41	JAGUAR	XJ8	10	3,816	2.6205
42	VOLVO	C70	4	1,540	2.5974

PRELIMINARY REPORT OF THEFT RATES FOR MODEL YEAR 2003 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2003—Continued

	Manufacturer	Make/model (line)	Thefts 2003	Production (Mfr's) 2003	2003 theft rate (per 1,000 vehicles produced)
43	GENERAL MOTORS	BUICK REGAL	89	35,374	2.5160
44	KIA MOTORS	SPECTRA	176	71,249	2.4702
45	GENERAL MOTORS	BUICK CENTURY	363	148,506	2.4443
46	JAGUAR	S–TYPE	55	22,608	2.4328
47	TOYOTA	LEXUS SC	26	10,800	2.4074
48	FORD MOTOR CO.	LINCOLN TOWN CAR	180	75,624	2.3802
49	TOYOTA	COROLLA	786	330,244	2.3801
50	FORD MOTOR CO.	FORD FOCUS	610	257,453	2.3694
51	HYUNDAI	ACCENT	120	51,425	2.3335
52	NISSAN	350Z	92	39,448	2.3322
53	TOYOTA	CELICA	42	18,062	2.3253
54	GENERAL MOTORS	SATURN LS	164	71,082	2.3072
55	DAIMLERCHRYSLER	CHRYSLER PT CRUISER	272	118,798	2.2896
56	HONDA	ACURA 3.2 CL	37	16,327	2.2662
57	FORD MOTOR CO.	FORD TAURUS	757	334,329	2.2642
58	GENERAL MOTORS	PONTIAC SUNFIRE	85	37,813	2.2479
59	BMW	7	46	21,387	2.1508
60	HYUNDAI	TIBURON	87	40,830	2.1308
61	TOYOTA	LEXUS IS	30	14,445	2.0768
62	FORD MOTOR CO.	MERCURY MOUNTAINEER	95	45,950	2.0675
63	GENERAL MOTORS	CHEVROLET CORVETTE	68	33,118	2.0533
64	GENERAL MOTORS	CADILLAC DEVILLE	157	77,703	2.0205
65	HYUNDAI	XG	18	8,942	2.0130
66	HONDA	ACURA RSX	51	26,035	1.9589
67	KIA MOTORS	RIO	86	44,120	1.9492
68	MAZDA	PROTÉGÉ	164	84,404	1.9430
69	GENERAL MOTORS	CADILLAC SEVILLE	36	18,627	1.9327
70	GENERAL MOTORS	PONTIAC BONNEVILLE	67	34,675	1.9322
71	MITSUBISHI	OUTLANDER	93	48,273	1.9265
72	FORD MOTOR CO.	MERCURY SABLE	123	64,477	1.9077
73	DAIMLERCHRYSLER	JEEP LIBERTY	331	177,461	1.8652
74	NISSAN	INFINITI QX4	14	7,766	1.8027
75	MERCEDES–BENZ	220 (S–CLASS)	37	20,679	1.7893
76	TOYOTA	MATRIX	153	87,440	1.7498
77	DAIMLERCHRYSLER	CHRYSLER TOWN & COUNTRY	216	123,575	1.7479
78	GENERAL MOTORS	GMC SONOMA PICKUP	71	41,164	1.7248
79	HYUNDAI	SONATA	129	77,468	1.6652
80	DAIMLERCHRYSLER	JEEP GRAND CHEROKEE	190	114,736	1.6560
81	MERCEDES–BENZ	129 (SL–CLASS)	34	20,685	1.6437
82	GENERAL MOTORS	CHEVROLET IMPALA	404	248,078	1.6285
83	FORD MOTOR CO.	FORD EXPLORER	537	332,158	1.6167
84	HYUNDAI	ELANTRA	210	130,031	1.6150
85	VOLVO	S60	31	19,532	1.5871
86	FORD MOTOR CO.	FORD ESCAPE	240	151,770	1.5813
87	AUDI	A8	1	643	1.5552
88	NISSAN	FRONTIER PICKUP	105	68,372	1.5357
89	VOLVO	S80	12	7,927	1.5138
90	TOYOTA	CAMRY/SOLARA	617	408,093	1.5119
91	GENERAL MOTORS	PONTIAC AZTEK	44	29,564	1.4883
92	KIA MOTORS	SORENTO	63	42,837	1.4707
93	FORD MOTOR CO.	FORD RANGER PICKUP	331	226,132	1.4637
94	DAIMLERCHRYSLER	JEEP WRANGLER	94	64,343	1.4609
95	DAIMLERCHRYSLER	DODGE DAKOTA PICKUP	31	21,582	1.4364
96	FORD MOTOR CO.	FORD CROWN VICTORIA	58	41,637	1.3930
97	NISSAN	INFINITI I35	24	17,334	1.3846
98	HONDA	ACURA 3.5 RL	4	2,903	1.3779
99	TOYOTA	LEXUS GS	20	14,555	1.3741
100	GENERAL MOTORS	CHEVROLET S10/T10 PICKUP	218	159,920	1.3632
101	NISSAN	INFINITI G35	111	81,505	1.3619
102	TOYOTA	TACOMA PICKUP	209	157,182	1.3297
103	FORD MOTOR CO.	FORD ESCORT	28	21,162	1.3231
104	TOYOTA	4RUNNER	133	101,254	1.3135
105	MAZDA	6	72	54,829	1.3132
106	GENERAL MOTORS	CHEVROLET TRACKER	54	41,730	1.2940
107	TOYOTA	RAV4	100	77,319	1.2933
108	GENERAL MOTORS	OLDSMOBILE BRAVADA	11	8,642	1.2729
109	PORSCHE	BOXSTER	10	7,880	1.2690
110	GENERAL MOTORS	GMC SAFARI VAN	11	8,738	1.2589

PRELIMINARY REPORT OF THEFT RATES FOR MODEL YEAR 2003 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2003—Continued

	Manufacturer	Make/model (line)	Thefts 2003	Production (Mfr's) 2003	2003 theft rate (per 1,000 vehicles produced)
111	GENERAL MOTORS	PONTIAC VIBE	88	69,941	1.2582
112	HONDA	CIVIC	369	300,485	1.2280
113	VOLKSWAGEN	GOLF/GTI	41	34,049	1.2041
114	FORD MOTOR CO.	MERCURY GRAND MARQUIS	127	105,615	1.2025
115	HONDA	ACCORD	499	427,660	1.1668
116	GENERAL MOTORS	CHEVROLET ASTRO VAN	38	32,687	1.1625
117	TOYOTA	PRIUS	16	13,826	1.1572
118	NISSAN	XTERRA	87	75,351	1.1546
119	TOYOTA	MR2 SPYDER	6	5,209	1.1519
120	ISUZU	ASCENDER	4	3,476	1.1507
121	VOLKSWAGEN	JETTA	171	148,729	1.1497
122	NISSAN	PATHFINDER	56	48,772	1.1482
123	JAGUAR	XKR	1	880	1.1364
124	HONDA	ACURA 3.2 TL	105	93,899	1.1182
125	GENERAL MOTORS	CHEVROLET TRAILBLAZER	205	194,427	1.0544
126	AUDI	A6/A6 QUATTRO/S6/AVANT	18	17,116	1.0516
127	ISUZU	AXIOM	4	3,848	1.0395
128	MERCEDES–BENZ	203 (C–CLASS)	65	63,327	1.0264
129	GENERAL MOTORS	CADILLAC CTS	69	68,264	1.0108
130	LAND ROVER	FREELANDER	10	9,985	1.0015
131	NISSAN	INFINITI Q45	3	3,034	0.9888
132	MAZDA	B SERIES PICKUP	19	19,342	0.9823
133	AUDI	TT	6	6,138	0.9775
134	TOYOTA	LEXUS ES	60	61,512	0.9754
135	MERCEDES–BENZ	210 (E–CLASS)	61	62,547	0.9753
136	NISSAN	INFINITI M45	6	6,402	0.9372
137	FORD MOTOR CO.	FORD EXPLORER SPORT TRAC	58	62,059	0.9346
138	TOYOTA	LEXUS LS	20	21,592	0.9263
139	TOYOTA	LEXUS GX	21	22,932	0.9158
140	NISSAN	MURANO	50	54,632	0.9152
141	BMW	5	36	39,342	0.9151
142	FORD MOTOR CO.	FORD WINDSTAR VAN	134	148,016	0.9053
143	PORSCHE	911	9	10,027	0.8976
144	BMW	3	90	100,589	0.8947
145	JAGUAR	X–TYPE	27	30,483	0.8857
146	VOLVO	XC70	8	9,175	0.8719
147	TOYOTA	AVALON	59	68,872	0.8567
148	GENERAL MOTORS	GMC ENVOY	71	83,069	0.8547
149	KIA MOTORS	SEDONA VAN	44	51,515	0.8541
150	VOLKSWAGEN	PASSAT	89	105,230	0.8458
151	GENERAL MOTORS	OLDSMOBILE AURORA	3	3,550	0.8451
152	AUDI	A4/A4 QUATTRO	40	47,520	0.8418
153	GENERAL MOTORS	CHEVROLET VENTURE VAN	80	96,022	0.8331
154	ISUZU	RODEO	11	13,625	0.8073
155	MAZDA	MX–5 MIATA	10	12,458	0.8027
156	HYUNDAI	SANTA FE	79	98,515	0.8019
157	MERCEDES–BENZ	208 (CLK–CLASS)	25	31,560	0.7921
158	JAGUAR	VANDEN PLAS/SUPER V8	1	1,26 5	0.7905
159	GENERAL MOTORS	BUICK LESABRE	97	124,342	0.7801
160	TOYOTA	SIENNA VAN	33	42,688	0.7731
161	GENERAL MOTORS	SATURN ION	73	96,382	0.7574
162	FORD MOTOR CO.	FORD THUNDERBIRD	10	13,948	0.7169
163	MAZDA	TRIBUTE	33	47,099	0.7007
164	GENERAL MOTORS	PONTIAC MONTANA VAN	32	45,936	0.6966
165	HONDA	ELEMENT	51	75,457	0.6759
166	HONDA	ACURA MDX	36	55,826	0.6449
167	TOYOTA	LEXUS RX	22	34,745	0.6332
168	GENERAL MOTORS	BUICK RENDEZVOUS	42	67,239	0.6246
169	TOYOTA	HIGHLANDER	77	128,157	0.6008
170	GENERAL MOTORS	OLDSMOBILE SILHOUETTE VAN	11	18,330	0.6001
171	VOLKSWAGEN	NEW BEETLE	35	58,891	0.5943
172	HONDA	PILOT	71	123,095	0.5768
173	GENERAL MOTORS	SATURN VUE	58	109,455	0.5299
174	BMW	Z4	12	24,198	0.4959
175	VOLVO	XC90	6	12,404	0.4837
176	VOLVO	V70	3	6,242	0.4806
177	GENERAL MOTORS	BUICK PARK AVENUE	14	29,309	0.4777
178	SUBARU	BAJA	7	14,966	0.4677

PRELIMINARY REPORT OF THEFT RATES FOR MODEL YEAR 2003 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2003—Continued

	Manufacturer	Make/model (line)	Thefts 2003	Production (Mfr's) 2003	2003 theft rate (per 1,000 vehicles produced)
179	SAAB	9–5	7	15,159	0.4618
180	NISSAN	INFINITI FX35	8	17,691	0.4522
181	BMW	MINI COOPER	15	33,255	0.4511
182	HONDA	CR–V	61	140,449	0.4343
183	SAAB	9–3	13	33,653	0.3863
184	SUBARU	LEGACY/OUTBACK	30	84,858	0.3535
185	VOLVO	V40	3	9,155	0.3277
186	SUBARU	FORESTER	21	65,691	0.3197
187	MERCEDES–BENZ	170 (SLK–CLASS)	2	6,526	0.3065
188	MAZDA	MPV VAN	10	33,563	0.2979
189	HONDA	ODYSSEY VAN	48	165,197	0.2906
190	GENERAL MOTORS	SATURN LW	2	7,251	0.2758
191	NISSAN	INFINITI FX45	2	7,743	0.2583
192	ASTON MARTIN	VANQUISH	0	286	0.0000
193	ASTON MARTIN	VANTAGE	0	399	0.0000
194	AUDI	ALLROAD QUATTRO	0	5,256	0.0000
195	AUDI	RS6	0	1,436	0.0000
196	AUDI	S8	0	301	0.0000
197	BMW	Z8	0	539	0.0000
198	DAIMLERCHRYSLER	DODGE VIPER	0	1,707	0.0000
199	FERRARI	360	0	885	0.0000
200	FERRARI	456	0	32	0.0000
201	FERRARI	575M	0	167	0.0000
202	FERRARI	ENZO	0	102	0.0000
203	GENERAL MOTORS	CADILLAC FUNERAL COACH/HEARSE	0	988	0.0000
204	GENERAL MOTORS	CADILLAC LIMOUSINE	0	692	0.0000
205	HONDA	ACURA NSX	0	176	0.0000
206	HONDA	INSIGHT	0	1,011	0.0000
207	JAGUAR	XJS	0	594	0.0000
208	LAMBORGHINI	MURCIELAGO	0	75	0.0000
209	LOTUS	ESPRIT	0	96	0.0000
210	MASERATI	COUPE/SPYDER	0	408	0.0000
211	MITSUBISHI	NATIVA [1]	0	470	0.0000
212	QUANTUM TECH	CHEVROLET CAVALIER	0	313	0.0000
213	ROLLS ROYCE	BENTLEY	0	2	0.0000
214	ROLLS ROYCE	BENTLEY ARNAGE	0	107	0.0000
215	ROLLS ROYCE	BENTLEY AZURE	0	35	0.0000
216	ROLLS ROYCE	CONTINENTAL R	0	1	0.0000
217	VOLKSWAGEN	EUROVAN/CAMPER	0	4,662	0.0000

[1] This vehicle was manufactured for sale only in Puerto Rico and represents the U.S. version of Mitsubishi's Montero Sport line.

Issued on: February 18, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–3987 Filed 3–1–05; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 70, No. 40
Wednesday, March 2, 2005

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

Submission for OMB Review; Comment Request

February 25, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copiers of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Food Stamp Program Repayment Demand and Program Disqualification.

OMB Control Number: 0584–0492.

Summary of Collection: Section 13(b) of the Food Stamp Act of 1977 require State agencies to initiate collection action against households that have been overissued benefits. To initiate collection action, State agencies must provide an affected household with written notification informing the overissued household of the claim and demanding repayment.

Need and Use of the Information: State agency personnel will collect the information from individuals collecting food stamp benefits. the State agencies must maintain all records associated with this collection for a period of three years so that FNS can review documentation during compliance reviews and other audits. Without approval of this information collection, FNS would not be able to correct accidental or fraudulent overpayment errors in the Food Stamp Program.

Description of Respondents: State, local, and tribal government; Individuals or households.

Number of Respondents: 53.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 166,329.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–4009 Filed 3–1–05; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 25, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Foreign Agricultural Service

Title: Specialty Sugar Certificates Application.

OMB Control Number: 0551–0025.

Summary of Collection: The Secretary of Agriculture each year announces the U.S. sugar import quantity that will be subject to the tariff-rate quotas, including specialty sugars for each fiscal year (October 1—September 30) under the authority of 19 U.S.C. 3601, Presidential Proclamation 6763, Additional Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States. In order to grant licenses, ensure that imported specialty sugar does not disrupt the current domestic support program, and maintain administrative control over the program, an application with certain specific information must be collected from those who wish to participate in the program established by the regulation. Importers are required to supply specific information to the Secretary

and the Foreign Agricultural Service (FAS), in order to be granted a certificate to import specialty sugar. The information is supplied to U.S. Customs officials in order to certify that the sugar being imported is ''specialty sugar.''

Need and Use of the Information: The collected information will be used to: (1) Determine whether applicants for the program meet the regulation's eligibility criteria; (2) ensure that sugar to be imported is specialty sugar and meets the requirements of the regulation; (3) audit participants' compliance with the regulation; and (4) prevent entry of world-priced progam sugar from entering the domestic commercial market instead of domestic specialty sugar market. Without the collection of this information the Certifying Authority would not have any basis on which to make a decision on whether a certificate should be granted, and would not have the ability to monitor sugar imports under this program.

Description of Respondents: Business or other for-profit; Individuals or households.

Number of Respondents: 20.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 10.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–4010 Filed 3–1–05; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agriculture Service

Agricultural Policy Advisory Committee for Trade and the Agricultural Technical Advisory Committees for Trade; Reestablishment and Nominations

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Secretary of Agriculture (Secretary), in coordination with the United States Trade Representative (USTR), intends to reestablish the Agricultural Policy Advisory Committee (APAC) for Trade and the six existing Agricultural Technical Advisory Committees (ATAC) for Trade. The Foreign Agricultural Service (FAS) is requesting nominations for persons to serve on these seven committees.

DATES: Written nominations must be received by FAS before the close of business on March 31, 2005.

ADDRESSES: Nominations must be hand-delivered (including FedEx, DHL, UPS, etc.) to the Legislative Affairs Office, Foreign Agricultural Service, USDA, Room 5929–S, 1400 Independence Avenue, SW., Mail Stop 1001, Washington, DC 20250–1001.

FOR FURTHER INFORMATION CONTACT: Inquiries or comments regarding the reestablishment of these committee also may be sent by electronic mail to *LegAffairs@fas.usda.gov,* or by fax to (202) 720–5936. The Legislative Affairs Office may be reached by telephone at (202) 720–7645, with inquiries directed to Joan Hurst.

SUPPLEMENTARY INFORMATION:

Introduction

The APAC and the ATACs are authorized by sections 135(c)(1) and (2) of the Trade Act of 1974, as amended (Pub. L. 93–618, 19 U.S.C. 2155). The purpose of these committees is to advise the Secretary and the USTR concerning agricultural trade policy. The committees are intended to ensure that representative elements of the private sector have an opportunity to express their views to the U.S. government.

Rechartering of Existing Committees

Pursuant to the Federal Advisory Committee Act 5 U.S.C. App. II), FAS gives notice that the Secretary and the USTR intend to reestablish the APAC and the following six ATACs:

- Animals and Animal Products;
- Fruits and Vegetables;
- Grains, Feed, and Oilseeds;
- Processed Foods;
- Sweeteners and Sweetener Products;
- Tobacco, Cotton, Peanuts, and Planting Seeds.

In 1974, Congress established a private sector advisory committee system to ensure that U.S. trade policy and negotiation objectives adequately reflect U.S. commercial and economic interests. The private sector advisory committee system currently consists of three tiers:

- The President's Advisory Committee on Trade and Policy Negotiations;
- Five general policy advisory committees, including the APAC; and,
- Twenty-eight technical advisory committees, including the ATACs.

The establishment and renewal of such committees is in the public interest in connection with the duties of the USDA imposed by the Trade Act of 1974, as amended.

Committee Membership Information

- All committee members are appointed by the Secretary and the USTR, and serve at the discretion of the Secretary and the USTR.
- Committee size will be limited up to approximately 35 members each.
- All committee appointments will expire in two years, but the Secretary and the USTR may renew an appointment for one or more additional terms.
- All committee members must be U.S. citizens.
- To attend certain meetings, committee members must have a current security clearance or have submitted an application for a security clearance.
- Committee members serve without compensation; they are not reimbursed for their travel expenses.
- No person may serve on more than one USDA advisory committee at the same time.

General Committee Information

- Each committee has a chairperson, who is elected from the membership of that committee.
- Committees meet approximately four times per year, and all committee meetings are held in Washington, DC.
- Committee meetings will be open to the public, unless the USTR determines that a committee will be discussing issues that justify closing a meeting or portions of a meeting, in accordance with 5 U.S.C. 552(c).
- Throughout the year, members are requested to review sensitive trade policy information via a secure Web site, and provide comments regarding trade negotiations.
- In addition to their other advisory responsibilities, at the conclusion of negotiations of any trade agreement, all committees are required to provide a report on each agreement to the President, Congress, and the USTR.

Agricultural Policy Advisory Committee for Trade

The APAC is composed of a broad spectrum of agricultural interests. The APAC provides advice concerning the following:

- Negotiating objectives and bargaining positions before the United States enters into a trade agreement;
- The operation of various U.S. trade agreements; and
- Other matters arising from the administration of U.S. trade policy.

Agricultural Technical Advisory Committees for Trade

The ATACs provide advice and information regarding trade issues that affect both domestic and foreign

production in the commodities of the respective sector, drawing upon the technical competence and experience of the members. There will be six ATACs, one for each of the following sectors:

- Animals and Animal Products;
- Fruits and Vegetables;
- Grains, Feed, and Oilseeds;
- Processed Foods;
- Sweeteners and Sweetener Products; and
- Tobacco, Cotton, Peanuts, and Planting Seeds.

Nominations and Appointment of Members

Nominations for APAC and ATAC membership are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure that the recommendations of the committees take into account the needs of the diverse groups served by the USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Members must have expertise and knowledge of agricultural trade as it relates to policy and commodity specific products. No person, company, producer, farm organization, trade association, or other entity has a right to membership on a committee. In making appointments, every effort will be made to maintain balanced representation on the committees: representation from producers, farm and commodity organizations, processors, traders, and consumers. Geographical balance on each committee will also be sought.

Nominations: Nominating a person to serve on any of the committees requires submission of a current resume for the nominee and the following form:

- AD–755 (Advisory Committee Membership Background Information), available on the Internet at *http://www.fas.usda.gov/admin/ad755.pdf.*

In addition, FAS encourages the submission of the optional form AD–1086 (Applicant for Advisory Committees Supplemental Sheet), available on the Internet at *http://www.fas.usda.gov/admin/ad1086.pdf.* Forms may also be requested by sending an e-mail to *LegAffairs@fas.usda.gov*, or by phone at (202) 720–7645.

Foreign Firms: Persons who are employed by firms that are 50 percent plus one share foreign-owned must state the extent to which the organization or interest to be represented by the nominee is owned by non-U.S. citizens, organizations, or interests. If the nominee is to represent an entity or corporation with 10 percent or greater non-U.S. ownership, the nominee must demonstrate at the time of nomination that this ownership interest does not constitute control and will not adversely affect his or her ability to serve as an advisor on the U.S. agriculture advisory committee for trade.

Issued at Washington, DC, this 11th day of February, 2005.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 05–4051 Filed 3–1–05; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee will meet in Ketchikan, Alaska, April 14, 2005. The purpose of this meeting is to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: The meeting will be held April 14, 2005 at 6 p.m.

ADDRESSES: The meeting will be held at the Southeast Alaska Discovery Center Learning Room (back entrance), 50 Main Street, Ketchikan, Alaska. Send written comments to Ketchikan Resource Advisory Committee, c/o District Ranger, USDA Forest Service, 3031 Tongass Ave., Ketchikan, AK 99901, or electronically to *lkolund@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Lynn Kolund, District Ranger, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, (907) 228–4100.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: February 22, 2005.

Olleke Rappe-Daniels,

Deputy Forest Supervisor.

[FR Doc. 05–3886 Filed 3–1–05; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Notice of Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its committee and board meetings to take place in Washington, DC from Monday through Wednesday, March 7–9, 2005 as noted below.

DATES: The schedule of events is as follows:

Monday, March 7, 2005

11 a.m.–Noon Ad Hoc Committee on Courthouse Access
1:30–4 p.m. Committee of the Whole—Strategic Plan—Closed
4–5 Ad Hoc Committee on Board Election Process

Tuesday, March 8, 2005

1:30–5 p.m. Ad Hoc Committee on Public Rights-of-Way—Closed

Wednesday, March 9, 2005

9–10 a.m. Planning and Budget Committee
10–11 Technical Programs Committee
11–Noon Executive Committee
1:30–3 p.m. Board Meeting

ADDRESSES: The meeting will be held at the Hilton Garden Inn, Franklin Square Hotel, 815 14th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: For further information regarding this meeting, please contact Lawrence W. Roffee, Executive Director, (202) 272–0001 (voice) and (202) 272–0082 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items:

(a) Approval of the January 12, 2005 draft meeting minutes;

(b) Committee reports: Ad Hoc Committee on Courthouse Access; Ad Hoc Committee on Board Election Process; Planning and Budget Committee; Technical Programs Committee; Executive Committee; Committee of the Whole (Strategic Plan);

(c) Public rights-of-way guidelines (closed); and

(d) Election of officers.

This meeting is accessible to persons with disabilities. If you plan to attend and require a sign language interpreter or similar accommodation, please make your request with the Board by March

1, 2005. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

Lawrence W. Roffee,
Executive Director.

[FR Doc. 05–4022 Filed 3–1–05; 8:45 am]
BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022505A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has determined that an application for EFPs contains all of the required information and warrants further consideration. The Assistant Regional Administrator is considering the impacts of the activities to be authorized under the EFPs with respect to the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue EFPs. Therefore, NMFS announces that the Assistant Regional Administrator proposes to issue EFPs in response to an application submitted by the Cape Cod Commercial Hook Fisherman's Association (CCCHFA), in collaboration with Maine Division of Marine Resources (MEDMR), and Research, Environmental and Management Support (REMSA). These EFPs would allow up to 20 commercial vessels to conduct an experimental demersal longline fishery for haddock in Georges Bank (GB) Closed Area (CA) II and portions of the Eastern U.S./ Canada Area. This fishery would take place at various times from May 2005 through February 2006. The purpose of the proposed study is to determine if hook-and-line gear could be used to target haddock with minimal bycatch of cod in order to establish potential future Special Access Programs (SAPs) in these areas as allowed under Amendment 13 to the FMP. The EFPs would also contain a provision authorizing the RA to discontinue the experimental fishery once a specified amount of cod and haddock are caught or at her discretion.

DATES: Comments on this action must be received at the appropriate address or fax number (see **ADDRESSES**) on or before March 17, 2005.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Haddock CA II SAP EFP Proposal.'' Comments may also be sent via fax to (978) 281–9135, or submitted via e-mail to the following address: *da735@noaa.gov*. Copies of the Environmental Assessment (EA) are available from the NE Regional Office at the same address.

FOR FURTHER INFORMATION CONTACT: Heather Sagar, Fishery Management Specialist, phone: 978–281–9341, fax: 978–281–9135, email: *heather.sagar@noaa.gov*

SUPPLEMENTARY INFORMATION:

Background

The CCCHFA, in collaboration with MEDMR and REMSA, submitted a request on November 16, 2004, to conduct an experimental fishery for GB haddock within GB CA II and a portion of the Eastern U.S./Canada Area. The purpose of the proposed study is to determine if demersal longline gear could be used to target haddock with minimal bycatch of cod in order to establish potential future SAP. This proposal builds on an ongoing study that began on June 10, 2004, and which ended on January 31, 2005. Preliminary results from this ongoing study demonstrate the viability of utilizing demersal longline gear to reduce bycatch of cod in a portion of Cashes Ledge Closure Area, Western Gulf of Maine Closure Area, GB CA I, and Rolling Closure Area III.

The CCCHFA's most recent proposal requests authorizing a total of 160 trips by 20 commercial longline vessels to fish for and possess haddock in the Eastern U.S./Canada Area, including CA II, during the period May 1, 2005, through February 28, 2006. Similar to their initial experiment, days-at-sea (DAS) would be used. Throughout this study, CCCHFA hopes to determine the appropriate season, bait, and location for a directed haddock fishery in the above identified areas that would have minimal impact on other groundfish stocks, particularly GB cod, for the purpose of developing a SAP. Participating vessels would be prohibited from fishing in areas outside of the identified areas during an experimental fishing trip. Participating vessels would also be prohibited from fishing in the Eastern U.S./Canada Area, should it be closed due to the attainment of either the cod, yellowtail flounder, or haddock TACs. Finally, participating vessels would be prevented from fishing in CA II during peak spawning for cod and haddock, unless otherwise notified. This study would follow normal fishing practices.

PROPOSED STUDY AREAS AND SEASONS

Area	Closure Type	Duration	Location	# Vessels	# Trips
GB CA II	Year-Round	May 2005 through February 2006.	Georges Bank CA II.	10	80 (8 per month)
Eastern U.S./Canada Area	TAC Based	May 2005 through February 2006.	Eastern U.S./ Canada Area.	10	80 (8 per month)

Vessels used in this study would include both GB Cod Hook Sector (Sector) and non-Sector vessels. All cod caught by Sector vessels would count against the Sector's cod allocation. The applicant estimates that each vessel would average 19,900 lb (9.0 mt) of haddock and less than 1 percent bycatch of GB cod per trip, for a total of

3,184,000 lb (1,444.6 mt) of haddock and 31,840 lb (14.4 mt) of cod. However, the applicant believes the study can be successfully completed with a bycatch of GB cod of 20,000 lb (9.1 mt). Therefore, to ensure that participating vessels stay within the confines of this experiment, the study will be subject to a poundage cap of 20,000 lb (9.1 mt) of GB cod, and 3,184,000 lb (1,444.6 mt) of GB haddock. Should this cap be caught, the RA would discontinue the experimental fishery. All fish landed would be subject to the minimum fish size. Although all vessels would be exempt from the haddock trip limits, non-Sector vessel would not be exempt from the cod trip limit requirements. Because the target species is haddock, the applicant has requested an exemption from the 3,600- hook limits for non-Sector vessels. Hook limits for longline fishermen were implemented as a means to reduce the catch of cod on Georges Bank. As such, the limit is unnecessary for fishermen targeting haddock. Additionally, EFPs DA–280 and DA–338 have demonstrated that the bycatch rate of cod is less than 1 percent when using fabricated baits.

REMSA scientific staff would be present on board each participating vessel, equating to 100–percent scientific data collector coverage for this experimental fishery. Scientific data collectors would be responsible for collecting all biological and environmental data on NMFS observer forms. CCCHFA would develop a full report of results and would submit this information to the NMFS Northeast Regional Office monthly. The EFPs would contain a provision that the RA has the authority to discontinue the proposed experimental fishery at any time, e.g., the RA would terminate the EFP if the Eastern U.S./Canada Area is closed due to TAC-based closures.

A draft EA has been prepared that analyzes the impacts of the proposed experimental fishery on the human environment. This draft EA concludes that the activities proposed to be conducted under the requested EFP are consistent with the goals and objectives of the FMP, would not be detrimental to the well-being of any stocks of fish harvested, and would have no significant environmental impacts. The draft EA also concludes that the proposed experimental fishery would not be detrimental to Essential Fish Habitat, marine mammals, or protected species.

The applicant may request minor modifications to the EFP throughout the year. EFP modifications may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and minimal enough so as not to change the scope or impact the initially approved EFP request.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 25, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries,National Marine Fisheries Service.

[FR Doc. E5–829 Filed 3–1–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Joint Advisory Committee on Nuclear Weapons Surety; Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Joint Advisory Committee on Nuclear Weapons Surety will conduct a closed session on March 30th, 2005 at the Institute for Defense Analyses, Alexandria, VA.

The Joint Advisory Committee is charged with advising the Secretaries of Defense and Energy, and the Joint Nuclear Weapons Council on nuclear weapons surety matters. At this meeting the Joint Advisory Committee will receive classified briefings on nuclear weapons safety and security.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended, Title 5, U.S.C. App. II, (1988)), this meeting concerns matters sensitive to the interests of national security, listed in 5 U.S.C. Section 552b(c)(1) and accordingly this meeting will be closed to the public.

Dated: February 25, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–4035 Filed 3–1–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Identifying and Sustaining U.S. Department of Defense/UK Ministry of Defence Defense Critical Technologies (Study) will meet in closed session on April 1, 2005, at Strategic Analysis, Inc., 3601 Wilson Boulevard, Arlington, VA. This Task Force will develop a methodology to identify unique defense technologies as well as commercially developed technologies needing augmentation to fulfill defense niche areas, and then apply the methodology to develop a list of defense critical technologies.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force should focus its effort on high leverage, differentiated and transformational technologies. The Study may then use this list of defense critical technologies to further assess the tools available to the U.S. DoD or UK MoD to develop its critical technology needs. Some of the considerations the Study should examine include mechanisms to develop niches in pre-existing technologies, foster new technology until the commercial marketplace takes over, or develop technology without any expectation of commercial development; the analysis should include a review of the applicable acquisition/business case. Finally, the Study should consider the impact of technology development in other countries and the implications that this may have on Anglo-U.S. unique needs.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: February 25, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–4034 Filed 3–1–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Uniform Formulary Beneficiary Advisory Panel

AGENCY: Department of Defense, Assistant Secretary of Defense (Health Affairs).

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Uniform Formulary Beneficiary Advisory Panel. The panel will review and comment on recommendations made to the Director, TRICARE Management Activity, by the Pharmacy and Therapeutics Committee regarding the Uniform Formulary. The meeting will be open to the public. Seating is limited and will be provided only to the first 220 people signing in. All persons must sign in legibly. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: Wednesday, March 23, 2005, from 8 a.m. to 4 p.m.

ADDRESSES: Naval Heritage Center Theater, 701 Pennsylvania Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Rich Martel, TRICARE Management Activity, Pharmacy Operations, Beneficiary Advisory Panel, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041, telephone 703–681–0064 ext. 3672, fax 703–681–1242, or e-mail at *richard.martel@tma.osd.mil.*

SUPPLEMENTARY INFORMATION: The Uniform Formulary Beneficiary Advisory Panel will only review and comment on the development of the uniform formulary as reflected in the recommendations of the Pharmacy and Therapeutics (P&T) Committee coming out of that body's meeting in February 2005. The DoD P&T information and subject matter for that meeting are available at *http://pec.ha.osd.mil.* Any private citizen is permitted to file a written statement with the advisory panel. Statements must be submitted electronically to The Uniform Formulary Beneficiary Advisory Panel, c/o Mr. Richard Martel, *richard.martel@tma.osd.mil.* In order to be considered by the panel prior to the meeting, statements must be submitted electronically no later than March 16, 2005. Any private citizen is permitted to speak at the Beneficiary Advisory Panel meeting, time permitting. One hour has been reserved for public comments, and speaking times will be assigned on a first-come, first-served basis. The amount of time allocated to a speaker will not exceed five minutes. Private citizens wishing to speak at the meeting may sign up at the meeting on a first-come, first-served basis.

Dated: February 25, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–4029 Filed 3–1–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army is proposing to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

The Department of the Army is proposing to alter the existing system of records by adding a new purpose, *i.e.,* to support the families of service members, and two new routine uses as follows:

Information from these records may be disclosed to the Department of Veterans Affairs, and other Federal agencies in connection with eligibility, notification and assistance in obtaining benefits due.

'Information from these records may be released to family members of injury or killed DoD personnel to aid in the settlement of the member's estate or other affairs.

DATES: This proposed action will be effective without further notice on April 1, 2005 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Office Division, U.S. Army Records Management and Declassification Agency, ATTN: AHRC–PDD–FPZ, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 428–6497.

SUPPLEMENTARY INFORMATION: The Department of the Army 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 address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on February 1, 2005, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 24, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

A0600–8–1c AHRC DoD

SYSTEM NAME:

Defense Casualty Information Processing System (DCIPS) (November 18, 2004, 69 FR 67551).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with U.S. Army Human Resources Command, 200 Stovall Street, Alexandria, VA 22332–0481.

Commander, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

Commander, Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055–3130.

Commandant of the Marine Corps Headquarters, U.S. Marine Corps, 3280 Russell Road, Quantico, VA 22134–5101.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. 5043, Commandant of the Marine Corps; DoD Instruction 1300.18, Personnel Casualty Matters, Policies, and Procedures; DoD Directive 1300.22, Mortuary Affairs Policy; DoD Directive 1300.15, Military Funeral Support; Office of the Assistant Secretary of Defense Memorandum, subject: Defense Casualty Information Processing System, dated Oct 22, 1999; and E.O. 9397 (SSN). For a complete list of individual Service implementing regulations, contact the system manager.''

PURPOSE(S):

Add to the end of the entry 'and to support the families of service members'.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Add two new paragraphs 'Information from these records may be disclosed to the Department of Veterans Affairs, and other Federal agencies in connection with eligibility, notification and assistance in obtaining benefits due.

Information from these records may be released to family members of injury or killed DoD personnel to aid in the settlement of the member's estate or other affairs.'

* * * * *

A0600–8–1c AHRC DoD

SYSTEM NAME:

Defense Casualty Information Processing System (DCIPS).

SYSTEM LOCATION:

U.S. Army Human Resources Command 200 Stovall Street, Alexandria, VA 22332–0481.

Commander, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

Commander, Navy Personal Command, 5720 Integrity Drive, Millington, TN 38055–3130.

Commandant of the Marine Corps Headquarters, U.S. Marine Corps, 3280 Russell Road, Quantico, VA 22134–5101.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense military personnel (active component and reserve component) and their family members; DoD civilian personnel, retired service members, non-DoD civilians, and other individuals that are reported as casualties.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, date of birth, branch of service, organization, duty, Army rank and military occupational speciality (MOS), Air Force Specialty Code (AFSC) and rank, Navy rank and rate, Marine Corp rank and specialty code, sex, race, religion, home of record, and other pertinent information; personnel records, correspondence with primary next of kin/secondary next of kin, inquiries from other agencies and individuals, DD Form 1300 (Report of Casualty).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; 10 U.A.C. 5043, Commandant of the Marine Corps; DoD Instruction 1300.18, Personnel Casualty Matters, Policies, and Procedures; DoD Directive 1300.22, Mortuary Affairs Policy; DoD Directive 1300.15, Military Funeral Support; Office of the Assistant Secretary of Defense Memorandum, subject: Defense Casualty Information Processing System, dated Oct 22, 1999; and E.O. 9397 (SSN). For a complete list of individual Service implementing regulations, contact the system manager.

PURPOSE(S):

To provide DoD with a single joint military casualty information processing system; to provide support for the management of casualty and mortuary affairs by the Services Casualty and Mortuary Affairs Offices; to respond to inquiries; to provide statistical data comprising type, number, place and cause of incident to DoD Services' members; and to support the families of service members.

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, 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:

Information from these records may be disclosed to the Department of Veterans Affairs, and other Federal agencies in connection with eligibility, notification and assistance in obtaining benefits due.

Information from these records may be released to family members of injury or killed DoD personnel to aid in the settlement of the member's estate or other affairs.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY:

By individual's name and/or Social Security Number or any other data element.

SAFEGUARDS:

All information is restricted to a secure area in buildings that employ security guards. Computer printouts and magnetic tapes and files are protected by password known only to properly screened personnel possessing special authorization for access.

RETENTION AND DISPOSAL:

Records are permanent.

SYSTEM MANAGERS AND ADDRESSES:

Commander, U.S. Army Human Resources Command, 200 Stovall Street, Alexandria, VA 22332–0481.

Commander, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

Commander, Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055–3130.

Commandant of the Marine Corps Headquarters, U.S. Marine Corps, 3280 Russell Road, Quantico, VA 22134–5101.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the appropriate system manager.

Individual should provide full name, current address and telephone number, and should identify the person who is the subject of the inquiry by name, rank and Social Security Number or Service Number.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the appropriate system manager.

Individual should provide full name, current address and telephone number, and should identify the person who is the subject of the inquiry by name, rank and Social Security Number or Service Number.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From casualty reports and investigations received from commander, medical personnel, medical examiners, and other related official sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–4031 Filed 3–1–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement for a Permit Application for the Proposed Hemet/San Jacinto Integrated Recharge and Recovery Program in San Jacinto, Riverside County, CA

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DoD.

ACTION: Notice of Intent (NOI).

SUMMARY: The U.S. Army Corps of Engineers (Corps), Los Angeles District, Regulatory Branch is considering an application from the Eastern Municipal Water District (EMWD) for a Department of the Army permit under Section 404 of the Clean Water Act to construct a groundwater recharge and storage facility in and adjacent to the San Jacinto River. The proposed project would consist of up to fifteen recharge basins (six in proposed Phase 1 and nine in proposed Phase 2) on approximately 100- acres in the San Jacinto River Channel, upgrades to two existing pump stations, a new approximately 7.7-mile-long water supply pipeline, up to ten extraction wells located west of the San Jacinto River, and up to six monitoring wells located near the western edge of the proposed recharge basins.

The Federal action involved in the project is the discharge of dredge and/or fill materials within waters of the United States. The Corps has determined that the potential impacts on the human environment from such activities may be adverse and significant. Therefore, in accordance with the National Environmental Policy Act (NEPA), the Corps will prepare an Environmental Impact Statement (EIS) prior to rendering a final decision on EMWD's permit application. The Corps may ultimately make a determination to grant or deny the permit or conditionally grant the permit. The Draft EIS is intended to be sufficient in scope to address the Federal and environmental issues concerning the proposed Federal permit action.

FOR FURTHER INFORMATION CONTACT: Questions and comments about the proposed action or Draft EIS should be addressed to Ms. Deanna L. Cummings, U.S. Army Corps of Engineers, Attn: 200401197, Los Angeles District, Regulatory Branch, 915 Wilshire Boulevard, Los Angeles, CA 90017.

SUPPLEMENTARY INFORMATION: 1. *Project Site and Background Information.* The proposed project would entail the recharge of up to 43,750 acre-feet per year of water in the Hemet/San Jacinto area of western Riverside County, California. (An acre-foot is equivalent to 325,850 gallons, roughly the amount of water that two southern California families of four uses in and around the house in one year.) The goals of the groundwater recharge project are to: Help meet water rights claims under a draft Settlement Agreement with the Soboba Band of Luiseño Indians; offset existing overdraft of the Hemet/San Jacinto area groundwater supply; provide an additional 15,000 acre-feet of annual water storage to help meet projected demand increases within EMWD's eastern service area; and provide up to 45,000 acre-feet of conjunctive use/drought management water storage, contributing to water storage goals identified by the CALFED Bay-Delta Program.

2. *Proposed Action.* The permit applicant's preferred alternative is to construct up to fifteen recharge ponds on an approximately 100-acre site in the San Jacinto River channel. This proposed recharge site is within unincorporated Riverside County near the cities of Hemet and San Jacinto, and near the San Jacinto River's confluences with Poppet and Bautista Creeks. The proposed project would entail the conveyance of State Water Project water to recharge basins located in the San Jacinto River. The potentially affected segment of the San Jacinto River normally is dry and only carries flows following storms or during winters with above-average rainfall. Water supplied to the recharge basins would infiltrate into the San Jacinto Basin, where it would be stored until it (or an equivalent amount of other groundwater in the basin) would be extracted by wells for consumptive use. In order to accomplish this recharge, the proposed project would require the following:

- A new, approximately 7.7-mile-long water supply pipeline extending from the EM–14 turnout on the Lakeview Pipeline (near Warren Road) to the proposed recharge basins at the San Jacinto River (this new pipeline would parallel an existing EMWD pipeline);
- Upgrades to the existing Warren Road and Commonwealth Avenue pump stations (located along the proposed water supply pipeline route);
- Up to fifteen new recharge basins on approximately 100- acres in the San Jacinto River channel;
- Up to eight extraction wells located west of the San Jacinto River; and
- Up to six monitoring wells located near the western edge of the proposed recharge basins.

In brief, water would be delivered to the proposed project area from California's State Water Project via the Lakeview Pipeline. Because the Lakeview Pipeline is located several miles west of the San Jacinto River, water would need to be conveyed to the recharge basins through an existing EMWD pipeline (Phase 1) and/or through a proposed new pipeline (Phase 2). Water conveyed to the San Jacinto River would be discharged into the proposed recharge basins, where the water would be allowed to infiltrate the groundwater supply under the river. EMWD would operate two types of wells in association with the proposed project: monitoring and extraction. As their name implies, the monitoring wells would allow EMWD to monitor groundwater levels and quality. Extraction wells would be used to extract water from the groundwater supply, where it would be piped into EMWD's existing network of water conveyance, storage and treatment facilities.

3. *Issues.* There are several potential environmental issues that will be addressed in the Draft EIS. Additional issues may be identified during the scoping process. Issues initially identified as potentially significant include:

1. Hydrology, including effects to the San Jacinto River and its floodplain and effects to groundwater, surface water and groundwater quality.
2. Biological resources, including impacts to wetlands, waters of the United States and Federal-listed threatened or endangered species and their habitat.
3. Land use and recreation.
4. Visual quality (aesthetics).
5. Geology and soils.
6. Transportation.
7. Cultural (historic and prehistoric) resources.
8. Noise.
9. Air quality.
10. Hazards and public safety.

The proposed project would require a number of Federal permits and approvals prior to implementation, including a Clean Water Act section 404 Permit, Clean Water Act section 401 Water Quality Certification and a Federal Endangered Species Act Incidental Take Permit.

4. *Alternatives.* In addition to EMWD's proposed project (the preferred alternative), the Draft EIS will evaluate reduced project and/or locational alternatives and a No Action Alternative.

5. *Scoping Process.* A public meeting will be held to receive public comments and assess public concerns regarding

the appropriate scope and preparation of the Draft EIS. Participation in the public meeting by Federal, State and local agencies and other interested organizations and persons is encouraged. The Corps will also be consulting with the U.S. Fish and Wildlife Service under the Endangered Species Act and Fish and Wildlife Coordination Act. The scoping meeting for the Draft EIS will be held at the James Simpson Neighborhood/Senior Center, 305 E. Devonshire Avenue, Hemet, CA at 6:30 p.m. on March 8, 2005. Parties interested in being added to the Corps' electronic mail notification list can register at: *http://www.spl.usace.army.mil/regulatory/register.html.* This list will be used in the future to notify the public about scheduled hearings and availability of future public notices.

6. *Availability of the Draft EIS.* The Corps expects the Draft EIS to be made available to the public in June 2005. A public hearing will be held during the public comment period for the Draft EIS.

Alex C. Dornstauder,

Colonel, U.S. Army, District Engineer.

[FR Doc. 05–3975 Filed 3–1–05; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement; Overview Information; Women's Educational Equity Act Program (WEEA); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.083A.

Note: The Department is not inviting applications under CFDA Number 84.083B (research and development grants) for FY 2005.

DATES: *Applications Available:* March 2, 2005.

Deadline for Notice of Intent To Apply: April 1, 2005.

Deadline for Transmittal of Applications: April 18, 2005.

Deadline for Intergovernmental Review: June 15, 2005.

Eligible Applicants: Public agencies; private nonprofit agencies; organizations, including community- and faith-based organizations; institutions; student groups; community groups; and individuals.

Estimated Available Funds: $2,519,942.

Estimated Range of Awards: $125,000–$250,000.

Estimated Average Size of Award: $175,000.

Maximum Award: $250,000 is the maximum award for a single budget period of 12 months.

Estimated Number of Awards: 14–15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the WEEA program is: (a) To promote gender equity in education in the United States; (b) to provide financial assistance to enable educational agencies and institutions to meet the requirements of title IX of the Educational Amendments of 1972; and (c) to promote equity in education for women and girls who suffer from multiple forms of discrimination based on sex, race, ethnic origin, limited English proficiency, disability, or age.

Priority: Under this competition we are particularly interested in applications that address the following priority.

Invitational Priority: For FY 2005 this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets the invitational priority a competitive or absolute preference over other applications.

This priority is:

Invitational Priority: Projects designed to increase the number of low-income women and girls pursuing and excelling in advanced courses in mathematics or science (including computer science), and entering highly skilled careers in which they have been underrepresented.

Program Authority: 20 U.S.C. 7283–7283g.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Note: The regulations in 34 CFR part 99 apply only to an educational agency or institution.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $2,519,942.

Estimated Range of Awards: $125,000–$250,000.

Estimated Average Size of Awards: $175,000.

Maximum Award: $250,000 is the maximum award for a single budget period of 12 months.

Estimated Number of Awards: 14–15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* Public agencies; private nonprofit agencies; organizations, including community- and faith-based organizations; institutions; student groups; community groups; and individuals.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/pubs/edpubs.html.* To obtain a copy from ED Pubs, write or call the following: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.083A.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Notice of Intent to Apply: We will be able to develop a more efficient process for reviewing grant applications if we have a better understanding of the number of entities that intend to apply

for funding under this competition. Therefore, we strongly encourage each potential applicant for the Women's Educational Equity program to notify us by e-mail that it intends to submit an application for funding. We request that this e-mail notification be sent no later than April 1, 2005, to Dr. Frances Yvonne Hicks at *frances.hicks@ed.gov.* Applicants that fail to provide this e-mail notification may still apply for funding.

Page Limit for Program Narrative: The program narrative (Part IV of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We strongly encourage you to limit Part IV to the equivalent of no more than 25 pages using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the program narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters or support. However, you should include all of the application narrative in Part IV.

3. *Submission Dates and Times: Applications Available:* March 2, 2005.

Deadline for Notice of Intent to Apply: April 1, 2005.

Deadline for Transmittal of Applications: April 18, 2005.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We will not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: June 15, 2005.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the WEEA program—CFDA Number 84.083A—must be submitted electronically using the Grants.gov Apply site. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the WEEA program at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted with a date/time received by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. We will not consider your application if it was received by the Grants.gov system later than 4:30 p.m. on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was submitted after 4:30 p.m. on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that your application is submitted timely to the Grants.gov system.

• To use Grants.gov, you, as the applicant, must have a D–U–N–S Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five business days to complete the CCR registration.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.

• Your electronic application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are

unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Dr. Frances Yvonne Hicks, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W208, Washington, DC 20202–5943. FAX: (202) 205–5630.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier), your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.083A),
400 Maryland Avenue, SW.,
Washington, DC 20202–4260;

or

By mail through a commercial carrier:

U.S. Department of Education,
Application Control Center—Stop 4260, Attention: (CFDA Number 84.083A), 7100 Old Landover Road,
Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.083A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from the Women's Educational Equity Act (WEEA) and 34 CFR 75.210 of EDGAR. (**Note:** Men and boys may participate in any program or activity assisted with funds under this program.) The maximum possible score for each criterion is indicated in parentheses with the criterion in this notice. The maximum score for all of the criteria is 100 points. The criteria are as follows:

Selection Criteria for Implementation Grants pursuant to Section 5613(b)(2) (20 U.S.C. 7283(b)(2)) of WEEA and 34 CFR 75.210:

(a) *Effectively achieving the purposes of WEEA* (15 points). The Secretary reviews each application to determine how well the project will effectively achieve the purposes of the Women's Educational Equity program.

Note: Applicants should consider the following statutory provisions when responding to this criterion. The purpose of the WEEA is: (a) To promote gender equity in education in the United States; (b) to provide financial assistance to enable educational agencies and institutions to meet the requirements of title IX of the Educational Amendments of 1972; and (c) to promote equity in education for women and girls who suffer from multiple forms of discrimination based on sex, race, ethnic origin, limited English proficiency, disability, or age.

(b) *Project as a component of a comprehensive plan* (10 points). The Secretary reviews each application to determine the extent to which the project is a significant component of a comprehensive plan for educational equity and compliance with title IX of the Educational Amendments of 1972 in the particular school district, institution of higher education, vocational-technical institution, or other educational agency or institution.

(c) *Implementing an institutional change strategy* (10 points). The Secretary reviews each application to determine the extent to which the project would implement an institutional change strategy with long-term impact that will continue as a central activity of the applicant after the grant has been terminated.

(d) *Need for project* (15 points). The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(ii) The extent to which the proposed project will promote equity in educational and career opportunities for those women and girls who suffer multiple forms of discrimination, based

on sex, race, ethnic origin, limited English proficiency, disability, or age.

(e) *Quality of Project Personnel* (10 points). The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel.

(ii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(f) *Quality of the management plan* (20 points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, time lines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(iii) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(g) *Quality of the project evaluation* (20 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(ii) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

Note: A strong evaluation plan should be included in the application narrative and should be used, as appropriate, to shape the development of the project from the beginning of the grant period. The plan should include benchmarks to monitor progress toward specific project objectives and also outcome measures to assess the impact on teaching and learning or other important outcomes for project participants. More specifically, the plan should identify the individual or organization that has agreed to serve as evaluator for the project and describe the qualifications of that evaluator. The plan should describe the evaluation design, indicating: (1) What types of data will be collected; (2) when various types of data will be collected; (3) what methods will be used; (4) what instruments will be developed and when; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the information collected through the evaluation to monitor progress of the funded project and to provide accountability information both about success at the initial site and effective strategies for replication in other settings. Applicants are encouraged to devote an appropriate level of resources to project evaluation.

2. *Review and Selection Process:* Additional factors considered in selecting an application for an award will include:

- A variety of levels of education, including preschool, elementary and secondary education, higher education, vocational education, and adult education;
- Different regions of the United States; and
- A diversity of urban, rural, and suburban entities.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in accordance with 34 CFR 75.118. We may also require more frequent performance reports in accordance with 34 CFR 75.720(c). All of these reports must include data collected by you on the key GPRA performance measures for this program described in the next section. For additional specific requirements on grantee reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Secretary has developed performance measures for assessing the effectiveness of this program. These measures are:

- An increase in the number/percent of students who are pursuing advanced courses in mathematics and science (including computer science), and
- An increase in the number/percent of students who indicate increased knowledge of non-traditional career options in mathematics and science (including computer science) and who plan to pursue these careers.

Performance targets, published in the application package, represent the expected increases that measure project performance. Beginning in FY 2005–2006 grantees will collect and report baseline data for these measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Dr. Frances Yvonne Hicks, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W208, Washington, DC 20202–5943. Telephone: (202) 260–0964.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 24, 2005.

Michael J. Petrilli,

Acting Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. E5–819 Filed 3–1–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–70–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Application

February 24, 2005.

Take notice that Southern Star Central Gas Pipeline, Inc., 4700 Highway 56, Owensboro, Kentucky 42301, filed in Docket No. CP05–70–000 on February 15, 2005, an application pursuant to sections 7(b) and (c) of the Natural Gas Act (NGA) for authorization to abandon an injection/withdrawal well (Well #65) and replace it with another (Well #89) in its North Welda Storage Field located in Anderson County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or TTY, (202) 208–1659.

Any questions regarding this application should be directed to David N. Roberts, Manager, Regulatory Affairs, at (270) 852–4654.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the date noted below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: March 17, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–831 Filed 3–1–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP05–13-000, CP05–11–000, CP05–12–000, and CP05–14–000]

Ingleside Energy Center, LLC, San Patricio Pipeline, LLC; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Ingleside Energy Center LNG Terminal and Pipeline Project

February 24, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft Environmental Impact Statement (EIS) on the liquefied natural gas (LNG) import terminal and natural gas pipeline facilities in Nueces and San Patricio Counties, Texas proposed by Ingleside Energy Center, LLC and San Patricio Pipeline, LLC (collectively referred to as Ingleside San Patricio) in the above-referenced dockets.

The draft EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The staff concludes that approval of the proposed project with appropriate mitigating measures, as recommended, would have limited adverse environmental impact. The draft EIS also evaluates alternatives to the proposal, including system alternatives, alternative sites for the LNG import terminal, and pipeline alternatives; and requests comments on them.

Ingleside San Patricio's proposed facilities would have a nominal output of about 1.0 billion cubic feet of imported natural gas per day to the U.S. market. In order to provide LNG import, storage, and pipeline transportation services, Ingleside San Patricio requests Commission authorization to construct, install, and operate an LNG terminal and natural gas pipeline facilities.

- The draft EIS addresses the potential environmental effects of the construction and operation of the following LNG terminal and natural gas pipeline facilities in San Patricio and Nueces Counties, Texas:
- A new marine terminal basin connected to the La Quinta Channel that would include a ship maneuvering area and one protected berth to unload up to 140 LNG ships per year;
- Two double containment LNG storage tanks with a nominal working volume of approximately 160,000 cubic meters (1,006,000 barrels equivalent);
- LNG vaporization and processing equipment;
- 26.4 miles of 26-inch-diameter natural gas pipeline; and

• Nine interconnects with existing intrastate and interstate pipelines, and related meter stations.

As proposed, the project would be integrated with the adjacent Occidental Chemical Company manufacturing complex in order for the two facilities to offset the other's respective heating and cooling needs. The use of the chemical manufacturing complex's cooling water would serve as a source of vaporization heat.

Comment Procedures and Public Meetings

Any person wishing to comment on the draft EIS may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received and properly recorded:

• Send an original and two copies of your comments to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

• Reference Docket Nos. CP05–11–000, CP05–12–000, CP05–13–000, and CP05–14–000.

• Label one copy of the comments for the attention of the Gas Branch 3, PJ–11.3.

• Mail your comments so that they will be received in Washington, DC on or before April 18, 2005.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable timeframe in our environmental analysis of the project. However, the Commission strongly encourages electronic filing of any comments or interventions to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments, you will need to create a free account, which can be created by clicking on ''Login to File'' and then ''New User Account.''

In addition to or in lieu of sending written comments, we invite you to attend the public meeting we have scheduled as follows: March 30, 2005, 7 p.m. (c.s.t.), Portland Community Center, 2000 Billy G Webb, Portland, TX 78374. Telephone: (361) 777-3301.

The meeting will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information. Interested groups and individuals are encouraged to attend and present oral comments on the draft EIS. Transcripts of the meeting will be prepared.

After these comments are reviewed, any significant new issues are investigated, and modifications are made to the draft EIS, a final EIS will be published and distributed by the staff. The final EIS will contain the staff's responses to timely comments received on the draft EIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

Anyone may intervene in this proceeding based on this draft EIS. You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

The draft EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426. (202) 502-8371.

A limited number of copies are available from the Public Reference Room identified above. In addition, copies of the draft EIS have been mailed to Federal, State, and local agencies; public interest groups; individuals and affected landowners who requested a copy of the draft EIS; libraries; newspapers; and parties to this proceeding.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site *(http://www.ferc.gov)* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to the eSubscription link on the FERC Internet Web site.

Magalie R. Salas,

Secretary.

[FR Doc. E5–832 Filed 3–1–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2150]

Puget Sound Energy; Notice of Technical Conference

February 24, 2005.

The Commission hereby gives notice that members of its staff will meet with Puget Sound Energy (Puget) and other stakeholders on March 16, 2005, from 9 a.m. to 5 p.m. (P.s.t.) at the U.S. Army Corps of Engineers District Office in Seattle, Washington. Commission staff will continue the technical conference the next day from 9 a.m. to 5 p.m. should an additional day of discussions be warranted. The U.S. Army Corps of Engineers Seattle District Office is located at 4735 E. Marginal Way S., Seattle, Washington 98134. Any additional information will be posted on the Commission's Web site soon at: *http://www.ferc.gov/EventCalendar/EventsADay.aspx?Date=3/16/2005&CalendarID=0.*

The purpose of the conference is to discuss Puget's amended license application for the Baker River Hydroelectric Project filed January 31, 2005, and Puget's settlement agreement filed November 30, 2004. The Baker River Hydroelectric Project is located on the Baker River in Skagit and Whatcom Counties, Washington.

This conference is open to the public. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate. There will be no transcript of the conference.

Please contact Steve Hocking at *steve.hocking@ferc.gov* or (202) 502–8753 with any questions or for additional information.

Magalie R. Salas,

Secretary.

[FR Doc. E5–830 Filed 3–1–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0310, FRL–7879–9]

Agency Information Collection Activities; Submission to OMB; Comment Request; EPA ICR No. 1759.04/OMB Control No. 2070–0148; Worker Protection Standard Training and Notification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Worker Protection Standard Training and Notification, EPA ICR No. 1759.04; OMB Control No. 2070–0148. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before April 1, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OPP–2004–0310 to (1) EPA online using EDOCKET (our preferred method), by e-mail to *opp-docket@epa.gov,* or by mail to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Mailcode: 7502C, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cameo Smoot, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5454; fax number: (703) 305–5884; e-mail address: *smoot.cameo@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. The **Federal Register** document, required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on September 30, 2004 (58431). EPA received no comments on this ICR during the 60-day comment period.

EPA has established a public docket for this ICR under Docket ID No. OPP–2004–0310 which is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice.Please note, EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

ICR Title: Worker Protection Standard Training and Notification

ICR Status: This is a request for extension of an existing approved collection that is currently scheduled to expire on February 28, 2005. EPA is asking OMB to approve this ICR for three years. Under 5 CFR 1320.12(b)(2), the Agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

Abstract: EPA is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Worker Protection Standard (WPS), codified at 40 CFR part 170, established requirements to protect agricultural workers and pesticide handlers from hazards of pesticides used on farms, on forests, in nurseries, and in greenhouses. EPA regulations in 40 CFR part 170 contain the standard and workplace practices, which are designed to reduce or eliminate exposure to pesticides and establish procedures for responding to exposure-related emergencies. The practices include prohibitions against applying pesticides in a way that would cause exposure to workers and others; a waiting period before workers can return to areas treated with pesticides (restricted entry interval); basic safety training (and voluntary training verification) and posting of information about pesticide hazards, as well as pesticide application information; arrangements for the supply of soap, water, and towels in case of pesticide exposure; and provisions for emergency assistance. The training verification program facilitates compliance with the training requirements by providing a voluntary method for employers to verify that the required safety information has been provided to workers and handlers. Responses to all other aspects of this information collection activity are mandatory. This renewal ICR estimates the third party response burden from complying with the WPS requirements. Information is exchanged between agricultural employers and employees at farm, forest, nursery and greenhouse establishments to ensure worker safety. No information is collected by the Agency under this ICR.

Burden Statement: The annual ''respondent'' burden for this ICR is estimated to be 2,293,364 hours. According to the Paperwork Reduction Act, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This total estimate includes the third party WPS training and notification requirements such as the provisions requiring employers to provide employees with pesticide-specific treatment (application) information in the form of oral or written notification, provisions requiring that employers assure that employees receive basic pesticide safety information or training, a voluntary program to verify training and relief duplication of training, provisions requiring handler notification to employers regarding pesticide treatments (applications) and provision for emergency information on pesticide

treatments, and provisions requiring employers to notify employees when an exception/exemption to the WPS is being implemented. The 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 information collection appear at the beginning and the end of this document. In addition OMB control numbers for EPA's regulations, after initial display in the final rule, are listed in 40 CFR part 9.

The following is a summary of the burden estimates taken from the ICR:

Respondents/affected entities: Agricultural workers, pesticide handlers, employers in farms, nurseries, forestry, and greenhouse establishments.

Estimated total number of potential respondents: 3,245,393.

Frequency of response: As needed.

Estimated total/average number of responses for each respondent: 3.

Estimated total annual burden hours: 2,293,364.

Estimated total annual labor costs: $109,436,947.

Changes in the ICR since the last approval: The total annual burden associated with this ICR has decreased by 1,261 hours, from 2,294,625 hours in the previous ICR to 2,293,364 hours for this ICR. This change reflects a slight program adjustment and is described in the ICR.

Dated: February 20, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–3997 Filed 3–1–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OA–2004–0005; FRL–7879–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Pretest of the Pollution Abatement Costs and Expenditures (PACE) Survey; EPA ICR Number 2158.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 1, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OA–2004–0005, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Dr. Kelly Maguire, U.S. Environmental Protection Agency, Office of Policy, Economics and Innovation, National Center for Environmental Economics, Mail Code 1809T, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–2273; fax number: (202) 566–2339; e-mail address: *maguire.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 19, 2004 (69 *FR* 51461), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA has addressed the comments received.

EPA has established a public docket for this ICR under Docket ID No. OA–2004–0005, which is available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA?s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Pretest of the Pollution Abatement Costs and Expenditures (PACE) Survey.

Abstract: The Pollution Abatement Costs and Expenditures (PACE) Survey was conducted by the U.S. Bureau of Census annually between 1973 and 1994 (excluding 1987) and again in 1999. This pretest is to evaluate a revised PACE survey instrument.

The data from the PACE survey are mainly used by the U.S. Environmental Protection Agency (EPA) to better satisfy legislative and executive requirements to track the costs of regulatory programs and to provide aggregate national statistics on costs and expenditures for pollution abatement activities. Other users of these aggregate data include trade associations, manufacturers, marketing and research companies, universities, financial and environmental institutions, other Federal agencies, State and local governments, and environmental reporters.

This information request is to conduct a pretest of the redesigned survey instrument being considered for use in reinstating the annual PACE survey conducted by the Bureau of the Census. The survey collects information on facility-specific costs and expenditures for pollution abatement activities among manufacturing, mining, and electric utility facilities. Pollution abatement includes treatment, recycling, waste disposal, pollution prevention, and other pollution management activities, such as monitoring and testing and recordkeeping and reporting.

Participation in the pretest of the PACE survey will be voluntary. EPA, through its contractors, ICF Consulting, and RTI, International, will recruit 24 facilities from the pulp and paper, iron and steel, electric utility, petroleum, and other industries to participate in the pretest. Facilities will complete the survey and then participate in a follow-up discussion of the results with engineers from RTI, International. The engineers will seek to better understand the results provided on the survey and walk through the facility to identify pollution abatement techniques. The engineers will develop independent estimates of costs for each facility which will serve to better assist the facility in understanding the sources of various cost elements and enhance the survey instrument.

The survey responses from the pretest will only be used to assess the redesigned survey instrument. All responses will be kept confidential at RTI, International and will be destroyed after 5 years.

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 numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 16 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: manufacturing facilities from the pulp and paper, petroleum, electric utility, iron and steel, and other select industries.

Estimated Number of Respondents: 24.

Frequency of Response: one-time.

Estimated Total Annual Hour Burden: 378.

Estimated Total Annual Cost: $11,000, which includes $0 annual capital/startup or O&M costs and $11,000 annual labor costs.

Dated: February 20, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–3998 Filed 3–1–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2004–0027; FRL–7879–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Response; Information Collection Request for Cooling Water Intake Structures—New Facility (Renewal), EPA ICR Number 1973.03, OMB Control Number 2040–0241

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 28, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. The ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 1, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OW–2004–0027, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *OW-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code 4101T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jack Faulk, Office of Wastewater Management, Mail Code 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–0768; fax number: 202–564–6431; e-mail address: *faulk.jack@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 30, 2004 (69 FR 52883), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comment.

EPA has established a public docket for this ICR under Docket ID No. OW–2004–0027, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Cooling Water Intake Structures—New Facility (Renewal)

Abstract: The section 316(b) New Facility Regulation requires the collection of information from new facilities that use a cooling water intake structure (CWIS). Entities affected by this ICR are new power producing facilities (both utility and nonutility) and new manufacturing facilities that have large cooling water requirements. Four categories of manufacturing facilities tend to have large amounts of cooling water: paper and allied products, chemical and allied products, petroleum and coal products, and primary metals. Section 316(b) of the Clean Water Act (CWA) requires that any standard established under section 301 or 306 of the CWA and applicable to a point source must require that the location, design, construction and capacity of CWISs at that facility reflect the best technology available (BTA) for minimizing adverse environmental impact. Such impact occurs as a result of impingement (where fish and other aquatic life are trapped on technologies at the entrance to cooling water intake structures) and entrainment (where aquatic organisms, eggs, and larvae are taken into the cooling system, passed through the heat exchanger, and then pumped back out with the discharge from the facility). These requirements seek to minimize the adverse environmental impact associated with the use of CWISs.

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 numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual average reporting and record keeping burden for the collection of information by facilities with a cooling water intake structure is estimated to be 2,107 hours per respondent (*i.e.*, an annual average of 71,645 hours of burden divided among an anticipated annual average of 34 facilities). The Director reporting and record keeping burden for the review, oversight, and administration of these requirements is estimated to average 132 hours per respondent (*i.e.*, an annual average of 4,623 hours of burden divided among an anticipated 35 States on average per year). Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: New power producing facilities and new manufacturing facilities that have large cooling water requirements.

Estimated Number of Respondents: 69.

Frequency of Response: One-time application and annual reports thereafter.

Estimated Total Annual Hour Burden: 76,268 hours.

Estimated Total Annual Cost: $5,715,579 includes $789,478 annualized O&M costs, $1,152,448 Capital expenses, and $3,773,653 in labor costs.

Changes in the Estimates: There is an increase of 35,892 hours in the total estimated annual burden and an increase of $176,000 from the total estimated cost currently identified in the OMB Inventory of Approved ICR Burdens. The burden is based on the addition of the newly built facilities, as well as the continued performance of annual activities by facilities that received their permit during the first ICR approval period. The increase of hours and cost is attributed to the permit re-issuance activities that were not in the original ICR. These activities were not included in the original ICR because none of the new facilities required permit re-issuance during the initial approval period.

Dated: February 20, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–3999 Filed 3–1–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7879–4]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree, to address lawsuits filed by the State of North Carolina and Environmental Defense: *State of North Carolina* v. *Johnson,* No. 5:05–CV–112 (E.D. N.C.) and *Environmental Defense* v. *Johnson*, No. 5:05–CV–113 (E.D. N.C.). On February 17, 2005, the State of North Carolina and Environmental Defense filed complaints against EPA seeking to compel EPA to take action on a petition submitted to EPA under section 126 of the Clean Air Act on March 18, 2004. Under the terms of the proposed consent decree, EPA is to sign a notice of proposed rulemaking regarding the section 126 petition no later than August 1, 2005, and a notice of final rulemaking no later than March 15, 2006.

DATES: Written comments on the proposed consent decree must be received by April 1, 2005.

ADDRESSES: Submit your comments, identified by docket ID number OGC–2005–0002, online at *http://www.epa.gov/edocket* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Steven Silverman, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Telephone: (202) 564–5523.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree establishes deadlines for EPA to propose and take final action regarding a petition submitted to EPA by the State of North Carolina pursuant to section 126 of the Clean Air Act. The petition was submitted by the State of North Carolina on March 18, 2004, and requested that the Administrator of the EPA make a finding that certain sources of emissions of air pollutants outside the State of North Carolina are significantly

contributing to fine particulate matter and/or ozone nonattainment or maintenance problems in North Carolina.

The proposed consent decree establishes a deadline of August 1, 2005, for the signature of a notice of proposed rulemaking regarding North Carolina's section 126 petition to be published in the **Federal Register**. The notice of proposed rulemaking is to set forth EPA's proposed determination regarding the section 126 petition, and proposed remedy if any part of the proposed determination is not a denial. The proposed consent decree also establishes a deadline of March 15, 2006, for the signature of a final action regarding the section 126 petition. In addition, the proposed consent decree provides that EPA will hold a public hearing on the proposal during the week of September 12, 2005.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

EPA has established an official public docket for this action under Docket ID No. OGC–2005–0002 which contains a copy of the consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: February 24, 2005.

Richard B. Ossias,

Acting Associate General Counsel, Air and Radiation Law Office, Office of General Counsel.

[FR Doc. 05–4001 Filed 3–1–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL –7879–6]

Science Advisory Board Staff Office; Notification of Upcoming Teleconferences of the Science Advisory Board, Second Generation Model Advisory Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA, Science Advisory Board (SAB) Staff Office announces two public teleconferences of the Second Generation Model (SGM) Advisory Panel.

DATES: April 1, 2005 and May 6, 2005. Public teleconferences of the SAB Second Generation Model Advisory Panel will be held from 2 p.m. to 4 p.m. Eastern time on April 1, 2005 and from 2 p.m. to 4 p.m. Eastern time on May 6, 2005.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the call-in number and access code to participate in the teleconference may contact Dr. Holly Stallworth, Designated Federal Officer, at telephone: (202) 343–9867 or via e-mail at: *stallworth.holly@epa.gov.* Agendas and any other background materials for these teleconferences will be posted on the SAB Web site at: (*http://*

www.epa.gov/sab/panels/sgm_adv_panel.htm) prior to each teleconference.

Technical Contact: The technical contact in EPA's Office of Atmospheric Programs for the Second Generation Model is Michael Leifman who can be reached at *leifman.michael@epa.gov* or 202–343–9380.

SUPPLEMENTARY INFORMATION:

Background: Background on the Second Generation Model Advisory Panel was provided in an earlier Notice published on July 9, 2004 (69 FR 41474–41475). Subsequent Notices published on November 18, 2004 (69 FR 67579–67580) and January 6, 2005 (70 FR 1245–1246) provided notice of a December 2, 2004 teleconference and a February 4, 2005 face-to-face meeting of the SGM Advisory Panel respectively. Posted on the SAB Web site (*http://www.epa.gov/sab/*) are a final roster of the Panel and charge questions from the Office of Atmospheric Programs. Additional background material on the Second Generation Model may be found at: *http://www.epa.gov/air/sgm_sab.html.* The upcoming teleconferences to be held on April 1 and May 6 will provide panelists an opportunity to continue their discussions of the Second Generation Model and plan for the writing of their advice on this model.

Procedures for Providing Public Comment. It is the policy of the EPA Science Advisory Board (SAB) Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB Staff Office expects that public statements presented at the Second Generation Model Advisory Panel's meetings will not be repetitive of previously submitted oral or written statements.

Oral Comments: Requests to provide oral comments must be in writing (e-mail, fax or mail) and received by Dr. Stallworth no later than five business days prior to the teleconference in order to reserve time on the meeting agenda. For teleconferences, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total.

Written Comments: Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least five business days prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 98/2000/XP format).

Dated: February 23, 2005.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 05–4004 Filed 3–1–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0202; FRL–7697–1]

Pentachloronitrobenzene (PCNB) Revised Risk Assessments and Preliminary Risk Reduction Options (Phase 5 of Six-Phase Process); Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's revised risk assessments for the fungicide pentachloronitrobenzene (PCNB). In addition, this notice solicits public comment on risk reduction options for PCNB. The public also is encouraged to suggest risk management ideas or proposals to address the risks identified in the revised risk assessments. EPA is developing a Reregistration Eligibility Decision (RED) for PCNB through the full, six-phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0202, must be received on or before May 2, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jill Bloom, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8019; fax number: (703) 308–8041; e-mail address: *bloom.jill@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2004–0202. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''Quick Search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket,

will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''Quick Search,'' and then key in docket ID number OPP–2004–0202. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0202. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0202.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0202. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register**citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is making available the Agency's revised risk assessments, initially issued for comment through a **Federal Register** notice published on August 4, 2004 (69 FR 47141) (FRL–7368–9); responses to comments; and related documents for PCNB. EPA also is soliciting public comment on risk reduction options for PCNB. EPA developed the risk assessments for PCNB as part of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

PCNB is a fungicide used to control diseases on a number of field crops, turf, and ornamentals. Use sites include cole crops, green beans, cotton, potatoes, peanuts, lawns, golf courses, and sod farms. PCNB is applied to soil, foliage, and seeds.

EPA is providing an opportunity, through this notice, for interested parties to provide risk management proposals or otherwise comment on risk management for PCNB. Risks of concern associated with the use of PCNB are: Concentrations of PCNB and its metabolites in drinking water which result in dietary risks, risk for residential handlers and post-application risks to children and adults exposed to treated turf, risks to golfers, occupational risk for a large number of scenarios (for both seed treatment and non-seed treatment handlers), and excess ecological risks (particularly for aquatic organisms). The Agency is soliciting information, via targeting specific risks of concern, in effective and practical risk reduction measures.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's announcement of its Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, PCNB is being reviewed through the full six-phase public participation process.

All comments should be submitted using the methods in Unit I.. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments and proposals will become part of the Agency Docket for PCNB. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

After considering comments received, EPA will develop and issue the PCNB RED.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 17, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–3996 Filed 3–1–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7879–1]

Public Water System Supervision Program Revision for the State of LA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Louisiana is revising its approved Public Water System Supervision Program. Louisiana has revised its variance and exemption regulation and adopted the interim enhanced surface water treatment regulation, the disinfectants/disinfection by-products regulation, and the lead and copper minor revisions regulation. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve these program revisions.

DATES: All interested parties may request a public hearing. A request for a public hearing must be submitted by April 1, 2005 to the Regional Administrator at the EPA Region 6 address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by April 1, 2005, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on April 1, 2005. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Louisiana Department of Health and Hospitals, Engineering Services, Safe Drinking Water Programs, 6867 Bluebonnet Drive, Baton Rouge, LA 70810 and the United States Environmental Protection

Agency, Region 6, Drinking Water Section (6WQ–SD), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: David Reazin, EPA Region 6, Drinking Water Section at the Dallas address given above or at telephone (214) 665–7501.

Authority: (Section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR Part 142 of the National Primary Drinking Water Regulations)

Dated: February 18, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 05–3910 Filed 3–1–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, February 15, 2005, 10 a.m. Meeting closed to the public. This meeting was cancelled.

* * * * *

DATE AND TIME: Tuesday, March 8, 2005 at 3 p.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: March 10, 2005 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Option 2005–01: Mississippi Band of Choctaw Indians, by counsel C. Bryant Rogers.

2005 Legislative Recommendations.

Final Rules and Explanation and Justification on Political Party Committees.

Donating Funds to Certain Tax-Exempt Organizations and Political Organizations.

Final Rules and Explanation and Justification on Filing Documents by Priority Mail, Express Mail, and Overnight Delivery Service.

Routine Administrative Matters.

* * * * *

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 05–4166 Filed 2–28–05; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at 202–523–5793 or via e-mail at *tradeanalysis@fmc.gov.* Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 010168–019.

Title: New Caribbean Service Rate Agreement.

Parties: CMA CGM, S.A.; P&O Nedlloyd B.V./P&O Nedlloyd Limited (acting as a single party); Hapag-Lloyd Container Linie GmbH; Hamburg-Südamerikanische Dampfschifffahrts-Gesellschaft KG; and Compania Sud Americana de Vapores, S.A.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment deletes the Virgin Islands from the geographic scope of the agreement.

Agreement No.: 010977–056.

Title: Hispaniola Discussion Agreement.

Parties: Crowley Liner Services; Seaboard Marine; Tropical Shipping and Construction Co. Ltd.; and Frontier Liner Services.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment clarifies the authority of the parties to communicate directly with one another and to hold meetings of less than the entire membership. It also adds a provision dealing with liability for civil penalties.

Agreement No.: 011905.

Title: K-Line/CSAV Car Carrier Agreement.

Parties: Compania Sud-Americana de Vapores (''CSAV'') and Kawasaki Kisen Kaisha (''K-Line'').

Filing Party: Walter H. Lion, Esq., McLaughlin & Stern LLP, 260 Madison Avenue, New York, NY 10016.

Synopsis: The proposed agreement permits the parties to exchange space on their respective services for the carriage of automobiles and other vehicles between South America and the U.S. Atlantic Coast.

By Order of the Federal Maritime Commission.

Dated: February 25, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–4025 Filed 3–1–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
004580F	Express Lanes International, Inc., 401 Broadway, New York, NY 10013	December 9, 2004.
004505NF	Freight Masters Systems, International, Inc., 3760 Guion Road, Indianapolis, IN 46222	December 16, 2004.
017572F	Impex of Doral Logistics, Inc., 7850 NW. 80th Street, Unit 3, Medley, FL 33166–2170	December 16, 2004.

Dated: February 25, 2005.

Peter J. King,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 05–4024 Filed 3–1–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants

General Express Freight, Inc., 9660 Flair Drive, Suite 423, El Monte, CA 91731. Officer: Zhiquan He, President (Qualifying Individual).

PAB Shipping Inc. dba PAB Maritime Services, 159 N. Courtland Street, East Stroudsburg, PA 18301. Officer: Pierangelo Bonati, President (Qualifying Individual).

H & T Shipping, Inc., 7771 Garvey Avenue, #D, Rosemead, CA 91770. Officer: Nick Vuong, President (Qualifying Individual).

BK Global Logistics Inc., 147–55 175th Street, Suite 102, Jamaica, NY 11434. Officer: Byeong Keun Yoo, President (Qualifying Individual).

Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Air-Sea Container Line, Inc., 167–10 South Conduit Avenue, Rm. 208, Jamaica, NY 11434. Officers: Scott S.F. Wang, President (Qualifying Individual), Nancy Yang Wang, Treasurer.

Pelorus, Inc. dba PS Line dba PFS Global, 2100 Watrous Avenue, Tampa, FL 33606–3047. Officers: William J. Kuzmick, Officer, Carlos Salazar Brehm, Officer (Qualifying Individuals).

B.F. Shipping, 10800 NW 29th Street, Doral, FL 33172. Officers: Alberto Blest, President (Qualifying Individual), Lidice Fernandez, Vice President.

Orion Freight Forwarders, Inc., 450 SE 7th Street, Unit #273, Dania Beach, FL 33004. Officers: Roylene Rogers, Vice President (Qualifying Individual), Adolfo DeVivo, President.

New Life Healthcare Services LLC dba New Life Marine Services, 9150 Main Street, Suite C, Houston, TX 77025. Officers: Henry C. Onyekwere, Managing Director (Qualifying Individual), Theresa A. Onyekwere, Manager.

Senadurna Freight Forwarders, 7778 NW 46 Street, Miami, FL 33166. Officer: Jorge Eseribani, Ocean Manager (Qualifying Individual).

Caribbean Shipping Agencies, Inc., 10180 S.W. 88 Street, #405, Miami, FL 33176. Officer: Barry Antoni, President (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Trust Express (LAX) Inc., 8915 S. La Cienega Blvd., #A, Inglewood, CA 90301. Officers: Alan Hua, President (Qualifying Individual), Kailing Hua, Vice President.

Dated: February 25, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–4026 Filed 3–1–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Board of Governors of the Federal Reserve System (Board)

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

On September 29, 2004, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), published a notice in the Federal Register (69 FR 58171) requesting public comment for 60 days on the extension, without revision, of the currently approved information collections: the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) and the Report of Assets and Liabilities of a Non–U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non–U.S.) Bank (FFIEC 002S). The comment period for this notice expired on November 29, 2004. No comments were received. The Board hereby gives notice that it plans to submit to OMB on behalf of the agencies a request for approval of the FFIEC 002 and FFIEC 002S.

DATES: Comments must be submitted on or before April 1, 2005.

ADDRESSES: Interested parties are invited to submit written comments to the agency listed below. All comments should refer to the OMB control number and will be shared among the agencies. You may submit comments, identified by FFIEC 002 (7100–0032) or FFIEC 002S (7100–0273), by any of the following methods:

- Agency Web Site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E–mail: *regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- FAX: 202–452–3819 or 202–452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Additional information or a copy of the collections may be requested from Michelle Long, Federal Reserve Board Clearance Officer, 202–452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551. Telecommunications Device for the Deaf

(TDD) users may call 202–263–4869, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Proposal to extend for three years without revision the following currently approved collections of informations:

1. Report Title: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks
Form Number: FFIEC 002
OMB Number: 7100–0032
Fequency of Response: Quarterly
Affected Public: U.S. branches and agencies of foreign banks
Number of Respondents: 275
Estimated Time per Response: 22.75 hours
Estimated Total Annual Burden: 25,025 hours
General Description of Report: This information collection is mandatory: 12 U.S.C. 3105(b)(2), 1817(a)(1) and (3), and 3102(b). Except for select sensitive items, this information collection is not given confidential treatment [5 U.S.C. 552(b)(8)].
Abstract: On a quarterly basis, all U.S. branches and agencies of foreign banks (U.S. branches) are required to file detailed schedules of assets and liabilities in the form of a condition report and a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The Federal Reserve System collects and processes this report on behalf of all three agencies.

2. Report Title: Report of Assets and Liabilities of a Non–U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non–U.S.) Bank
Form Number: FFIEC 002S
OMB Number: 7100–0273
Frequency of Response: Quarterly
Affected Public: U.S. branches and agencies of foreign banks
Estimated Number of Respondents: 74
Estimated Time per Response: 6 hours
Estimated Total Annual Burden: 1,776 hours
General Description of Report: This information collection is mandatory: 12 U.S.C. 3105(b)(2), 1817(a)(1) and (3), and 3102(b) and is given confidential treatment [5 U.S.C. 552(b)(8)].
Abstract: On a quarterly basis, all U.S. branches and agencies of foreign banks are required to file detailed schedules of their assets and liabilities in the form FFIEC 002. The FFIEC 002S is a separate supplement to the FFIEC 002 that collects information on assets and liabilities of any non–U.S. branch that is ''managed or controlled'' by a U.S. branch or agency of the foreign bank. Managed or controlled means that a majority of the responsibility for business decisions, including but not limited to decisions with regard to lending or asset management or funding or liability management, or the responsibility for recordkeeping in respect of assets or liabilities for that foreign branch resides at the U.S. branch or agency. A separate FFIEC 002S must be completed for each managed or controlled non–U.S. branch. The FFIEC 002S must be filed quarterly along with the U.S. branch's or agency's FFIEC 002.

The data are used for: (1) monitoring deposit and credit transactions of U.S. residents; (2) monitoring the impact of policy changes; (3) analyzing structural issues concerning foreign bank activity in U.S. markets; (4) understanding flows of banking funds and indebtedness of developing countries in connection with data collected by the International Monetary Fund (IMF) and the Bank for International Settlements (BIS) that are used in economic analysis; and (5) assisting in the supervision of U.S. offices of foreign banks, which often are managed jointly with these branches.

Request for Comment

Comments are invited on:

a. Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collections 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.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Board of Governors of the Federal Reserve System, February 24, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–3974 Filed 3–1–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, March 7, 2005.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, February 25, 2005.

Robert dev. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–4064 Filed 2–25–05; 5:12 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–208]

Availability of Public Health Assessment Guidance Manual (Update)

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR),

Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the availability of the ATSDR Public Health Assessment Guidance Manual (Update). ATSDR is mandated to conduct public health assessment activities at all sites on, or proposed for inclusion on, the National Priorities List (NPL). ATSDR can also conduct public health assessments in response to a request from the public for an evaluation of active waste sites, landfills, and other possible releases of hazardous substances to the environment.

ADDRESSES: The Public Health Assessment Guidance Manual is available to the public by mail from the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, or by telephone at (703) 487–4650. There is a charge, determined by NTIS, for the manual. The NTIS order number for this document is PB2005–102123.

The Public Health Assessment Guidance Manual is also available on the ATSDR Web site at *http://www.atsdr.cdc.gov/HAC/PHAManual/index.html*.

FOR FURTHER INFORMATION CONTACT: William Cibulas, Ph.D., Director, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 498–0007.

SUPPLEMENTARY INFORMATION: ATSDR is required by section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to conduct health assessment activities at all sites on, or proposed for inclusion on, the NPL (42 U.S.C. 9604(i)(6)(A)). ATSDR may also conduct health assessments in response to a request from the public (42 U.S.C. 9604(i)(6)(B)). In addition, the U.S. Environmental Protection Agency may request the conduct of a health assessment under the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6939a(b)).

The general procedures for the conduct of public health assessments are included in the ATSDR regulation, ''Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities' (42 CFR part 90).

The ATSDR public health assessment is the evaluation of data and information on the release of hazardous substances into the environment to assess any current or future impact on public health, develop health advisories or other recommendations, and identify studies or actions needed to evaluate, mitigate, or prevent human health effects.

The ATSDR public health assessment includes an analysis and statement of the public health implications posed by the site under consideration. This analysis generally involves an evaluation of relevant environmental data, exposure pathways, community health concerns, and, when appropriate, health outcome data. The public health assessment also identifies populations living or working on or near hazardous waste sites for which more extensive public health actions or studies are indicated.

The Public Health Assessment Guidance Manual (Update) sets forth in detail the public health assessment process as developed by ATSDR and clarifies the methodologies and guidelines used by ATSDR staff and agents of ATSDR in conducting the assessments. The manual is not intended to supplant the professional judgment and discretion of the health assessor (or the public health assessment team) compiling and analyzing data, drawing conclusions, and making public health recommendations. Instead, the manual offers a systematic approach for evaluating the public health implications of hazardous waste sites, while still allowing the health assessors to develop new approaches to the process and apply the most current and appropriate science and methodology.

This manual replaces the previous guidance manual that was released on May 18, 1992. The manual has been updated and expanded to reflect current scientific knowledge and public health practices. For example, the manual expands the description of how to select environmental contaminants for further analysis and how to conduct an in-depth analysis of their potential to cause adverse health effects. Other revisions include new guidance on the evaluation of health outcome data and exposure to chemical mixtures.

This notice announces the availability of the revised manual. The manual has undergone extensive internal review, has been subjected to scientific peer review by experts both within and outside the Federal government, and was available for public comment from April 2, 2002, to June 3, 2002, **Federal Register** 67 15574, April 2, 2002.

Dated: February 23, 2005.

Georgi Jones,

Director, Office of Policy, Planning, and Evaluation, National Center for Environmental Health and Agency for Toxic Substances and Disease Registry.

[FR Doc. 05–3983 Filed 3–1–05; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Urban Networks To Increase Thriving Youth Through Violence Prevention

Announcement Type: New.

Funding Opportunity Number: RFA 05042.

Catalog of Federal Domestic Assistance Number: 93.136.

Key Dates:

Letter of Intent Deadline: April 1, 2005.

Application Deadline: May 2, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under Section 391(a) of the Public Health Service Act, 42 U.S.C. 280b(a).

Background: Youth violence is a pervasive and multi-sectoral problem. Homicide is one of the top four leading causes of death in every age group, from ages 1 to 34; it is the second and third leading cause of death among people ages 15–24 and 25–34, respectively.[1] Research indicates a number of factors can predispose children to a lifetime of violence and criminal activity, including poverty, substance abuse, poor parenting skills, placement outside the home, and improper peer interaction.[2] Exposure to violence is magnified for many youth in urban communities who have had encounters with shootings, stabbings, and other acts of violence by early adolescence.[3] The disproportionate exposure to violence by urban youth often results in increased social problems such as anxiety and depression, pronounced grief, aggressive and delinquent behavior, a decrease in grade point average and social withdrawal.[4]

[1] National Center for Health Statistics, 2000, as printed in chart developed by NCIPC, in CDC Injury Factbook 2001–2002.

[2] Friday JC. The psychological impact of violence in underserved communities. J Health Care Poor Underserved. 1995; 6(4):403–9.

[3] Newman BM, Lohman BJ, Newman PR, Myers MC, & Smith VL (2000). Experiences of urban youth navigating the transition to ninth grade. Youth and Society, 31(4), 387–416.

[4] Rasmussen A, Aber MS, & Bhana A. (2004) Adolescent Coping and Neighborhood Violence:

Research indicates youth violence is not an intractable problem. Research and programs using public health methodologies is changing the emphasis on and commitment to youth violence. This approach derives from a tradition of collaboration among a broad spectrum of scientific disciplines to prevent the first occurrence of violence. The public health approach also highlights the potential utility of applying a variety of scientific tools (*e.g.*, epidemiology, medicine and behavioral and social sciences) explicitly toward identifying effective prevention strategies.

The public health approach to youth violence prevention maximizes the opportunity to jointly define violence, clarifying barriers to cooperation, and outlining key actions to foster a multidisciplinary, collaborative approach to violence prevention. With this approach, U.S. cities, in which exposure to violence is magnified, can develop tools and frameworks that connect diverse groups with a common view of the issue and provide concrete methods for prevention.

Using the public health approach to reframe the issue of youth violence prevention is important to identify as needed resources, gain awareness from key stakeholders, and develop a common view of the issue. With a common vision, cities, their affiliated organizations and others can begin to collaborate within their fields (*e.g.* health, law, education) and respective networks. If cities and affiliates work together, resources may be directed and redirected toward effective, research based prevention strategies and programs. It emphasizes the need to disseminate scientifically validated studies and to provide resources and incentives for their implementation.

For the purposes of this program announcement the following definitions apply:

Change Agents: Leaders who mark a path for others to follow. Change agents may be inside an organization or come from an outside source. They play a key role in sustaining the momentum and direction of a youth violence prevention effort.

City: An incorporated municipality with a population greater than 400,000 in the United States with definite boundaries and legal powers set forth in a charter granted by the state.

Consortium: An agreement, combination, or group formed to undertake an enterprise beyond the resources of any one member.

Dissemination: The process of communicating information to specific audiences for the purpose of extending knowledge and with a view to adopting or modifying evidence-based programs, policies and practices. This can include providing access to information and telling a wider audience about a project and its results. Dissemination can occur through but is not limited to seminars, newsletters, press releases and similar methods.

Ecological Approach: The ecological model presented in the World Report on Violence and Health [5] identifies levels (individual, relationship, community and societal) of influence where strategies to address risk and protective factors can be detected.

Framing: The process by which person(s) or organization(s) communicate—using language and visuals—that signals the way receivers shape thoughts, create context or interpret and classify new information. Framing helps receivers of a message classify and attribute meaning to a topic, message or issue. The practice of framing is carried out most often in the media dictating the problem, context and responsibility for the issue.

Intervention: Services, policies and actions provided after violence perpetrated toward or among youth have occurred and may have the advantageous effect of preventing a re-occurrence of violence.

Prevention Campaign: The total planned, coordinated effort on behalf of the awardee to research, assess, develop, coordinate, and evaluate frame(s), tools, training, and products that lead to the adoption of evidence based youth violence prevention principles, practices, and concepts. This includes established goals, time parameters and performance measurements.

Primary Prevention: Population-based and/or environmental/system level strategies, policies and action that prevent violence from initially occurring. Prevention efforts work to modify and/or entirely eliminate the event, conditions, situations, or exposure to influences (risk factors) that result in the initiation of violence and associated injuries, disabilities and deaths. Additionally, prevention efforts seek to identify and enhance protective factors that may prevent violence, not only in at-risk populations but also in the community at large. Prevention efforts for violence perpetrated toward and among youth include activities that are aimed at addressing the individual, relationship, community and societal factors of potential perpetrators, bystanders and victims.

Public Health Approach: The public health approach has four basic steps:

1. Defining the problem: Collecting information and data about the problem.
2. Identifying risk and protective factors: Knowing those factors which place people at a greater potential risk for violence and recognizing which factors seem to protect them from violent behavior.
3. Developing and testing prevention strategies: Before implementing programs, it is important to first carefully design and evaluate interventions. While this may take more time and effort than other approaches, it is important to ensure that programs are safe, practical and ethical.
4. Ensuring widespread adoption: Strategies and action steps must be specifically defined for the needs of stakeholders. Interventions should be realistic, measurable and easy to replicate for sustainability.

Stakeholders: Includes everyone with a potential interest in youth violence prevention, practices, concepts and research.

Youth Violence: Youth violence involves persons between the ages of 10 and 24 who intentionally use physical force or power threatened or actual, against another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, mal-development or deprivation.[6]

Purpose: The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2005 funds for a cooperative agreement to build capacity within U.S. cities to collaborate, plan, and implement youth violence prevention principles, practices, and concepts. This includes building a national consortium of key stakeholders representing the viewpoints of United States cities that can inform and support reframing the public discourse about youth violence prevention. This also includes developing tools, strategies, and messages to build infrastructure and a broad base of support for youth violence prevention and develop a national strategy to direct urban planning and action to prevent youth violence.

This program addresses the ''Healthy People 2010'' focus area of injury and violence prevention, as well as related goals in the CDC Futures Initiative:

Perceptions, Exposure, and Urban Youths' Efforts to Deal With Danger. Am J of Community Psychology, Vol. 33.

[5] Krug EG, Dahlberg LL, Mercy JA, Zwi AB, Lozano R, editors. World Report on Violence and Health. Geneva: World Health Organization; 2002.

[6] Krug EG, Dahlberg LL, Mercy JA, Zwi AB, Lozano R, editors. World Report on Violence and Health. Geneva: World Health Organization; 2002.

• *Health promotion and prevention of disease, injury and disability:* All people, especially those at higher risk due to health disparities, will achieve their optimal lifespan with the best possible quality of health in every stage of life.

• *Leadership for the nation's health system.* CDC will assume greater leadership to strengthen the health impact of the state and local public health systems.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC): to increase the capacity of injury prevention and control programs to address the prevention of injuries and violence.

Activities

Awardee activities are designed to integrate youth violence prevention practices and concepts into a national effort to address youth violence within U.S. cities and assist key stakeholders, policy leaders, and practitioners in adopting sustainable youth violence prevention efforts. It is anticipated that the project will be completed in two phases.

Phase I involves identifying key stakeholders, convening a consortium and developing a frame to build support for and address the prevention of youth violence within U.S. cities.

Phase II involves developing and disseminating a National Youth Violence Prevention Strategic Plan, utilizing the national frame and outlining specific steps for addressing youth violence prevention. These projects will use proven and potentially promising coalition building, framing, and public health advocacy and information dissemination methodologies to promote youth violence prevention. All program components shall foster cooperation, collaboration and communication between public and private organizations, government agencies, state and city health departments, NCIPC partners and grantees and others in their efforts to prevent youth violence and reduce violence-related injuries.

Phase I: Assessment and Framing

Awardee activities for this phase are as follows:

1. Establish a national youth violence prevention consortium.

a. Conduct a national assessment of organizations to determine key stakeholders for urban youth violence prevention efforts including those involved in youth violence prevention, youth development, violence prevention, public health, community development and other relevant groups. Examples may include but are not limited to the National League of Cities, National Association of City and County Health Officials, The Association of State and Territorial Health Officers, National Civic League, U.S. Conference of Mayors and the National Association of Cities.

2. Convene and coordinate the activities of the consortium.

At a minimum these activities should include the following:

a. The establishment of operating and administrative guidelines and principles (*e.g.* defining membership, by-laws, goals and objectives, etc)

b. A review of existing assessments and recommendations to address gaps in youth violence prevention within U.S. cities. The areas of assessment to be considered should include but are not limited to:

i. Evidence of level of commitment, interest and readiness at the city level to fully engage in efforts to prevent the perpetration of violence toward or among youth.

ii. Existing inventories of city programs that work directly or indirectly to prevent the perpetration of violence toward or among youth (at minimum, this should include the number of prevention programs, intended audience, content and resources devoted to the programs).

iii. Existing assessments of city and relevant national policies focused on preventing the perpetration of violence toward or among youth.

iv. Existing assessments of city and relevant national data sources that identify violent incidents perpetrated toward and among youth, including non-traditional data sources such as linked health-outcomes.

3. Prepare a report that summarizes the findings. This report should identify gaps, needs, and highlight recommendations from the consortium based on this review.

4. Develop a national frame for prevention of youth violence in U.S cities:

a. The frame should address environmental, relational, community and societal risk and protective factors for youth violence and assist in conveying that violence is a preventable public health issue.

b. The awardee should consult the youth violence prevention consortium and additional key stakeholders in youth violence prevention including national, state, and city leaders, professional organizations, public health officials and other relevant parties.

c. The frame should be established using proven framing methodologies and practices.

d. The frame should assure the delivery of credible, science-based information in understandable and effective formats consistent with the needs of key stakeholders and target audiences.

5. Develop a national youth violence prevention campaign that is a planned, coordinated effort on behalf of the awardee to research, assess, develop, coordinate, and evaluate frame(s), tools, training, and products that lead to the adoption of youth violence prevention principles, practices, and concepts.

a. The prevention campaign should build a broad base of support for youth violence prevention by creating tools, training and products that lead to the adoption of evidence based youth violence prevention principles, practices and concepts.

b. The prevention campaign should include a tool kit that highlights strategies and tactics for framing youth violence prevention. This should include research briefs, an explanation of the frame(s) with suggestions specific to each message or topic idea (*i.e.* messengers, metaphors, context, etc.), and applicable examples including demo press releases, publications and publicity ideas. The toolkit should have an evaluation to determine its usability and effectiveness in promoting the adoption of evidence based strategies.

c. Evaluate the frame and prevention campaign using assessments that measure the influence and within U.S. cities. Items should include but are not limited to:

i. Key stakeholders awareness of the youth violence prevention frame, messages, tools and strategies.

ii. City and stakeholder collaboration—Number of cities and affiliated groups using the youth violence prevention frame, messages, tools and strategies.

iii. Changes in youth violence programs, policies, and practices of cities and their affiliated organizations—How much and what kind of stimulus does the youth violence prevention frame, messages, tools and strategies have in influencing cities to plan and implement youth violence prevention programs, policies?

iv. Frequency and number of alternative activities generated by cities and their affiliated organizations to decrease risk factors and increase protective factors for youth violence prevention.

Phase II: Development and dissemination of a National Youth Violence Prevention Strategic Plan

Awardee activities for this phase are as follows:

1. Develop a National Youth Violence Prevention Strategic Plan. At a minimum this program should:

a. Specify steps and directions for cities to address youth violence prevention.

b. Include a logic model and time-line outlining implementation

c. Delineate priorities for addressing youth violence prevention with practical implications and immediate relevance for those working to advance evidence based youth violence prevention principles, practices, concepts and research.

d. Utilize the youth violence prevention campaign by providing effective frames for addressing youth violence prevention including methods and messages that engage cities throughout the nation.

e. Include communication processes to ensure effective dialog and consensus across and among the youth violence prevention stakeholders.

f. Adopt and outline sustainable strategies for cities to address youth violence prevention in alignment with ecological approach.

g. Include short-term, intermediate and long-term SMART (specific, measurable, attainable, realistic and time-phased) goals and objectives.

h. Reinforce and support previously established youth violence prevention infrastructures, such as the National Youth Violence Prevention Resource Center, including outlining partnerships that will enhance youth violence prevention efforts within U.S. cities.

i. Include an evaluation component that has outcome and impact measures assessing how much and what kind of stimulus the National Youth Violence Prevention Strategic Plan creates. Items should include but are not limited to:

i. Process evaluation for planning and implementation—Assessment of the planning process used to prepare the National Youth Violence Prevention Strategic Plan goals and the action plan and follow-through on National Youth Violence Prevention Strategic Plan activities.

ii. Leadership—Participation by key sectors representing U.S. cities and ascertaining the diversity of committee membership as well as assessment of cities' perceptions of the strength and competence of the National Youth Violence Prevention Strategic Plan's leadership.

iii. Progress and Outcome—Success in generating resources for youth violence prevention and progress in meeting the strategic plan's specific objectives.

2. Disseminate the National Youth Violence Prevention Strategic Plan

a. Dissemination should include strategies to implement evidence based youth violence prevention principles, practices and concepts, and build a broad base of support to effectively address youth violence prevention.

b. Work with key stakeholders and the National Youth Violence Prevention Resource Center to provide training and technical assistance in the areas of communication, advocacy and health education strategies (*e.g.*, social marketing, health and risk communications and media relations) in the support of the strategic plan.

c. Network with private foundations, media, policy makers, public health entities and other organizations to identify, promote and distribute the national strategic plan for youth violence prevention.

d. Include promotional and educational materials, media strategies, outreach efforts and public relations strategies to disseminate the plan.

e. Include evaluation measures or tools to assess the extent to which the strategic plan has been implemented. The measures/tools should be of value to cities in collecting baseline and follow-up data on youth violence prevention programs, the dissemination of evidence based principles, practices, and concepts and youth violence related health impacts; and should include process and impact measures and quantitative and qualitative measures that monitor the implementation of proposed activities.

3. Collaborate with CDC and other partners on an ongoing basis.

4. Submit required reports to CDC as scheduled.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

- As appropriate, coordinate opportunities for funded applicants and partners to network with other NCIPC funded national organizations.
- Provide consultation and technical assistance in planning, implementing and evaluating activities. CDC may provide consultation both directly and indirectly through other partners.
- Provide up-to-date scientific information on youth violence surveillance, risk and protective factors and effective programs, as well as findings from formative research.
- Assist in the design and implementation of program evaluation activities.
- Facilitate the transfer of successful program models and ''lessons learned'' through convening meetings of grantees and communication between project officers.
- Monitor the recipient's performance of program activities and compliance with requirements.
- Involve the recipient in other NCIPC related youth violence prevention activities and efforts.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $300,000 (** Awards in Yrs. 3–5 funding levels may increase to up to $500,000 for related activities).

Approximate Number of Awards: One.

Approximate Average Award: $300,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs.)

Floor of Award Range: $250,000.

Ceiling of Award Range: $300,000 (This ceiling is for the first 12-month budget period.)

Anticipated Award Date: September 1, 2005.

Budget Period Length: 12 months.

Project Period Length: Two years with a possibility for five years total. (An initial two-year project period is specified with the anticipation of an additional three years with years 3, 4, and 5 contingent on the accomplishment of very specific outcomes in years 1 and 2)

Milestones and success necessary to continue into Years 3, 4, and 5

- The awardee has identified key stakeholders and has established a national youth violence prevention consortium.
- The awardee is supporting the activities of a consortium including establishment of operating and administrative guidelines and principles (*e. g.* by-laws, goals and objectives, etc).
- The awardee has completed, in conjunction with the consortium, a review of existing city assessments and has facilitated making recommendations for steps to address gaps in youth violence prevention,
- The awardee has prepared a report summarizing the findings, identifying gaps and needs and highlighting recommendations from the consortium.
- The awardee has developed a frame, using methodologically valid

approaches approved by CDC, to build support for and to address youth violence prevention within U.S. cities.

- The awardee has developed an evaluation plan that collects the baseline and follow-up data necessary to assess the impact of the frame.

Throughout the project period, CDC's commitment to continuation of awards will also be conditioned on the availability of funds, and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private organizations that have the expertise, experience and capacity to develop and implement programs to prevent youth violence at the national level. Organizations, such as:

- Public nonprofit organizations.
- Private nonprofit organizations.
- For profit organizations.
- Small, minority, women-owned businesses.
- Universities.
- Colleges.
- Research institutions.
- Hospitals.
- Community-based organizations.
- Faith-based organizations.
- Federally recognized Indian tribal governments.
- Indian tribes.
- Indian tribal organizations.
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, The Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau).
- Political subdivisions of States (in consultation with states).

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Special Requirements

If your application is incomplete or non-responsive to the special requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

- Late applications will be considered non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.

- **Note:** Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV. 1. Address to Request Application Package

To apply for this funding opportunity use application form PHS 5161–1.

Electronic Submission

CDC strongly encourages you to submit your application electronically by utilizing the forms and instructions posted for this announcement on *www.Grants.gov,* the official Federal agency wide E-grant Web site. Only applicants who apply online are permitted to forego paper copy submission of all application forms.

Paper Submission

Application forms and instructions are available on the CDC web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Letter of Intent (LOI)

Your LOI must be written in the following format:

- Maximum number of pages: Two.
- Font size: 12-point unreduced.
- Paper size: 8.5 by 11 inches.
- Single spaced.
- Page margin size: One inch.
- Printed only on one side of page.
- Written in plain language, avoid jargon.

Your LOI must contain the following information:

- Number and title of this Program Announcement.
- Brief description of your organization including the component(s) of youth violence prevention that your organization addresses.
- Organizational structure and reach.

Application

Electronic Submission

You may submit your application electronically at: *www.grants.gov.* Applications completed online through Grants.gov are considered formally submitted when the applicant organization's Authorizing Official electronically submits the application to *www.grants.gov.* Electronic applications will be considered as having met the deadline if the application has been submitted electronically by the applicant organization's Authorizing Official to Grants.gov on or before the deadline date and time.

It is strongly recommended that you submit your grant application using Microsoft Office products (*e.g.*, Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, you may submit a PDF file. Directions for creating PDF files can be found on the Grants.gov Web site. Use of file formats other than Microsoft Office or PDF may result in your file being unreadable by our staff.

CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of your application. Any such paper submission must be received in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement. The paper submission must be clearly marked: ''BACK-UP FOR ELECTRONIC SUBMISSION.'' The paper submission must conform with all requirements for non-electronic submissions. If both electronic and back-up paper submissions are received by the deadline, the electronic version will be considered the official submission.

Paper Submission

If you plan to submit your application by hard copy, submit the original and two hard copies of your application by mail or express delivery service. Refer to section IV.6. Other Submission Requirements for submission address.

You must submit a project narrative with your application forms. The

narrative must be submitted in the following format:

- Maximum number of pages: 30 If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Font size: 12 point unreduced.
- Spacing: Double spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period and must include the following items in the order listed here:

- Abstract (one-page summary of the application that includes a description of applicant's plan for participating in this cooperative agreement).
- Relevant Experience (framing violence as a public health issue, strategic planning, national level awareness campaigns and coalition building, dissemination that has resulted in widespread adoption of youth violence prevention principles, practices, concepts and research).
- Work plan (including time phased, measurable objectives; methods or strategies; timelines; logic models and staffing plan).
- Capacity and Staffing (a minimum of one, 100 percent, fulltime, program director position is required).
- Collaboration.
- Measures of Effectiveness.
- Budget justification (does not count towards page limit).

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Proof of eligibility.
- Curriculum Vitas or Resumes.
- Organizational Charts.
- Letters of Support.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc. gov/od/pgo/funding/pubcommt.htm.*

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

LOI Deadline Date: April 1, 2005.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program and to allow CDC to plan the application review.

Application Deadline Date: May 2, 2005.

Explanation of Deadlines: LOIs and Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you submit your LOI or application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee.

If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on LOI and application content, submission address and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review and will be discarded. You will be notified that you did not meet the submission requirements.

Electronic Submission

If you submit your application electronically with Grants.gov, your application will be electronically time/date stamped which will serve as receipt of submission. In turn, you will receive an e-mail notice of receipt when CDC receives the application. All electronic applications must be submitted by 4 p.m. Eastern Time on the application due date.

Paper Submission

CDC will *not* notify you upon receipt of your paper submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question, contact the PGO-TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds for this project cannot be used for construction, renovation, the lease of passenger vehicles, the development of major software applications, or supplanting current applicant expenditures.
- Funds may not be used for reimbursement of pre-award costs.
- The applicant must perform a substantial portion of the program activities and cannot serve merely as a fiduciary agent. Applications requesting funds to support only managerial and administrative functions will not be accepted.
- Budgets for the first year should include travel costs for two cooperative agreement staff to attend two 2-day planning meetings in Atlanta with CDC staff and/or other cooperative agreement recipients.
- The use of program funds for the development and production of curriculum is prohibited without explicit approval.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Guidance for completing your budget can be found on the CDC web site, at the following Internet address: *http://www.cdc. gov/od/pgo/funding/budgetguide. htm.*

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or E-mail to: Neil Rainford, Project Officer, CDC, National Center for Injury Prevention and Control, 2939 Flowers Road South, Atlanta, GA 30341, Telephone Number: 770–488–1122, Fax Number: 770–488–1360, E-mail: *NRainford@cdc. gov.*

Application Submission Address

Electronic Submission

CDC strongly encourages applicants to submit electronically at: *www.Grants.gov.* You will be able to download a copy of the application package from *www.Grants.gov,* complete it offline, and then upload and submit the application via the Grants.gov site. E-mail submissions will not be accepted. If you are having technical difficulties in Grants.gov they can be reached by E-mail at *www.support@grants.gov* or by phone at 1–800–518–4726 (1–800–518–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. Eastern Time, Monday through Friday.

Paper Submission

If you chose to submit a paper application, submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management-RFA 05042, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

Work Plan (30 points)

1. Does the applicant include a detailed work plan, including a time-line, logic model(s) and staffing plan?
2. Does the work plan include goals and objectives that are SMART (specific, measurable, attainable, realistic and time-phased)?
3. Does the applicant's work plan consider and highlight a ecological approach?
4. Does the applicant's work plan outline successful ways to involve the youth violence prevention consortium, key stakeholders in youth violence prevention and the National Youth Violence Prevention Resource Center?
5. Does the applicant's work plan outline outstanding processes for establishing an evidence based frame that assures the delivery of credible, evidence based information in understandable and effective formats consistent with the needs of the target audiences?
6. Does the work plan include superior methods and evidence based strategies that meet goals and objectives as well as address how it will engage and mobilize key stakeholders including policy makers, public health officials and/or city affiliated organizations?
7. Does the applicant's work plan include a superior evaluation to monitor outcomes and impact?

Relevant Experience (25 Points)

1. Does the applicant demonstrate successful experiences in collecting and using evidence based youth violence prevention assessment data?
2. Does the applicant have appropriate experience using relevant data and research to determine priorities and a frame for youth violence prevention?
3. Does the applicant demonstrate a minimum of three years experience coordinating, collaborating, and mobilizing national and affiliated city partners with regard to violence prevention or a component of violence prevention?
4. Does the applicant demonstrate effective experience interacting with key stakeholders to provide leadership, support and facilitate the sharing of information across a network of youth violence prevention coalitions?
5. Does the applicant demonstrate outstanding experience developing strategic plans?
6. Does he applicant demonstrate exceptional experience in establishing and managing advisory boards or consortiums with participants from a variety of sectors?
7. Does the applicant demonstrate outstanding experience in compiling, synthesizing and disseminating youth violence prevention information and evaluation findings through a variety of mediums to key stakeholders, including policy makers, the non-profit sector, public health officials and/or local/city organizations?
8. Does the applicant demonstrate outstanding ability to coordinate and disseminate youth violence prevention principles, practices, concepts and research?
9. Has the applicant demonstrated that these dissemination efforts resulted in the successful and widespread adoption of youth violence prevention, practices, concepts and research?
10. Does the applicant demonstrate outstanding ability to frame violence as a public health issue and use that frame to engage key stakeholders including policy makers, the non-profit sector, public health officials and/or local/city organizations?
11. Does the applicant include the establishment of a youth violence prevention consortium?

Collaboration (25 points)

1. Does the applicant describe lucrative strategies to develop and maintain a national youth violence prevention consortium?
2. Does the applicant successfully describe how it will avoid duplication of other youth violence prevention efforts?
3. Does the applicant demonstrate a willingness to collaborate with CDC, the National Youth Violence Prevention Resource Center and other CDC funded organizations?
4. Does the applicant include letters of support and/or memoranda of agreement from organizations, research and/or academic experts/institutions and other agencies and organizations, including public health agencies and organizations that work with youth and/or violence prevention?
5. Does the applicant provide high-quality descriptions of the composition, role and involvement of consortium members that represent a broad range of disciplines and levels of influence that work in the area of violence prevention including public health?

Capacity and Staffing (20 points)

1. Does the applicant demonstrate relevant, existing capacity and infrastructure to carry out the required activities in the cooperative agreement?
2. Does the applicant include and outline the role of one, 100percent, fulltime, program director with relevant experience?
3. Does the applicant clearly describe all project staff and their relevant skills/expertise for their assigned position? Does the applicant include an organizational chart?
4. Are the applicant's past and current training and assistance experiences, knowledge and expertise documented, lucrative, and relevant?
5. Does the applicant successfully demonstrate a capacity to develop a consortium by providing training and technical assistance for the purpose of promoting public health initiatives?
6. Does the applicant successfully demonstrate the ability and highlight relevant connections to successfully identify, modify, promote and distribute the youth violence prevention campaign and strategic plan to private foundations, media, policy makers and public health entities/organizations?

Measures of Effectiveness (not scored)

1. Does the applicant provide lucrative objective/quantifiable measures regarding the intended outcomes that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement?

2. Does the evaluation demonstrate how the goals and objectives will successfully increase the capacity of injury prevention and control programs to address the prevention of injuries and violence?

Budget Justification (not scored)

1. Does the applicant provide a detailed budget with complete line-item justification of all proposed costs consistent with the stated activities in the program announcement? Details must include a breakdown in the categories of personnel (with time allocations for each), staff travel, communications and postage, equipment, supplies and any other costs? Does the budget projection include a narrative justification for all requested costs? Any sources of additional funding beyond the amount stipulated in this cooperative agreement should be indicated, including donated time or services. For each expense category, the budget should indicate CDC share, the applicant share and any other support. These funds should not be used to supplant existing efforts.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff and for responsiveness by NCIPC. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above.

CDC will provide justification for any decision to fund out of rank order.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NOA) from the CDC Procurement and Grants Office. The NOA shall be the only binding, authorizing document between the recipient and CDC. The NOA will be signed by an authorized Grants Management Officer and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search. html.*

An additional Certifications form from the PHS5161–1 application needs to be included in your Grants.gov electronic submission only. Refer to *http://www.cdc. gov/od/pgo/funding/PHS5161-1-Certificates.pdf.* Once the form is filled out attach it to your Grants.gov submission as Other Attachments Form.

The following additional requirements apply to this project:

AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
AR–15 Proof of Non-Profit Status

Additional information on these requirements can be found on the CDC web site at the following Internet address: *http://www.cdc. gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness.

f. Additional Requested Information.

2. Financial status report is due no more than 90 days after the end of the budget period.

3. Final financial and performance reports are due no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Neil Rainford, Project Officer, National Center for Injury Prevention and Control, 2939 Flowers Road South, Atlanta, GA 30341, Telephone Number: 770–488–1122, Fax Number: 770–488–1360, E-mail: *NRainford@cdc. gov.*

For financial, grants management, or budget assistance, contact: James Masone, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2736, E-mail: *Zft2@cdc. gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc. gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

Dated: February 23, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–3981 Filed 3–1–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the

Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Broadly Cross-Reactive HIV–1 Neutralizing Human Monoclonal Antibodies

Drs. Dimiter S. Dimitrov and Mei-yun Zhang (NCI), U.S. Provisional Application No. 60/623,394 filed 29 Oct 2004 (DHHS Reference No. E–251–2004/0–US–01) *Licensing Contact:* Sally Hu; 301/435–5606; *hus@mail.nih.gov.*

The invention provides for pharmaceutical compositions of, and methods of using potent cross-reactive human monoclonal antibodies to HIV. Specifically, the invention describes a competitive antigen panning (CAP) method of isolating antibodies that bind to the gp41 subunit of the HIV–1 envelop glycoprotein. Additionally, the invention includes compositions of the aforementioned antibodies and the epitopes recognized by the antibodies. Methods of using the invention in the development of vaccine immunogens for the treatment and prevention of HIV, as well as the detection of HIV in a mammal are also described. The invention has significant implications in the development of HIV inhibitors, vaccines, and research tools for understanding mechanisms of HIV entry. Further development of the disclosed invention may yield novel therapies and methods in the prevention of mother-to-child transmission of HIV, treatment of accidental exposure to HIV, and chronic infection in patients with resistance to current therapies.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Endotoxin-Free Vaccine Candidate for *Moraxella Catarrhalis*

Xin-Xing Gu and Daxin Peng (NIDCD), U.S. Provisional Application No. 60/577,244 filed 04 Jun 2004 (DHHS Reference No. E–174–2004/0–US–01); U.S. Provisional Application No. 60/613,139 filed 23 Sep 23 (DHHS Reference No. E–174–2004/1–US–01), *Licensing Contact:* Susan Ano; 301/435–5515; *anos@mail.nih.gov.*

This invention relates to a strain of *Moraxella catarrhalis* containing a gene mutation that prevents endotoxic lipooligosaccharide (LOS) synthesis and potential use of the mutant for developing novel vaccines against the pathogen, for which there is currently no licensed vaccine. The mutant is defective in the lpxA gene, whose enzyme product is relevant in lipid A biosynthesis (lipid A is part of the LOS). Previous attempts to produce similar mutants for other bacteria were unsuccessful. The nontoxic mutant was found to elicit high levels of antibodies with bactericidal activity and provided protection against wild type bacterial challenge. Use of this mutant bacterium is envisioned as a new approach for vaccines against *M. catarrhalis.*

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Single Lipid Nanoparticle

S. Narasimhan Danthi, King Li, Jianwu Xie (NIH/CC/LDRR), U.S. Provisional Application filed 19 Jan 2005 (DHHS Reference No. E–100–2004/0–US–01), Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov.*

Available for licensing and commercial development are nanoparticle compositions comprising a phospholipid or diphosphatidyl glycerol component, an optional linker and a multifunctional ligand. A patent application has been filed covering the nanoparticle compositions and their methods of use as site-specific imaging or therapeutic agents. The particles are preferably single lipid compounds or single lipid nanoparticles (SLNs) prepared from single lipids (*e.g.*, being a lipid molecule of a single lipid type or of a uniform structural type).

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Identification of a G-protein Coupled Receptor, FPR, as a Functional Receptor for the Leukocyte Chemotactic Activity of the Neutrophil Granule Protein Cathepsin G (CaG)

Ji Ming Wang, Ronghua Sun, Joost Oppenheim, and Ye Zhou (NCI), U.S. Provisional Application No. 60/581,765 filed 23 Jun 2004 (DHHS Reference No. E–281–2003/0–US–01), *Licensing Contact:* Cristina Thalhammer-Reyero; 301/435–4507; *thalhamc@mail.nih.gov.*

This invention relates to methods for identifying peptides of Cathepsin G (CaG), or active variants thereof, which modulate activities of the receptor for bacterial chemotactic formyl peptides (FPR), including chemotactic behavior. It provides methods of designing therapeutic approaches related to the host defense based on the interaction of CaG and FPR, as CaG binds to FPR to mediate the proinflammatory activities of CaG. The inventive aspects relate to the finding that CaG induces a more partial and selective effects upon activation of FPR to mediate a certain and more limited immunological activity than other agonists that are also capable of binding FPR. The limitations in the activity include not inducing calcium flux, having only a week activation of mitogen-activated protein kinases (MAPKs), and being able to activate certain types of atypical protein kinase C (PKC), such as PKCzeta, while not activating PKCalpha and PKCbeta. These limitations are advantageous in attempting to limit the response in mobilizing the phagocytic leukocyte infiltration to mediate the clearance and repair of damaged tissue while not amplifying the general inflammatory response, which may result in damage to healthy and normal tissue.

The technology is further described in R. Sun *et al.*, ''Identification of Neutrophil Granule Protein Cathepsin G as a Novel Chemotactic Agonist for the G Protein-Coupled Formyl Peptide Receptor'', J. Immunol. 2004 173:428–436.

In addition to licensing, the technology is available for further development through collaborative research with the inventors via a Cooperative Research and Development Agreement (CRADA).

Dated: February 22, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–3965 Filed 3–1–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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 Cancer Institute Special Emphasis Panel, Early Detection Research Network-Biomarkers Developmental Laboratories.

Date: March 23–24, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place; Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Gerald G. Lovinger, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8101, Rockville, MD 20892–7405, 301/496–7987.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: February 23, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–3964 Filed 3–1–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice if 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 Eye Institute Special Emphasis Panel, NEI Review Panel for Career Grant Applications.

Date: March 21, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Houmam H. Araj, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, NIH, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892–9602, 301–451–2020, *haraj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS.)

Dated: February 23, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–3959 Filed 3–1–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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 Eye Institute Special Emphasis Panel, NEI Review Panel for Clinical/Epi Grant Applications.

Date: March 25, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Houmam H. Araj, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, NIH, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892–9602, 301–451–2020, *haraj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS.)

Dated: February 23, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–3960 Filed 3–1–05; 8:45 am]

BILLING CODE 4140—01—M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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 Eye Institute Special Emphasis Panel, Small Grant for Pilot Research (R03) Applications.

Date: March 14–15, 2005.

Time: 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Inn, 1310 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Anne E Schaffner, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892–9300. (301) 451–2020. *aes@nei.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.867, Vision Research, National Institutes of Health, HHS.)

Dated: February 23, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–3962 Filed 3–1–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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 Heart, Lung, and Blood Institute Special Emphasis Panel, NHLBI Clinical Proteomics Programs.

Date: April 6, 2005.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Rouge, 1315 16th Street, NW., Washington, DC 20036.

Contact Person: Keith A. Mintzer, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7186, MSC 7924, Bethesda, MD 20892, (301) 435–0280.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 23, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–3956 Filed 3–1–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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 on Drug Abuse Special Emphasis Panel, Lapse and Relapse to Drug Abuse and Other Chronic Conditions.

Date: May 2–3, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Rita Liu, PhD, Associate Director, OEA, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 212, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1388.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: February 23, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–3958 Filed 3–1–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Clinical Nutrition Research Units.

Date: March 9–11, 2005.

Time: 8 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michele L. Barnard, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–8898. *barnardm@extra.niddk.nih.gov.*

This notice is begin 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. 93.847, Diabetes, Endocrinology and Methabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology) Research, National Institutes of Health, HHS.)

Dated: February 23, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–3963 Filed 3–1–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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 invasion privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel P41's Telephone SEP.

Date: April 6, 2005.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Hua-Chuan Sim, MD, Scientific Review Administrator, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: February 23, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–3957 Filed 3–1–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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 Library of Medicine Special Emphasis Panel, Loan Repayment (Internet Assisted Review).

Date: April 22, 2005.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Hua-Chuan Sim, MD, Scientific Review Administrator, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS.)

Dated: February 23, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–3961 Filed 3–1–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: North American Free Trade Agreement Duty Deferral

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of 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 of 1995: NAFTA Duty Deferral. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no 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** (69 FR 76954) on December 23, 2004, 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 April 1, 2005.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of 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 of 1995 (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: North American Free Trade Agreement Duty Deferral.

OMB Number: 1651–0071.

Form Number: N/A.

Abstract: The North American Free Trade Agreement Duty Deferral Program prescribe the documentary and other requirements that must be followed when merchandise is withdrawn from a U.S. duty-deferral program for exportation to another NAFTA country.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 5.6 hours.

Estimated Total Annual Burden Hours: 280.

Estimated Total Annualized Cost on the Public: $754.65

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: February 23, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–4036 Filed 3–1–05; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Arrival and Departure Record: (Forms I–94, I–94W and I–94T)

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Arrival and Departure Record, Form I–94 and alternate versions. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 2, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Arrival and Departure Record.

OMB Number: 1651–0111.

Form Number: I–94, I–94W and I–94T.

Abstract: These forms are used to deliver to the CBP Officers at the port of arrival lists or manifests of persons on board arriving and departing vessels and aircrafts. These forms are completed by the master or commanding officer, or authorized agent, owner, or consignee of the vessel or aircraft.

Current Actions: This submission is being submitted to extend the expiration date.

Type of Review: Extension (with change).

Affected Public: Individuals.

Estimated Number of Respondents: 18,124,380.

Estimated Time Per Respondent: 24 hours.

Estimated Total Annual Burden Hours: 1,352,209.

Estimated Total Annualized Cost on the Public: $120,958,321.

Dated: February 23, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 05–4037 Filed 3–1–05; 8:45 am]

BILLING CODE 4820–02–U

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Establishment of a Bonded Warehouse: Bonded Warehouse Regulations

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning Establishment of a Bonded Warehouse (Bonded Warehouse Regulations). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 2, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Establishment of a Bonded Warehouse (Bonded Warehouse Regulations).

OMB Number: 1651–0041.

Form Number: N/A.

Abstract: 19 CFR part 19 sets forth requirements for bonded warehouses. This includes applications needed to establish a bonded warehouse; to receive free materials the warehouse; and to make alterations, suspensions, relocation or discontinuance of a bonded warehouse.

Current Actions: This submission is being submitted to extend the expiration date.

Type of Review: Extension (with change).

Affected Public: Businesses, Institutions.

Estimated Number of Respondents: 198.

Estimated Time Per Respondent: 24 hours.

Estimated Total Annual Burden Hours: 4,910.

Estimated Total Annualized Cost on the Public: $108,020.

Dated: February 25, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 05–4038 Filed 3–1–05; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permits.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species. We provide this notice pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: We must receive written data or comments on these applications at the address given below, by April 1, 2005.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist).

FOR FURTHER INFORMATION CONTACT: Victoria Davis, telephone (404) 679–4176; facsimile (404) 679–7081.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following applications for permits to conduct certain activities with endangered and threatened species. If you wish to comment, you may submit comments by any one of the following methods. You may mail comments to the Service's Regional Office (*see* **ADDRESSES** section) or via electronic mail (e-mail) to *victoria_davis@fws.gov.* Please submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from the Service that we have received your e-mail message, contact us directly at the telephone number listed above (*see* **FOR FURTHER INFORMATION CONTACT** section). Finally, you may hand deliver comments to the Service office listed above (*see* **ADDRESSES** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Applicant: Share the Beach, Michael Ogden Reynolds, Gulf Shores, Alabama, TE100012–0.

The applicant requests authorization to take (monitor nest, excavate, and hold nestlings temporarily, release) the following species: loggerhead (*Caretta caretta*), Kemp Ridley (*Lepidochelys kempi*), and green turtle (*Chelonia mydas*). The proposed activities would take place while conducting monitoring on private lands and while mitigating human-related mortality, by assisting hatchlings when they become disoriented. The proposed activities would occur on the entire Alabama Gulf Coast (Baldwin and Mobile Counties, Alabama).

Applicant: Andrew C. Miller, U.S. Army Engineer District Mobile, Vicksburg, Mississippi, TE099764–0.

The applicant requests authorization to take (capture, identify, release) the shinyrayed pocketbook (*Lampsilis subangulata*), purple bankclimber (*Elliptoideus sloatianus*), and threeridge mussel (*Amblema neislerii*) while conducting presence/absence surveys. The proposed activities would occur in the Flint River near Albany, Dougherty County, Georgia.

Applicant: USDA Forest Service, Bankhead National Forest, Double Springs, Alabama, TE100070–0.

The applicant requests authorization to take (capture, identify, and release) Indiana bats (*Myotis sodalis*) and gray bats (*Myotis grisescens*) while conducting presence and absence surveys, while assessing bat habitat availability and use on the forest, and while estimating population trends. The proposed activities would occur on national forests throughout the State of Alabama.

Dated: February 14, 2005.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 05–4013 Filed 3–1–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Catahoula National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a Comprehensive Conservation Plan and Environmental Assessment for Catahoula National Wildlife Refuge in LaSalle and Catahoula Parishes, Louisiana

SUMMARY: This notice advises the public that the Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare a Comprehensive Conservation Plan and Environmental Assessment for Catahoula National Wildlife Refuge, pursuant to the National Environmental Policy Act and its implementing regulations.

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan is so provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the plan identifies wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

The purpose of this notice is to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain suggestions and information on the scope of issues to include in the environmental document.

DATES: Open house style meeting(s) will be held throughout the scoping phase of the comprehensive conservation plan development process. Special mailings, newspaper articles, and other media announcements will be used to inform the public and state and local government agencies of the opportunities for input throughout the planning process.

ADDRESSES: Address comments, questions, and requests for more information to Tina Chouinard, Natural Resource Planner, Central Louisiana National Wildlife Refuge Complex, 401 Island Road, Marksville, Louisiana 71351. To ensure consideration, written comments must be received within 45 days following the date of this notice.

SUPPLEMENTARY INFORMATION: Catahoula National Wildlife Refuge was established in 1958 primarily as a wintering area for migratory waterfowl. The refuge, in east-central LaSalle Parish and west-central Catahoula Parish, about 30 miles northeast of Alexandria and 12 miles east of Jena, now totals 25,162 acres. The 6,671-acre Headquarters Unit borders 9 miles of the northeast shore of Catahoula Lake, a 26,000-acre natural wetland renowned for its large concentrations of migratory waterfowl. The 18,491-acre Bushley Bayou Unit, located 8 miles west of Jonesville, was established in May 2001. The acquisition was made possible through a partnership agreement between The Conservation Fund, American Electric Power, and the Fish and Wildlife Service.

The refuge lies within a physiographic region known as the Lower Mississippi River Alluvia Valley. This valley was, at one time, a 25-million-acre forested wetland complex that extended along both sides of the Mississippi River from Illinois to Louisiana. Although the refuge was part of this very productive bottomland hardwood ecosystem, most of the forest on the refuge was cleared in the early 1970s for agriculture production.

FOR FURTHER INFORMATION CONTACT: Natural Resource Planner, Central Louisiana National Wildlife Refuge Complex, telephone: 318/253–4238; fax: 318/253–7139; e-mail: *tina_chouinard@fws.gov.;* or mail (write to the Natural Resource Planner at address in **ADDRESSES** section).

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Pub. L. 105–57.

Dated: January 28, 2005.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 05–4012 Filed 3–1–05; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–05–1310–DB]

Notice of Meeting of the Pinedale Anticline Working Group

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (1976) and the Federal Advisory Committee Act (1972), the U.S. Department of the Interior, Bureau of Land Management (BLM) Pinedale Anticline Working Group (PAWG) will meet in Pinedale, Wyoming, for a business meeting. Group meetings are open to the public.

DATES: The PAWG will meet March 15, 2005, from 9 a.m. until 5 p.m.

ADDRESSES: The meeting of the PAWG will be held at the Pinedale Volunteer Fire Department, 130 S. Fremont Ave., Pinedale, WY.

FOR FURTHER INFORMATION CONTACT: Carol Kruse, BLM/PAWG Liaison, Bureau of Land Management, Pinedale Field Office, 432 E. Mills St., PO Box 738, Pinedale, WY, 82941; 307–367–5352.

SUPPLEMENTARY INFORMATION: The Pinedale Anticline Working Group (PAWG) was authorized and established with release of the Record of Decision (ROD) for the Pinedale Anticline Oil and Gas Exploration and Development Project on July 27, 2000. The PAWG advises the BLM on the development and implementation of monitoring plans and adaptive management decisions as development of the Pinedale Anticline Natural Gas Field proceeds for the life of the field.

The agenda for these meetings will include follow-up discussions and recommendations on proposed monitoring plans submitted by individual task groups. At a minimum, public comments will be heard prior to lunch and adjournment of the meeting each day.

Dated: February 24, 2005.

Priscilla E. Mecham,

Field Office Manager.

[FR Doc. 05–4040 Filed 3–1–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–01–1020–PG]

Notice of Public Meeting; Central Montana Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Central Montana Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held March 22 & 23, 2005, at the Best Western Great Northern Inn, 1345 1st Street, in Havre, Montana. The March 22 meeting will begin at 1 p.m. with a 30-minute public comment period. The meeting is scheduled to adjourn at approximately 6 p.m. The March 23 meeting will begin at 8 a.m. with a 60-minute public comment period. This meeting will adjourn at approximately 3 p.m.

SUPPLEMENTARY INFORMATION: This 15-member council advises the Secretary of the Interior on a variety of management issues associated with public land management in Montana. At these meetings the council will discuss/act upon:

The minutes of their proceeding meeting;

Election of officers;

The West Hi-Line update;

Oil and gas leases within the monument;

Field Managers updates;

The upcoming Lewis and Clark signature event;

The sage grouse management plan;

Potential for buy/out/trade-out of oil and gas leases in the Blacklead area;

The Montana Challenge (the economic contribution of public lands);

Community collaborative planning along the Rock Mountain Forest; and

Special recreation use permits on the river and in the uplands.

All meetings are open to the public. The public may present written comments to the RAC. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

FOR FURTHER INFORMATION CONTACT: June Bailey, Lewistown Field Manager, Lewistown Field Office, PO Box 1160, Lewistown, MT 59457, (406) 538–7461.

Dated: February 24, 2005.

June Bailey,

Lewistown Field Manager.

[FR Doc. 05–4011 Filed 3–1–05; 8:45 am]

BILLING CODE 4310–$$–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Pacific Region, Environmental Document Prepared for Plains Exploration and Production Company's Submarine Power Cable Repair Project

AGENCY: Minerals Management Service (MMS). Interior.

ACTION: Notice of availability of environmental assessment (EA) and finding of no significant impact (FONSI).

SUMMARY: The MMS prepared an EA for Plains Exploration and Production Company's Platform Hillhouse-to-Shore Submarine Power Cable Repair Project and issued a FONSI pursuant to the requirements of the National Environmental Policy Act (NEPA).

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Pacific Region, 770 Paseo Camarillo, Camarillo, CA 93010, Mr. John Lane, telephone (805) 389–7820.

SUPPLEMENTARY INFORMATION: The MMS prepares EAs and FONSIs for Outer Continental Shelf (OCS) oil and gas exploration and development activities and other operations on the Pacific OCS. Plains Exploration and Production Company's power cable repair project involves replacing up to 400 feet of failed power cable that links OCS Platform Hillhouse to shore in the County of Santa Barbara. The EA examines the potential environmental effects of the project and presents MMS's conclusions regarding the significance of those effects. The MMS prepares EAs to determine whether proposed projects constitute a major Federal action that significantly affects the quality of the human environment in the sense of NEPA 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA. The MMS completed the EA and issued the FONSI on January 31, 2005. This notice constitutes the public Notice of Availability of environmental documents required under the NEPA regulations.

Dated: February 11, 2005.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

[FR Doc. 05–4033 Filed 3–1–05; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Collection of Royalties, Rentals, Bonuses, and Other Monies Due the Federal Government

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice requesting comments on an increase in base rentals and the use of sliding scale rentals in the Gulf of Mexico (GOM) lease sales.

SUMMARY: MMS is considering an increase to the base level rentals and the use of sliding scale rentals in Gulf of Mexico lease sales. This notice explains the purpose of the change and what the sliding scale rentals might be. MMS requests comments on both the increase to the base amounts and on the structure of the sliding scale system and its potential effects.

DATES: MMS will consider all comments received by April 1, 2005, and may not fully consider comments received after April 1, 2005.

ADDRESSES: You may submit comments on the notice by any of the following methods listed below. Please use ''Increasing Base Rentals and Sliding Scale Rentals'' as an identifier in your message. See also Public Comment Policy at the end of this notice.

- MMS's Public Connect on-line commenting system, *http://ocsconnect.mms.gov.* Follow the instructions on the website for submitting comments.
- Email MMS at *rules.comments@mms.gov.* Use ''Increasing Base Rentals and Sliding Scale Rentals'' in the subject line.
- Fax: 703–787–1093. Identify as ''Increasing Base Rentals and Sliding Scale Rentals''.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team (RPT); 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Increasing Base Rentals and Sliding Scale Rentals'' in your comments.

FOR FURTHER INFORMATION CONTACT: Marshall Rose, Chief, Economics Division, at (703) 787–1536 or *Marshall.Rose@mms.gov.*

SUPPLEMENTARY INFORMATION:

Background

The increase in the pace of leasing since the introduction of the Deep Water Royalty Relief Act (DWRRA) has been about twice as high as the increase in the pace of exploration. In order to encourage exploration drilling in deepwater areas earlier in the lease term, MMS is considering the use of a sliding scale rental system in future GOM sales. Under this policy, annual rentals would escalate gradually beginning with the sixth year of the initial lease term period except under certain conditions. If a lease is drilled within the first 5 years of its initial period, escalating rentals can be avoided either through a discovery, at which time the rental rate would stay the same until the start of royalty-bearing production, or, as might occur in the case of unsuccessful exploration, through relinquishment. If a discovery is made after the first 5 years of the primary term of the lease, the rental rates would return to the level that prevailed during the first 5-year period.

Most deepwater blocks, *i.e.*, those located in water depths of 400 meters or greater, are issued with longer primary terms and lower royalty rates than shallow water blocks. MMS issues all deepwater blocks, *i.e.*, those located in water depths of 200 meters or greater, with provisions for royalty suspension or the possibility of royalty suspension, unlike shallow water blocks. Partly due to these lease terms, a $7.50 per acre annual rental rate has been used in deeper water depths since the implementation of the DWRRA in 1996. In contrast, the annual rental rate for leases in shallow water has been set at $5.00 per acre over this same time period. The authority for MMS to require payment of a rental, at a rate specified in the lease, exists under 43 U.S.C. 1337 (b)(6): An oil and gas lease issued pursuant to this section shall '' * * * contain such rental and other provisions as the Secretary may prescribe at the time of offering the area for lease * * *.''

The President's FY 2006 Budget submission includes language that MMS would increase the base level for rentals. The current base amounts are $5.00 per acre or fraction thereof for blocks in water depths of less than 200 meters and $7.50 per acre or fraction thereof for blocks in water depths of 200 meters or greater. These rates were last adjusted in 1993 for the shallow water depth and in 1996 for the deeper water depth. MMS is considering raising these base levels to approximately $6.25 per acre or fraction thereof for blocks in water depths of less than 200 meters

and $9.50 per acre or fraction thereof for blocks in water depths of 200 or greater in subsequent GOM sales. These increased rental rates mostly reflect inflationary adjustments from the last time rentals were revised.

Potential Structure for Rental Rates

For future lease sales for the GOM, MMS is considering using a sliding scale structure for blocks in water depths of 400 meters or greater, where royalty relief is typically offered. MMS would not use this escalating system in shallow water blocks of less than 200 meters or for deepwater blocks between 200 meters and less than 400 meters. However, as noted above, the base level of the rental rate for leases in water depths less than 400 meters may be raised. For leases in water depths of 400 meters or deeper, the table below lists the possible annual rental rates being considered, both base levels and escalated levels.

Year	Rental rate (per acre per year or fraction thereof)
1	$9.50
2	9.50
3	9.50
4	9.50
5	9.50
6	10.50
7	12.00
8	13.75
9	15.50
10	17.50

Rentals must be paid on or before the first day of each lease year until a discovery in paying quantities of oil or gas, and then at the expiration of each lease year until the start of royalty-bearing production. In water depths of 400 meters or deeper, if a discovery in paying quantities is made (see 30 CFR 250.115 or 250.116 and NTL No. 2000–G04 for requirements to demonstrate well producibility), regardless of the rental rate in effect before or at the time of the discovery, the rental rate will revert to $9.50 per acre per year or fraction thereof in years subsequent to such a discovery. Thus, if a discovery in paying quantities is made in year 8, at the beginning of which the lessee paid a rental of $13.75 per acre per year or fraction thereof, then at the expiration of each lease year thereafter until the start of royalty-bearing production, the rental rate would be fixed at $9.50 per acre per year or fraction thereof.

MMS would like to receive comments about both the increase to a new base level of rentals for all water depths, and the structure of the escalating rental rates that MMS is considering for water depths 400 meters or greater and their possible effects on acquisition and exploration decisions. Would fewer tracts receive bids? Would the amount of the individual bids change? Would escalating rentals at the rate specified above have any effect on the timing of exploration? Depending on upcoming sale results, changing market conditions, responses to this notice, and revisions in future projections, a sliding scale rental structure also might have to be adjusted. MMS will advise you of its final decision regarding base rental rates and any sliding scale rental stipulations in a future Notice of Lease Sale.

Public Comments Procedures

All submissions received must include the agency name and refer to ''Increasing Base Rentals and Sliding Scale Rentals.' MMS' practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that MMS withhold their address from the record, which will be honored to the extent allowable by law. There may be circumstances in which MMS would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, MMS will not consider anonymous comments. Except for proprietary information, MMS will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: January 25, 2005.

Thomas Readinger,

Associate Director for Offshore Minerals Management.

[FR Doc. 05–4032 Filed 3–1–05; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–503]

In the Matter of Certain Automated Mechanical Transmission Systems for Medium-Duty and Heavy-Duty Trucks and Components Thereof; Notice of Commission Decision Not To Review a Final Initial Determination Finding a Violation of Section 337 of the Tariff Act of 1930; Request for Written Submissions on Remedy, the Public Interest, and Bonding

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 the presiding administrative law judge's (ALJ) initial determination (''ID'') in the above-captioned investigation finding a violation of section 337 of the Tariff Act of 1930. Notice is also hereby given that the Commission is requesting briefing on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Rodney Maze, Esq., 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 (*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 patent-based section 337 investigation was instituted by the Commission on January 7, 2004, based on a complaint filed by Eaton Corporation (''Eaton'') of Cleveland, Ohio. 69 FR 937 (January 7, 2004). The complainant, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after

importation of certain automated mechanical transmission systems for medium-duty and heavy-duty trucks, and components thereof, by reason of infringement of claim 15 of U.S. Patent No. 4,899,279 (''the '279 patent''); claims 1–20 of U.S. Patent No. 5,335,566 (''the '566 patent''); claims 2–4 and 6–16 of U.S. Patent No. 5,272,939 (''the '939 patent''); claims 1–13 of U.S. Patent No. 5,624,350 (''the '350 patent''); claims 1, 3, 4, 6–9, 11, 13, 14, 16 and 17 of U.S. Patent No. 6,149,545 (''the '545 patent''); and claims 1–16 of U.S. Patent No. 6,066,071 (''the '071 patent'').

The complaint and notice of investigation named three respondents ZF Meritor, LLC (''ZF Meritor) of Maxton, North Carolina, ZF Friedrichshafen AG (''ZFAG'') of Freidrichshafen, Germany, and ArvinMeritor, Inc. of Troy, Michigan.

On July 21, 2004, the Commission issued a notice indicating that it had determined not to review the ALJ's initial determination (''ID'') (Order No. 20) terminating the investigation as to the '071 patent and as to claims 2, 3, and 5–20 of the '566 patent, claims 4, 7, and 12 of the '350 patent, and claims 4, 8–9, and 14 of the '545 patent.

On August 11, 2004, the Commission issued a notice (indicating that it had determined not to review the ALJ's ID (Order No. 31) terminating the investigation as to the '939 patent and as to claims 10, 11, and 13 of the '350 patent.

On August 16, 2004, the Commission issued a notice indicating that it had determined not to review the ALJ's ID (Order No. 28) that Eaton has satisfied the economic prong of the domestic industry requirement as to certain articles it alleges practice the patents at issue in this investigation.

On August 23, 2004, the Commission issued a notice indicating that it had determined not to review the ALJ's ID (Order No. 30) that Eaton did not meet the technical prong of the domestic industry requirement as to the remaining claims, claims 1–3, 5, 6, 8, and 9, of the '350 patent, thus terminating the investigation as to that patent.

On September 17, 2004, the Commission issued a notice indicating that it had determined not to review the ALJ's ID (Order No. 38) granting Eaton's partial summary determination that the importation requirement has been met.

On September 23, 2004, the Commission issued a notice indicating that it had determined not to review the ALJ's ID (Order No. 45) granting Eaton's motion for summary determination that it satisfies the economic prong of the domestic industry requirement of section 337 as to its medium-duty automated transmissions. The Commission also issued a notice on September 23, 2004, indicating that it had determined not to review ALJ's ID (Order No. 55) granting Eaton's motion for partial termination of the investigation as to claim 1 of the '566 patent.

On January 7, 2005, the ALJ issued his final ID on violation and his recommended determination on remedy. The ALJ found a violation of section 337 by reason of infringement of claim 15 of the '279 patent by respondents. He found no violation of section 337 regarding the '566 and the '545 patents. Petitions for review were filed by Eaton, the respondents, and the Commission investigative attorney on January 21, 2005. All parties filed responses to the petitions on January 28, 2005.

Having examined the record in this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined not to review the ID, thereby finding a violation of section 337.

In connection with the final disposition of this investigation, the Commission may issue an order that could result in the exclusion of respondents' FreedomLine transmissions from entry into the United States, and/or issue one or more cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of FreedomLine transmissions. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see In the Matter of Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

When the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. 19 U.S.C. § 1337(j). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. *Id.* The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the January 7, 2005, recommended determinations by the ALJ on the issuance of remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration and to state the date on which the '279 patent will expire. The written submissions and proposed remedial orders must be filed no later than close of business on March 7, 2005. Reply submissions must be filed no later than the close of business on March 14, 2005. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* section 201.6 of the Commission's Rules of Practice and Procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All non-confidential written submissions will be available for public inspection at the Office of the Secretary.

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 sections 210.42, 210.43, and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42, 210.43, and 210.50).

By order of the Commission.

Issued: February 24, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–3970 Filed 3–1–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the comments received on the proposed Final Judgment in *United States* v. *Cingular Wireless Corp. et al.,* Civil Action No. 1:04CV01850 (RBW), filed in the United States District Court for the District of Columbia, together with the United States' response to the comments on February 17, 2005.

Copies of the comments and the response are available for inspection at Room 200 of the Department of Justice, Antitrust Division, 325 Seventh Street, NW., Washington, DC 20530, telephone (202) 514–2481, and at the Office of the Clerk of the United States District Court for the District of Columbia, E. Barrett Prettyman United States Courthouse, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

J. Robert Kramer II,

Director of Operations.

In the United States District Court for the District of Columbia

United States of America, State of Connecticut and State of Texas, Plaintiffs, v. Cingular Wireless Corporation, SBC Communications Inc., BellSouth Corporation and AT&T Wireless Services, Inc., Defendants; Plaintiff United States's Response to Public Comments

Civil No. 1:04CV01850 (RBW)

Filed: February 17, 2005

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.SC. 16(b)–(h) (''APPA'' or ''Tunney Act''), the United States hereby responds to the public comments received regarding the proposal Final Judgment in this case. After careful consideration of the comments, the United States continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint. The United States will move the Court for entry of the proposed Final Judgment after the public comments and this Response has been published in the **Federal Register**, pursuant to 15 U.S.C. 16(d).

On October 25, 2004, plaintiffs filed the Complaint in this matter alleging that the proposed acquisition of AT&T Wireless Services, Inc. (''AT&T Wireless'') by Cingular Wireless Corp. (''Cingular'') and its parents, SBC Communications Inc. (''SBC'') and BellSouth Corp. (''BellSouth''), would violate Section 7 of the Clayton Act, 15 U.S.C. 18. Simultaneously with the filing of the Complaint, the plaintiffs filed a proposed Final Judgment [1] and a Preservation of Assets Stipulation and Order signed by plaintiffs and defendants consenting to the entry of the proposed Final Judgment after compliance with the requirements of the Tunney Act. Pursuant to those requirements, the United States filed a Competitive Impact Statement (''CIS'') in this Court on October 29, 2004; published in the proposed Final Judgment and CIS in the **Federal Register** on November 15, 2004, *see* 69 FR 65633 (2004); and published a summary of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, in the Washington Post for seven days beginning on November 10, 2004 and ending on November 16, 2004. The 60-day period for public comments ended on January 15, 2005, and two comments were received as described below and attached hereto.

I. Background

As explained more fully in the Complaint and CIS, this transaction substantially lessened competition in mobile wireless telecommunications services and mobile wireless broadband services in 13 geographic markets, located in 11 states. To restore competition in these markets, the proposed Final Judgment, if entered, would require Cingular to divest (1) AT&T Wireless's wireless business in 5 geographic markets (Connecticut RSA–1 (CMA 357), Kentucky RSA–1 (CMA 443), Oklahoma City (CMA 045), Oklahoma RSA–3 (CMA 598), and Texas RSA–11 (CMA 662)); (2) minority interests in other wireless service providers in 5 geographic markets (Shreveport, LA (including CMAs 100, 219, 454, 455, and 456), Pittsfield, MA (CMA 213), Athens, GA (CMA 234), St. Joseph, MO (CMA 275), and Topeka, KS (CMA 179)); and (3) 10 MHz of contiguous PCS spectrum in 3 geographic markets (Detroit, MI (BTA 112), Dallas, TX (CMA 009), and Knoxville, TN (BTA 232)). Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and punish violations thereof.

II. Legal Standard Governing the Court's Public Interest Determination

Upon the publication of the public comments and this Response, the United States will have fully complied with the Tunney Act and will move the Court for entry of the proposed Final Judgment as being ''in the public interest.'' 15 U.S.C. 16(e). The Court, in making its public interest determination, shall consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including considerations of the public benefit, it any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1). As the U.S. Court of Appeals for the District of Columbia Circuit has held, the Tunney Act permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's compliant, whether the proposed Final Judgment is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the proposed Final Judgment may positively harm third parties. See *United States* v. *Microsoft*

[1] A corrected version of the proposed Final Judgment was filed on November 3, 2004. The only change was the addition of the *underlined* language to the last sentence of Section II.F: ''Plaintiff United States in its sole discretion may approve this request if it is demonstrated that the retained minority interest will become irrevocably and entirely passive, *so long as defendants own the minority interests,* and will not significantly diminish competition.''

The corrected version is what was published in the **Federal Register**. None of the public comments addressed this aspect of the proposed Final Judgment.

Corp., 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

''Nothing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.''15 U.S.C. 16(e)(2). Thus, in conducting this inquiry, ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney).[2] Rather:

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * *carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at ¶ 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public. '' *United States* v. *BNS Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); see also *Microsoft,* 56 F.3d at 1460–62. Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the pubic in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is '*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel. 648 F.2d at 666 (emphasis added) (citations omitted).[3]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice of whether it mandates certainty of free competition in the future. Court approval of a consent judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability of is 'within the reaches of public interest.' '' *United States* v. *AT&T Corp.,* 552 F.Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting Gillette, 406 F. Supp. at 716), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); see also *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent judgment even though the court would have imposed a greater remedy).

Moreover, the Court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60. The United States is entitled to ''due respect'' concerning its ''prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.'' *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (citing *Microsoft,* 56 F.3d at 1461).

III. Summary of Public Comments and the United State's Response

During the 60-day public comment period, the United States received two comments—one from the Oklahoma Corporation Commission (''OCC'') and the other from William Lovern, Sr.—which are attached hereto and summarized below. The United States appreciates the comments from the OCC and Mr. Lovern. As explained below, neither comment addresses whether the proposed Final Judgment is in the public interest or warrants any change to the proposed Final Judgment. Copies of this Response and its attachments have been mailed to the OCC and Mr. Lovern.

A. Oklahoma Corporation Commission

1. Summary of Comment

The OCC is the state agency charged with regulatory oversight of the telecommunications industry in Oklahoma. In its comment of January 6, 2005, the OCC expresses concern about the potential for the merger to harm Oklahoma consumers, specifically Oklahomans throughout the state who are current subscribers to AT&T Wireless's services and ''may not wish to do business with Cingular, or any other company acquiring the AT&T Wireless customer base, and that those customers may be assessed a fee to terminate their existing AT&T Wireless contracts.'' The OCC's comment also quotes a portion of the language from Section II.L of the proposed Final Judgment, which it believes may address this concern, at least for consumers in Oklahoma City and Oklahoma RSA–3: ''[A]ny subscribers who obtain mobile wireless services through any contract retained by [Cingular] and who are located in [Oklahoma City, Oklahoma, Oklahoma RS–3 (CMA598), and some other areas outside Oklahoma], shall be given the option to terminate their relationship with [Cingular], without financial cost, within one year of closing of the Transaction.'' (Brackets in original.) The OCC asks that the language in the proposed Final Judgment be clarified or expanded to include all AT&T Wireless subscribers in Oklahoma and state that no ''Oklahoma consumer with an existing contract for wireless service with AT&T Wireless will be charged a termination fee by AT&T Wireless, Cingular or any other company that acquires that customer contract, after the closing of the Cingular acquisition of AT&T Wireless.''

2. Response

The OCC's primary concern appears to be that the merger could harm Oklahoma consumers. The Department also was concerned about the welfare of residents of Oklahoma. The Complaint

[2] See *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (recognizing it was not the court's duty to settle; rather, the court must only answer ''whether the settlement achieved [was] within the reaches of the public interest''). A ''public interest'' determination can be made properly on the basis of the CIS and Response to Comments filed by the Department of Justice. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. No. 93–1463, 93d Cong., 2d Sess. 8–9 (1974), *reprinted* in 1974 U.S.C.C.A.N. 6535, 6538–39.

[3] *Cf.BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [Tunney Act] is limited to approving or disapproving the consent decree''); *Gillette,* 406 F. Supp. at 716 (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''); see generally *Microsoft* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' ''.

alleges competitive harm in Oklahoma City and Oklahoma RSA–3, and the proposed Final Judgment provides for the divestiture of AT&T Wireless's wireless businesses in those markets in order to preserve the existing competition for the benefit of Oklahoma's citizens. The OCC's concern that most AT&T Wireless customers would be forced to deal with Cingular after the merger is a consequence of the companies' decision to merge and not the proposed Final Judgment. Although consumers may not like to switch providers, switching caused by a merger that does not harm competition does not constitute a harm to competition that is recognized by the antitrust laws.

It would also be inappropriate for plaintiffs or the Court to require as part of the settlement of this matter that all of AT&T Wireless's customers in the wireless business divestiture markets be allowed to cancel existing contracts when the divestiture assets are sold. To preserve competition, any divestiture package must include the necessary assets for the purchaser to be a viable, ongoing competitor to the merged firm in the affected markets. *See* U.S. Dept. of Justice, Antitrust Div., Policy Guide to Merger Remedies at 4, 9–12 (Oct. 2004) (''Restoring competition is the 'key to the whole question of an antitrust remedy.' '' (quoting *United States* v. *E.I. du Pont de Nemours & Co.,* 366 U.S. 316, 326 (1961))). A package without sufficient assets to allow a divestiture purchaser to quickly replace the competition lost as a result of the merger and give it the incentive to do so fails to protect competition. *See Policy Guide to Merger Remedies* at 9–11. To be a viable competitor, the divestiture purchaser needs access to the divested business's customers.[4] Therefore, the proposed Final Judgment in Section II.L provides for customer contracts to be included in the Wireless Business Divestiture Assets in order to ensure that a suitable purchaser would be willing to acquire the assets make the effort necessary to maintain competition for the benefit of all consumers in these areas.

The OCC's request for clarification of the language in Section II.L of the proposed Final Judgment is unnecessary. This Section relates solely to business customer contracts that cover subscribers both inside and outside the wireless business divestiture markets. In an effort to avoid forcing these customers who previously had a single contract to deal with both Cingular and the divestiture purchaser, the proposed Final Judgment assigns the contracts to Cingular or the divestiture purchaser based upon where the majority of the subscribers covered by the business customer contract are located. Section II.L of the proposed Final Judgment requires Cingular to divest business customer contracts where more than 50 percent of the subscribers are located in the wireless business divestiture markets.[5] This will give the purchaser the necessary access to business customers to make it a viable competitor to preserve the existing competition.

Under the terms of the proposed Final Judgment, any business subscriber located in the wireless business divestiture markets covered by a business customer contract retained by Cingular has the right to terminate their service without financial penalty within one year of the closing of the merger. *See* Proposed Final Judgment, section II.L. This last provision is what was quoted by the OCC, but by its very terms it applies only to subscribers covered by the business customer contracts retained by Cingular. The provision's purpose is to provide additional incentive to the divestiture purchaser by expanding the base of customers to which it could immediately market its services.

After reviewing the concerns raised by the OCC, the United States continues to believe that the proposed Final Judgment is in the public interest and that it appropriately addresses the competitive harm alleged in the Complaint.

B. William Lovern, Sr.

1. Summary of Comment

William Lovern Sr., President of Trial Management Associates (a self-described ''private company that litigates international public interest cases''), submitted a comment on November 11, 2004. First, Mr. Lovern is concerned that ''AT&T Wireless has been looted by its executives in conjunction with Cingular's takeover, even though the merger is not final.'' In conversations with the United States, he discussed this looting in relation to documents being taken from AT&T Wireless. Second, he asserts the Regional Bell Operating Companies (''RBOCs''), including SBC and BellSouth (the parents of Cingular), are ''operating an anticompetitive Universal Billing & Collection System known as the InterCompany Settlement System (ICS)'' that allegedly controls the billing and collection for the RBOCs as well as their competitors. He claims that the new Cingular/AT&T Wireless and Verizon Wireless will have ''market share advantages'' that will force competitors out of business because they will be the only two entities that have 100%A on net Universal Billing & Collection.'' Finally, he states that ''SBC has violated Sarbanes-Oxley with their 2004, 1st, 2nd and 3rd Quarter Q filing with the [Securities and Exchange Commission],'' which he alleges is a result of its operating of the ICS. Along with his comment, Mr. Lovern submitted a copy of a letter he sent to James S. Turkey, Chairman and CEO of Ernest & Young, LLP, stating that SBC has ''committed flagrant securities fraud'' allegedly by ''operating a criminal enterprise'' (*i.e.,* the ICS) that illegally overcharges consumers and put four of his telecommunications companies out of business.

Mr. Lovern provided additional information on November 24, 2004 in the form of a November 22, 2004 letter to Warburg Pincus LLC and Providence Equity Partners Inc. detailing his long-running dispute with the RBOCs over the ICS, which he alleges is a ''criminal racketering enterprise,'' and Warburg Pincus's and Providence Equity Partners' alleged liability from purchasing Telecordia Technologies, which he claims was involved with the ICS. As described in this second submission, Mr. Lovern sued SBC in 1992, and the lawsuit was subsequently settled against his wishes. He now claims that the court lacked jurisdiction, making the settlement invalid. Mr. Lovern also alleges that the Missouri Public Service Commission covered up the fraud he alleges was committed by the RBOCs through ICS. Finally, he forwarded a series of demand letters via e-mail threatening lawsuits or regulatory complaints against SBC and its executives on December 9, and 10, 2004.

[4] *See Policy Guide to Merger Remedies* at 10 (''In markets where an installed base of customers is required in order to operate at an effective scale, the divested assets should either convey an installed base of customers to the purchaser or quickly enable the purchaser to obtain an installed customer base.'').

[5] The proposed Final Judgment reads in part: ''[P]rovided that defendants shall only be required to divest Multi-line Business Customer contracts, if 50 percent or more of the Multi-line Business Customer's subscribers reside or work within any of the five (5) license areas described herein [the wireless business divestiture areas which include Oklahoma City and Oklahoma RSA–3], and further, any subscribers who obtain mobile wireless services through any *such* contract retained by defendants and who are located within five (5) geographic areas identified above, shall be given the option to terminate their relationship with defendants, without financial cost, within one year of the closing of the transaction.''

Proposed Final Judgment, section II.L (emphasis added). ''Multi-line Business Customers'' are defined as AT&T Wireless business customers that have contracts for multiple wireless phones for their employees for which the business is liable. See *id.* section II.G

2. Response

Mr. Lovern's series of submissions has nothing to do with the issue before this Court—whether the proposed Final Judgment is in the public interest. Nothing in Mr. Lovern's comments relates to competition in the relevant product markets (*i.e.,* mobile wireless telecommunications and mobile wireless broadband services) or to the assets that Cingular must dives under the proposed Final Judgment. Mr. Lovern's allegations about the ICS remain unchanged by the merger, and the alleged Sarbanes-Oxley violations are, by their very nature, not addressable by the antitrust laws.

IV. Conclusion

After careful consideration of these public comments, the United States still concludes that entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint and is, therefore, in the public interest. Pursuant to Section 16(d) of the Tunney Act, the United States is submitting the public comments and its Response to the **Federal Register** for publication. After the comments and its Response are published in the **Federal Register**, the United States will move this Court to enter the proposed Final Judgment.

Respectfully submitted

Hillary B. Burchuk (D.C. Bar # 366755),
Matthew C. Hammond,
David T. Blonder,
Benjamin Brown,
Michael D. Chaaleff,
Benjamin Gilibnerti,
Jeremiah M. Luongo,
Lorenzo McRae (D.C. Bar # 473660),

Attorneys, Telecommunications & Media, Enforcement Section, Antitrust Division.

U.S. Department, of Justice, City Center Building, 1401 H Street, NW., Suite 8000, Washington, DC 20530, (202) 514–5621, Facsimile: (202) 514–6381.

Certificate of Service

I hereby certify that copies of the Plaintiff United States' Response to Public Comments have been mailed, by U.S. mail, postage prepaid, to the attorneys listed below, the 17th day of February 2005.

Counsel for Defendants Cingular Wireless Corporation and SBC Communications, Inc.; Richard L. Rosen, Esq., Arnold & Porter LLP, 555 Twelfth St., NW., Washington, DC 20004.

Counsel for Defendants Cingular Wireless Corporation and BellSouth Corporation; Stephen M. Axinn, Esq., Axinn, Veltrop & Harkrider LLP, 1801 K St., NW., Washington, DC 20006.

Counsel for Defendant AT&T Wireless Services, Inc.; Ilene Knable Gotts, Esq., Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, NY 10019.

Counsel for Plaintiff State of Texas; John T. Prud'homme, Jr., Esq., Assistant Attorney General, Antitrust and Civil Medicare Fraud Department, Office of the Attorney General, 300 West 15th Street, 9th Floor, Austin, Texas 78701.

Counsel for Plaintiff State of Connecticut; Rachel O. Davis, Esq., Assistant Attorney General, Antitrust Department, 55 Elm Street, Hartford, Connecticut 06106.

Hillary B. Burchuk (D.C. Bar # 366755),
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Office of General Counsel

Ben Jackson, General Counsel

January 6, 2005

Nancy Goodman
Chief, Telecommunications & Media Enforcement Section
Antitrust Division
U.S. Department of Justice
1401 H Street, NW., Suite 8000
Washington, DC 20530

Re: United States v. Cingular Wireless Corporations, SBC Communications, Inc., BellSouth Corporation, and AT&T Wireless Services, Inc.; Competitive Impact Statement, Proposed Final Judgment, Complaint, Preservation of Assets Stipulation and Order

Public Comment of the
Oklahoma Corporation Commission

On November 15, 2004, a notice was published in the Federal Register inviting public comments regarding the proposed acquisition of AT&T Wireless Services by Cingular Wireless Corporation. *Reference:* 69 Fed. Reg. 65,633 (2004). The notice specified that public comments would be considered by the U.S. Department of Justice and filed in *United States v. Cingular Wireless Corp.*, Civil Case No. 1:04CV01850 (RBW). In response to that notice, the Oklahoma Corporation Commission submits this public comment to express its concern about the proposed acquisition.

The Oklahoma Corporation Commission is the state agency charged with regulatory oversight of many industries operating within the State of Oklahoma, including the telecommunications industry. While the Oklahoma Corporation Commission does not have direct oversight of the wireless telecommunications industry, it does regulate some aspects of wireless operations within Oklahoma and is especially focused on decisions that impact the rights and obligations of state residents.

The Oklahoma Corporation Commission is concerned that the potential exists for Oklahoma consumers to be harmed by the proposed acquisition. Specifically, the Oklahoma Corporation Commission is concerned that Oklahoma consumers who subscribed to AT&T Wireless service

may not wish to do business with Cingular, or any other company acquiring the AT&T Wireless customer base, and that those customers may be assessed a fee to terminate their existing AT&T Wireless contracts. The Notice published in the Federal Register indicates that, "[A]ny subscribers who obtain mobile wireless services through any contract retained by [Cingular] and who are located in [Oklahoma City, Oklahoma, Oklahoma RS-3 (CMA 598), and some other areas outside Oklahoma], shall be given the option to terminate their relationship with [Cingular], without financial cost, within one year of the closing of the Transaction." *Reference:* 69 Fed. Reg. 65,641 (2004).

While this language appears to satisfy the concerns of the Oklahoma Corporation Commission, the language is somewhat ambiguous. The language could be read to exclude some Oklahoma customers that reside outside Oklahoma City or Oklahoma RS-3. Further, the words "without financial cost" are not defined and do not specifically exclude assessment of termination fees that may be provided for within the AT&T contracts.

The Oklahoma Corporation Commission respectfully asks that this language be modified to clearly state that no Oklahoma consumer with an existing contract for wireless service with AT&T Wireless will be charged a termination fee by AT&T Wireless, Cingular or any other company that acquires that customer contract, after the closing of the Cingular acquisition of AT&T Wireless.

If you have any questions or comments, do not hesitate to contact the Oklahoma Corporation Commission, Attn. Bennett Abbott, Assistant General Counsel, Office of General Counsel, P.O. Box 52000, Oklahoma City, OK 73152-2000; Phone 405-521-3570.

Respectfully Submitted

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Oklahoma Corporation Commission
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cc: Bob Anthony, Chairman, Oklahoma Corporation Commission
Jeff Cloud, Vice Chairman, Oklahoma Corporation Commission
Denise Bode, Commissioner, Oklahoma Corporation Commission
Joyce Davidson, Director, Public Utility Division, Oklahoma Corporation Commission
Eric Sequin, Chief of Telecom, Public Utility Division, Oklahoma Corporation Commission

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November 11, 2004

R. Hewitt Pate, Matthew C. Hammond
Antitrust Division - New Case Unit
950 Pennsylvania Ave., N.W. Suite 3322
Washington, DC 20530

Via fax: (202)-514-6381

RE: SBC Communications, Inc. / Bell South Corporation

Dear Mr. Hammond:

As we discussed Tuesday, AT&T Wireless has been looted by its executives in conjunction with Cingular's takeover, even though the merger is not final. SBC Communications, Inc. (SBC) and Bellsouth Corporation (BS) have been operating an anticompetitive Universal Billing & Collection System known as the InterCompany Settlement System (ICS) since 1984. The ICS is located in Missouri at Southwestern Bell telephone (SWBT). It has been operated for 20 years under the radar without a single tariff being filed anywhere, and to the detriment of consumers nationwide and competition. It is a monopoly. It is the only billing & collection system with 100% on net capability.

SBC is the "Contract Administrator" and the "King Pin" of the racketeering enterprise. The lieutenants [ICS Direct Participants] of the criminal enterprise began in 1985 as the Seven RBOCs, Cincinnati Bell, and Southern New England Telephone (SNET). Today they are no different:

1. New England Telephone Company
2. New York Telephone Company
3. Bell Atlantic, NJ
4. Bell Atlantic, PA
5. Bell Atlantic, DE
6. Bell Atlantic, DC
7. Bell Atlantic MD
8. Bell Atlantic VA
9. Bell Atlantic WV
10. Southern Bell Telephone Company
11. South Central Bell Telephone Company
12. Ohio bell Telephone Company (Ameritech)

13. Michigan Bell Telephone Company (Ameritech)
14. Indiana Bell Telephone Company (Ameritech)
15. Illinois Bell Telephone Company (Ameritech)
16. Wisconsin Bell Telephone Company (Ameritech)
17. Northwestern Bell Telephone Company
18. Southwestern Bell Telephone company
19. Mountain Bell Telephone Company
20. Pacific Bell Telephone Company
21. Nevada Bell Telephone Company
22. Southern New England Telephone Company
23. Cincinnati Bell Telephone Company

These 23 companies can control every single USA toll message placed on a LEC bill anywhere in the U.S., Canada & Caribbean. The ICS is AT&T's original billing system and they have installed numerous derivatives of the system within their respective territories to allow themselves to look like they act independently, when in fact they act as a single monopoly with anticompetitive pricing, part and parcel to a two tier system of billing and collection, violating since 1984 the Clayton Act, Sherman Act, FTC Act and RICO. The criminal enterprise has lined its pockets with hundreds of billions of dollars of dirty money. We have their secret internal documents, flow charts included, showing how they laundered the money. It is the best kept secret in telecommunications. They have paid off numerous public officials to keep the criminal enterprise going over the last 20 years.

By allowing Cingular & AT&T Wireless to merge, Cingular will now enjoy market share advantages no one can appreciate except Verizon Wireless. When SBC, Bellsouth, and Verizon begin bundling wireline service and wireless on the same bill we will see the wireless industry controlled by the racketeering enterprise, specifically Cingular [SBC/Bellsouth] and Verizon Wireless [Verizon]. Nextel, Sprint et al will become extinct as no one can compete with 100% on net Universal Billing & Collection (B&C). Anyone can transport Mr. Hammond, but what separates the "Big Boys" from the "little boys" is billing & collection. Not just collecting your money. The speed, expense, accuracy, accounting, and reporting capabilities of the ICS is so anticompetitive in comparison to the tariffed B&C product offered to the competition it's like comparing Sandlot football to the NFL. In addition to the obvious, the 23 ICS hosts listed above micro manage their competitors messages by unpacking and editing out what the criminal enterprise doesn't want on the LEC bill. The infamous 23 completely controls what goes on the LEC bills. When Judge Greene broke up AT&T he did not give SBC and its partners in crime AT&T's billing system to be used as a monopoly, yet that is exactly what they did, which is why the playing field has never been level since divestiture. To compete one must be able to control its cash flow.

Bill McGowen [MCI Founder] told me personally in 1991 that he knew AT&T had been getting preferential billing treatment since 1985, but that he couldn't prove it. It has taken me 13 years and millions of dollars but be assured that I can prove that and much, much more. I have enough evidence to put the infamous 23's Executives in jail. Through the telecom companies I owned, I lost about $900 million because of the anticompetitive ICS, and by adding 5% compound interest, today my damages are $1.7 Billion. I intend to collect my damages.

Page 3 (DOJ Antitrust)

SBC has violated Sarbanes-Oxley with their 2004, 1st, 2nd and 3rd Quarter Q filings with the SEC as TMA put SBC on written notice of the ICS liability in March 2004, and warned them to disclose pursuant to 17 CFR 229.303, as interpreted by the U.S. Supreme Court. James Turley [Global Managing Partner, Ernst & Young, a personal friend of Ed Whitacre - Chairman of SBC]... Mr. Turley was put on written notice in June 2004, [enclosed] as Ernst & Young is the outside auditor for SBC. Bank of America (BOA) was notified as one of the lead banks in SBC's $6 Billion Credit agreement used to finance the AT&T Wireless deal. BOA covered up the liability [BOA Audit Committee Chairman is a good friend of Whitacre and he refused to look at the evidence], which means the credit agreement is in default, specifically Art. III, Sec. 3.01 (b) of the agreement; and, fraudulent NOTES have been sold to the public. BOA is now a co-conspirator along with Ernst & Young, SBC and its outside lawyers who handled this matter in the upcoming class action that has joint & several liability around $2.5 Trillion, which includes treble damages.

In their capacity as lead bank for the $6 Billion credit agreement, Citibank has knowingly allowed SBC to stay in default since the agreement closed October 18, 2004. The other 19 banks are fighting over how to get out. SBC used this money to issue fraudulent Debt Securities to the public, and now 19 additional banks/lenders are involved in funding antitrust and racketeering. Defendant, C. Michael Armstrong [former CEO at AT&T who covered up the criminal enterprise while at AT&T] sits on the Audit Committee at Citigroup. This incestuous conduct is normal for the defendants.

The list of banks is as follows: Citibank; Bank of America; ABN AMRO Bank, N.V.; Barclays Bank; Deutsche Bank A.G. [NY]; JP Morgan Chase; Lehman Brothers Bank, FSB; UBS Loan Finance LLC; HSBC Bank USA, N.A.; Merrill Lynch Bank USA; Credit Suisse First Boston; William Street Commitment Corp.; Morgan Stanley; Bank of Toyoko-Mitsubishi, Ltd.; Sumitomo Mitsui Banking Corp.; Mellon Bank, N.A.; Wachovia bank N.A.; The Northern Trust Co.; Frost National Bank. These banks/lenders are all now facing joint & several liability in excess of $2.5 Trillion in the upcoming class action mentioned above.

It is important that you notify Judge Walton immediately about the looting of AT&T Wireless, and that we are going to challenge the merger pursuant to the APPA, as it will be necessary to put AT&T Wireless back in tact when the merger is cancelled. As we discussed, it is inappropriate for the AT&T Wireless Executives to loot the company of its files before the merger is even final. As I told you I know this has happened by talking to insiders still around. I will follow this letter up with detailed evidence of the antitrust violations, but first we must protect AT&T Wireless from being destroyed as the merger will be nullified one way or another.

Yours truly,

William Lovern, Sr.
President

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June 29, 2004

James S. Turley
Chairman and Chief Executive Officer
Ernst & Young, L.L.P.
5 Times Sq., 14th Fl.
New York, NY 10036-6530

Via fax & Reg. Mail – (212)-773-6350

RE: SBC Communications

Dear Mr. Turley:

You obviously know Ed Whitacre from your time in St. Louis and the Midwest. I hope your relationship with Ed will not skew your ethics in this matter. SBC Communications, Inc. (SBC) has already committed flagrant securities fraud with their 2004 1st Quarter Q et al, violating Sarbanes-Oxley in the process. SBC had an obligation to disclose liability that creates any uncertainties that "**...will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations.**" SBC has been operating a criminal enterprise in Missouri known as the Inter-Company Settlement System (ICS) [billing & collection of toll calls] under the regulatory radar, without a single tariff being filed, which said criminal enterprise violates, but not limited to, the Clayton Act, Sherman Act, FTC Act, and RICO. Consumers lost, due to illegal over-charges directly connected to the ICS, over $400 Billion, and, AT&T competitors lost over $300 Billion between 1984 and 1994. The total figures today are even more staggering. In March of 2004 I put SBC on written notice as to their liability and disclosure obligation under the SEC laws. Today, I demand on behalf of shareholders pursuant to SEC Rule 10A-3 that Ernst & Young make the SBC Audit Committee aware of this problem and inform them I want to present the evidence to them personally. After seeing the physical evidence they will understand clearly the liability.

Beginning in 1992, I lost through my four telecom companies that I owned, over $900 Million to date, which at 5% Compound interest for 13 years is about $1.7 Billion. In 1992, I had 3 year customer B&C contracts worth over $300 Million that each had two 3 year options. SBC in their capacity as "Contract Administrator" for the ICS illegally put me out of business. The conspiracy that began in 1984 is still very much alive and operating today, never having missed a day; hence, the statute of limitations has not even begun to run.

Page 2 (Ernst & Young)

(1)... 17 C.F.R. Ch. II, 229.303 states in (3) (ii);

> **"Describe any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations." [underline added for emphasis].**

The key word is uncertainties.

Commentary to 303 (a) 3 states;

> **"The discussion and analysis shall focus specifically on material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition."**

Commentary to 303 (a) 3 cont-

> **"This would include descriptions and amounts of (A) matters that would have an impact on future operations and have not had an impact in the past,..." [underline added for emphasis].**

Again the key word is uncertainties, with further inference on not and impact.

For uncertainties to be eliminated from disclosure one must conclude that the threatened liability in the upcoming **American TeleDial Corp (ATC) et al v. SBC Communications et al; William Lovern, Sr. et al v. SBC Communications et al** cases is certain not to materialize. SBC Management, nor its lawyers, nor the SEC can make that claim considering the defendant class violated the Judge Greene's Modified Final Judgment (MFJ), overcharging consumers Hundreds of Billions of Dollars, plus stealing Hundreds of Billions from AT&T's competitors, myself and my telecom companies included. The cases do not have to be filed for disclosure to be mandatory.

> **"...issue of materiality is a mixed question of law and fact that is generally for the jury." In Re Par Pharmaceutical, Inc. Securities Lit., 733 F. Supp. at 677, quoting TSC Industries, Inc. v. Northway, Inc., 426 U.S. at 450, 96 S. Ct. at 2132.**

Information is material if **"...a reasonable investor might have considered [it] important in the making of [the investment] decision." Affiliated Ute Citizens of Utah v. United States, 406 U.S. 128, 153-54; Cook v. Avien, 573 F. 2d 685, 693.** In the case of **Roeder v. Alpha Industries, Inc., 814 F. 2d 22, 25,** the court said;

Page 3 (Ernst & Young)

> **"...we conclude that reasonable investors might have considered defendants' alleged illegal conduct to be important information they would want to have before they made investment decisions."**
>
> **"Investors may prefer to steer away from an enterprise that circumvents fair competitive bidding and opens itself to accusations of misconduct. Furthermore, regardless of financial motives, investors may not want to associate themselves with such an enterprise."** ***Roeder Id.***
>
> **"The securities laws do not operate under the assumption that material information need not be disclosed if management has reason to suppress it. Investors may want to know about illegal activity for the same reason management will be reluctant to reveal it: it threatens to damage the corporation severely. Excepting from the disclosure rules information management has reason to hide would eviscerate the protection for investors embodied in the securities laws."** ***Roeder Id.***

Most important court quote, ***" Information is material if, a reasonable investor might have considered [it] important in the making of [the investment] decision."*** ***Roeder*** citing - **Affiliated Ute Citizens of Utah, supra. [U.S. Supreme Court].**

I concede that the companies in question are not required to disclose our legal theories as to the many different causes of action; however, there is no doubt about the uncertainty of the alleged liability, [it] is not unsubstantiated as we have undeniable evidence in the form of the Defendants' internal documents, which clearly prove the allegations and, it is anything but "...routine litigation." In addition, we will be providing information to the Missouri PSC in preparation for formal hearings about the misuse of the (ICS). Therefore, the alleged liability should have been disclosed so the investors can decide for themselves. ***"Reasonable investors might consider the information important."*** The ***Ute Citizens of Utah*** case opinion requires disclosure.

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(2)... Aiding & Abetting By Third Parties: Disclosure requirements

Another item to be discussed is the disclosure requirements of outside attorneys and third parties in conjunction with the securities laws. As you know, there are an abundance of outside lawyers / third parties, auditors, etc... directly involved with SBC - specifically pertaining to the disclosure issue under **17 CFR 229.303** in dispute. The Defendant's lawyers have made the same mistakes that former White House lawyers made when Mrs. Clinton took the position that they represented the President and First Lady instead of the American People. Defendant lawyers in this case have made that same mistake by taking the position that they represent management/lawyers instead of the shareholders of SBC.

Page 4 (Ernst & Young)

The types of frauds prohibited under the securities laws are less rigid than the standards established by common law. Examples: **Lerman v. Tenney, 295 F. Supp. 780; U.S. v. Prey, 452 F. Supp. 788; Miller v. Steinbach, 268 F. Supp. 255.** In the current dispute lawyers for SBC, its management, and agents have become aiders and abettors.

> **"Where a person or business entity knowingly gives aid and assistance to a securities fraud perpetrated by another, the regulatory or deterrent purpose of the securities laws will be best served by allowing persons injured by the wrongs to get relief from the aiders and abettors, as well as the wrongdoers."**

In re Equity Funding Corp. of America Securities Litigation, 416 F. Supp. 161.

Without giving away a major part of our case, many times third parties have a disclosure requirement under the securities laws the same as management. **See Hochfelder v. Earnst & Earnst, 503 F. 2d 1100; Hochfelder v. Midwest Stock Exchange, 503 F. 2d 364; Kerbs v. Fall River Industries, Inc., 502 F. 2d 731; Strong v. France, 474 F. 2d 747.** Third parties can easily become parties to derivative actions for failure to disclose to the shareholders.

What's really scary is the number of **"Officers of The Court"** that are involved in aiding and abetting securities fraud connected to this matter. There is a fiduciary relationship of trust and confidence between outside lawyers and auditors working for the company and especially the shareholders. The United States Supreme Court has decreed that under the federal securities laws, a duty to disclose; ... " **arises from the relationship between parties." Dirks v. SEC, 463 U.S. 646, 658;** and, it will exist if there is ... **"fiduciary or other similar relation of trust or confidence between them." Chiarella v. United States, 445 U.S. 222, 228; See Schatz v. Rosenberg, 943 F. 2d 485 (4th Cir. 1991).**

It is well established that the **"Right of Contribution"** for violations of the federal securities laws exists among **"Joint Tortfeasors." See Greene v. Emerson, Ltd., 102 F.R.D. 33, 36, (S.D.N.Y.), aff'd. sub nom; Kenneth Leventhal & Co. v. Joyner Wholesale Co., 736 F. 2d 29; See also, Tucker, 646 F. 2d 727; and, In Re Leslie Fay Companies, Inc. Securities Litigation, 918 F. Supp. 749.**

I hope all parties will reconsider their current positions regarding disclosure. The Audit Committee at SBC has a legal responsibility to investigate, independent of management, violations of Sarbanes-Oxley and 303. **"REASONABLE INVESTORS HAVE THE RIGHT TO CONSIDER ALLEGED ILLEGAL CONDUCT BEFORE MAKING INVESTMENT DECISIONS."** ***Roeder supra.*** The court said alleged, NOT proven. Your friend Ed Whitacre has violated Sarbanes-Oxley. You must not allow this to happen again with the upcoming Q.

Even though several federal district courts have held that there is no private right of action under Item 303, a properly pled case alleging common law fraud and negligent misrepresentation in conjunction with the Defendants disclosure duty under Rule 10b-5 will suffice.

Page 5 (Ernst & Young)

The determination of what needs to be disclosed often depends on the materiality standard. SEC Rule 12b-2 states that, "The term 'material,' when used to qualify a requirement for furnishing information as to any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to buy or sell the securities registered." With respect to misstatements or failures to disclose, relevant factors for the determination of materiality include the following:

- Whether the misstatement masks a change in earnings or other trends;
- Whether the misstatement turns a loss into income or vice versa;
- Whether the misstatement masks a failure to meet analysts' projections;
- Whether the misstatement hides an illegal activity, etc." [underline added for emphasis]

The mixing of qualitative and quantitative factors can result in a numerically insignificant matter being considered by the SEC and the courts to be material. In light of higher standards of accountability and the greater consequences of noncompliance, companies should always err on the side of accurate and full disclosure.

The SEC has emphasized that "[i]nvestors have legitimate expectations that public companies are making, and will continue to make, prompt disclosure of significant corporate developments." SEC Release No. 18271, 1981 SEC LEXIS 292, at *13 (Nov. 19, 1981). Furthermore, under Items 303(a) and 303(b) of Regulation S-K, promulgated by the SEC under the Exchange Act, there is a duty to disclose in annual and periodic reports filed with the SEC "known trends or any known demands, commitments, events or uncertainties" that are reasonably likely to have a material impact on a company's sales revenues, income or liquidity, or cause previously reported financial information not to be indicative of future operating results. 17 C.F.R. §229.303(a)(1)-(3) and Instruction 3. While a company is not required to make predictions about its future performance in its public records pursuant to Item 303 of Regulation S-K, the SEC explicitly distinguishes predictions from presently known data which will impact upon future operating results, which the SEC does require to be disclosed if material. See, e.g., In re Caterpillar, Inc., SEC Release No. 30532, 1992 SEC LEXIS 786, at *15 (Mar. 31, 1992) (a company must provide sufficient information to permit investors to see the company "through the eyes of management").

The SEC has repeatedly stated that the anti-fraud provisions of the federal securities laws, which are intended to ensure that the investing public is provided with "complete and accurate information about companies whose securities are publicly traded," apply to all public statements by persons speaking on behalf of publicly traded companies "that can reasonably be expected to reach investors and the trading markets, whoever the intended primary audience." SEC Release No.33-6504, 1984 SEC LEXIS 2559, at *2 (Jan. 13, 1984).

Not only does Rule 10b-5 forbid the making of "any untrue statement of a material fact," it also provides for **scheme liability**. Scheme liability is authorized by the text of §10(b). According to the Supreme Court, §10(b)'s prohibition of "any manipulative or deceptive device or contrivance" necessarily encompasses any "scheme to defraud."

Page 6 (Ernst & Young)

In Ernst & Ernst v. Hochfelder, 425 U.S. 185(1976), the Court referred to the dictionary definitions of §10(b)'s words to find that a "device" is ' "[t]hat which is devised, or formed by design; a contrivance; an invention; project; scheme; often, a scheme to deceive; a stratagem; an artifice.' " Id. at 199 n.20 (quoting Webster's International Dictionary (2d ed. 1934)). The Court found that a "contrivance" means ' "a scheme, plan, or artifice.'" Id. (quoting Webster's International Dictionary (2d ed. 1934)); see also Aaron v. SEC,446 U.S. 680, 696 n.13 (1980).

Clearly, "scheme" is encompassed in the broad language of §10(b). Thus Rule 10b-5 – adopted by the SEC to implement §10(b) – makes it unlawful for any person "directly or indirectly" to employ "any device, scheme, or artifice to defraud," "[t]o make any untrue statement[s]," or to "engage in any act, practice, or course of business which operates... as a fraud or deceit upon any person." 17 C.F.R. §240.10b-5. [See also U.S. Quest, Ltd. v. Kimmons, 228 F.3d 399, 407 (5th Cir. 2000)].

Liability to the corporation for a loss may be said to arise from an unconsidered failure of the board to act in circumstances in which due attention would, arguably, have prevented the loss. Cases arising whereby ("an unconsidered failure of the board to act in circumstances in which due attention would, arguably, have prevented the loss") do not afford directors the protection of the business judgment rule because in such cases the directors did not exercise any judgment. Such cases could potentially involve the directors' failure to adequately supervise the affairs of the corporation. In proposed rules relating to audit committees and other Sarbanes-Oxley Act issues, the New York Stock Exchange observed that "|w|hile it is not the audit committee's responsibility to certify the company's financial statements or to guarantee the auditor's report, the committee stands at the crucial intersection of management, independent auditors, internal auditors and the board of directors."

Audit committee members, and outside auditors continue to have fiduciary duties to the company and its shareholders, which include the duty of care, the duty of loyalty, and the duty to make informed judgments. The business judgment rule (BJR) is a defense available in litigation to shield directors from breach of fiduciary claims provided that, among other things, directors make informed, rational decisions. Whether audit committee members can successfully defend a claim for breach of duty to make informed judgments will depend upon whether they fully considered all material information reasonably available to them before making a decision [see *Smith v. Van Gorkam*, 488 A.2d 858 (1985)]. Thus, audit committees must be able to probe for reliable and relevant information, which means they must meet with me and consider the information that has been sent to the Board in relation to the upcoming disclosure |Public Report] of the Missouri PSC. This is why you, the Audit Committee, has no choice but to meet with me on this issue.

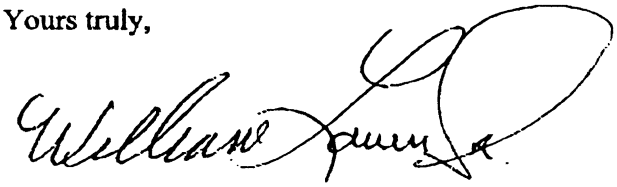
Audit committee members are subject to actions by the SEC under the Securities and Exchange Act of 1934, which grants the SEC broad enforcement powers, increases the maximum penalties for existing crimes, and creates new federal crimes, such as banning any director or officer of an issuer of securities from taking any action to fraudulently influence, coerce, manipulate, or mislead an accountant engaged in the performance of an audit for the purpose of rendering such financial statements materially misleading. Ernst & Young could find themselves in a bad way if you do not handle this request properly. I will hold you and Ernst & Young accountable.

Page 7 (Ernst & Young)

Section 10(b) of the 1934 Act also lowers the threshold for the SEC to ban a person from serving as a director or officer upon a finding that such person demonstrates "unfitness" to serve as an officer or director. The SEC also has the power to ban a person from serving as a director or officer in a cease-and-desist proceeding if such person demonstrates unfitness. Ernst & Young and the SBC Audit Committee are in a no win situation. Disclosure is mandatory in the next Q filing, plus the 1st Quarter Q must be amended.

I expect Ernst & Young to follow the rule of law without exception. Failure to do so will drag Ernst & Young into a class action suit[s] that with treble damages, joint & several, can rise above $2.5 Trillion, with no possible antitrust exemption as the ICS has never been regulated. I do not believe Ernst & Young can manage that. I expect to hear from you ASAP.

Yours truly,



William Lovern, Sr.
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William Lovern, Sr. et al v. SBC Communications et al
William Lovern, Sr. et al v. Telcordia Technologies et al

Dear Companies:

On March 29, 2004, I put Telcordia Technologies on written notice regarding their massive liability associated with the Intercompany Settlement System (ICS). At the CompTel Convention in Las Vegas in February 1992, all the Bell Companies sat in my Hotel Suite with their lawyers and denied that the ICS even existed. On March 29, 1992, through my partner at the time Fidelity Telephone, I began legally downloading messages into the ICS for LEC Billing. The messages were formatted in EMR instead of the more expensive EMI format, and they flew through the system as expected, ending up at LECS throughout the country just like AT&T messages did daily, except for one thing, when the LECs began calling Southwestern Bell (SWBT) asking what was going on, SWBT panicked. They knew I had figured out the codes and was in the "Country Club's" secret billing system. It was the beginning of the end of the telecommunication industry...POST DIVESTITURE. It was the beginning of the end of the RBOCs discriminatory practices. The ICS has been used as a criminal racketeering enterprise. The criminal enterprise is still in operation today and you can see evidence of such by going to www.trainfo.com/products_services/tra/downloads/raoguide.pdf. The beginning of the criminal racketeering enterprise started when Judge Greene ordered AT&T to divest themselves of their original billing and collection system [ICS] but that didn't happen. Instead it was replicated and the replicated version was installed at Southwestern Bell Telephone in Kansas City, MO by Alex Abjornson who worked at Bell Labs, and he is who designed and built the system.

Page 2 (Telcordia – Warburg – Providence)

The installation at Southwestern Bell Telephone (SWBT) occurred in 1984. In the Spring of 1984 there was a secret meeting at a Hotel in St. Louis between the Regional Bell Operating Companies (RBOCs) and AT&T to discuss how the RBOCs were going to bill and collect AT&T's toll calls. AT&T supposedly did not have a billing system any longer, or so the industry thought.

On February 28, 1983, Judge Greene's Modification of Final Judgment was affirmed [103 S. Ct. 1240] in the now famous case, **U.S. v. American Tel. and Tel. Co.,** 552 F. Supp. 131 (1982). In his decision the court said;

> **"Antitrust consent decree must leave defendant without ability to resume actions which constituted antitrust violation in first place; the decree should not be limited to past violations, but it must also effectively foreclose possibility that antitrust violations will occur or recur."**

Judge Greene went on to say that the way AT&T had maintained monopoly power in telecommunications was through the control of the Bell Operating Companies (BOCs) and their strategic bottleneck position. Divestiture was intended to require the removal of the two main barriers that previously deterred firms from entering or competing effectively in the interexchange market. Regarding exchange access services, which included B&C services, [bottleneck service] the court said;

Judge Greene 552 F. Supp. at pg. 171

> **"AT&T will no longer have the opportunity to provide discriminatory interconnection to competitors. The Operating Companies [BOCs] will own the local exchange facilities. Since these companies will not be providing interexchange services [S-1822], they will lack AT&T's incentive to discriminate.**
>
> **Moreover, they will be required to provide all interexchange carriers with exchange access that is equal in type, quality, and price to that provided to AT&T and its affiliates."**

How badly did the BOCs violate Judge Greene's Order? Below is the speech I gave at the 1994 NARUC Convention in Reno. It's worthy of another read today to bring things into perspective.

"Speech" – BY: WILLIAM LOVERN, SR. given at "National Association of Regulatory Utility Commissioners" (NARUC) - National Convention, November 1994, Reno, Nevada. "NOTE: 2004"...is information added in 2004, not part of the speech.
Also in 1994 we did not have any where near the physical evidence or the BOC employee testimony we have today that proves our claims. Our evidence today is overwhelming.

Today marks the 10th year, 11th month, and 12th day since Divestiture.
What has changed in the telecommunications industry, as far as reshuffling the wealth since the first day of January, 1984 has been remarkable; however, what has not changed in the telecommunication industry since the first day in January, 1984, is the continuing AT&T dominance through its ability to exclusively offer RAO based *"Special Number Calling Cards"* and to receive preferential premium billing services from all US telephone companies.

The importance of these two issues is this:

AT&T has dominated the calling card market, making billions of dollars over the years, through a special calling card arrangement with Cincinnati Bell and Bell South. This special arrangement has allowed AT&T to receive,

*** preferential treatment and premium billing services, as if the card had been issued by a Bell Operating Company ("BOC") or Independent Telephone Company ("ITC") and,**

*** no other competitive interexchange carrier has received such preferential treatment and today 10 years, 11 months and 12 days after Divestiture, no competitive interexchange carrier has been able to market an intraLATA and interLATA calling card that is accepted by virtually the entire telephone industry in the United States.**

What is this arrangement I am referring to?

SPECIAL BILLING NUMBER (RAO) CALLING CARDS

Here's what that includes;

1. Exclusive use of Cincinnati Bell's RAOs. AT&T has been able to issue Special Calling Cards (approximately 4 million) using 308 and 077 (077 appears as 677 on the actual calling card - per Bellcore specifications).

2. Exclusive use of Caribbean RAOs. AT&T has been able to issue Special Calling Cards (approximately 8 million) using RAO codes 503, 506, 507, 508. Each of these RAO codes - having been assigned by Bellcore to specific Caribbean countries - were never intended to be used for the issuance of calling cards, let alone calling cards for AT&T.

The use of these RAOs enables AT&T to issue 12 million, fully honored and completely billable calling cards that have generated billions of dollars over the course of the past few years, inclusive of an enormous amount of money for calls transported over other IC networks, charged to one of these cards, yet AT&T was paid for the call instead of the IC who actually transported the call.

Let's examine the preferential treatment that goes along with this arrangement.

BILLING & COLLECTION

AT&T has received premium billing services since day one of Divestiture. AT&T believes they paid too much money for the service, but the rewards have been enormous. EXAMPLES;

* What competitive interexchange carrier can say that they have 100% market presence in non-equal access as well as equal access telephone companies?

* What competitive interexchange carrier can market a calling card that is universally accepted by virtually every US Telephone Company - for intraLATA, interLATA, and international calling?

* What competitive interexchange carrier receives the comprehensive detail level Billing & Collection ("B&C") reports TODAY that AT&T has been receiving before, during and after Divestiture?

* What competitive interexchange carrier can boast that Bellcore actually changed the Bellcore CIID assignments document, for the entire Bellcore Client Companies [BOCs as you know them] to legitimize AT&T's blatant misuse of Cincinnati Bell and the Caribbean RAOs that have resulted in the issuance of up to 12 million AT&T exclusive calling cards?

* And what competitive interexchange carrier has their own unique version of the Exchange Message Interface ("EMI") that is used by the telephone industry to maintain premium billing services for AT&T?

I am referring to the AT&T - EMI or Exchange Standards Reference Document, or AT&T ESRD. [published and put out by AT&T, not Bellcore]

To summarize there are two systems for billing and collection services. A premium system, or Rolls Royce for AT&T and the BOCs, [BCCs, which includes SNET & CBT] then there is the Chevrolet for everyone else. Oddly the Chevrolet costs as much as a 1200% more to use than the Rolls Royce system and guess who pays for it all, the American Consumer, via the rates associated with LEC Billing.

Most people think AT&T divested themselves of their original billing system (System). Not true, they transferred ownership of replicated versions of their billing systems and kept the original for themselves. ***Alex Abjornson*** [the man who designed, implemented, and wrote the Bellcore Manuals for the System], installed the replicated version at Southwestern Bell in Kansas City. The original CMDS and CATS systems have been alive and well for the last 10 years, 11 months, and 12 days, still controlled by AT&T.

HISTORY ON THE BELL COMPANIES AND DIVESTITURE

It is important to understand the history of billing services, as offered by the Regional Bell Operating Companies or ("RBOCs").

As a result of Divestiture the Access Service Tariff came into existence.

The initial intent of the Tariff was to structure how the RBOCs would be compensated for carrier use of BOC facilities.

Billing and Collection services were not directly a part of local access considerations and were defined as "Ancillary Services."

RBOC analysis determined that under Divested conditions, End User Billing [B&C] could be more than an ancillary requirement of Divestiture.

RBOC awareness as to the revenue potential of Billing & Collection grew, and as a result the RBOCs directed the CSO [later became Bellcore] in September, 1982, to form a Task Force to evaluate billing as a line of business or "LOB."

It should be noted that the development of Billing as a LOB was constrained by the historical regulated rate of return philosophy until April 1983.

In April, 1983, because of the FCC Third Report and Order, Docket 78-72, it became evident that even the short run potentials for Billing as a LOB were theoretically expanded considerably. [HUGE PROFITS]

This resulted in the creation of a new CSO (Bellcore) Task Force to evaluate the potential.

At this time in history, spring of 1983, B&C was no longer subject to regulation.

This meant that if B&C revenues were above or below the FCC allowed rate of return for the other Access Services, whatever B&C earned [more than or less than the normal FCC allowed rate of return] would not impact other Access Service revenues.

In essence, as of April 1983, B&C was allowed to make as much money as it could - **AN IMPORTANT POINT TO REMEMBER.**

[THIS RESULTED IN THE CREATION OF A NEW TASK FORCE TO EVALUATE THE REVENUE POTENTIAL FOR THE BOCS.]

The Task Force met between April 28th through May 29th, 1983. The product of this Task Force was the compilation of over 300 pages of significant data that provided National Parameters from which the RBOCs could utilize for their regional "price driving".. B&C models.

TASK FORCE RESULTS & CONCLUSIONS

A couple of the key recommendations from this Task Force are as follows:

1. Billing & Collection should be considered a LOB by the RBOCs.

2. The mechanism to be used by the RBOCs for determining prices should be based upon the J. Goldberg cost model, generally referred to as the "Top Down Methodology." This process would allow each RBOC to quickly ...calculate revenue maximizing prices. [they artificially inflated costs associated with B&C]

Through the allocation of costs to the various billing elements, each RBOC could assign various costs. What this means is;

1. Billing & Collection rates were manipulated to fully recover the money that RBOCs were receiving from AT&T before Divestiture.

2. There was no consideration by the RBOCs of pricing B&C services competitively - because there were no other competitors.

INTERCOMPANY SETTLEMENTS AND THE CMDS I SYSTEM

At the same time the Task Force was developing AT&T and B&C rates, the RBOCs and CSO [Bellcore] were creating what I refer to as the *Country Club* billing system, the Rolls Royce, the second system, the "circle within the circle."

This secret billing system for the telephone industry was fully functional in every way to the Tariffed billing system being presented to the FCC, except for the COSTS. THE RATES WERE SIGNIFICANTLY LOWER. HOW LOW? Originally the rate per message for billing was set at $.10 per message.

This rate was immediately lowered by 50% to $.05 per message including inquiry inclusive of Rolls Royce reporting system. This still exists today as we speak. This is the Intercompany Settlements System ("ICS") which is facilitated through the Centralized Message Distribution System ("CMDS I") and BOC (BCC) CATS, controlled by Bellcore and the BOCs, operated by Southwestern Bell and it has been operating in full swing since Divestiture.

Imagine $.05 per message [a nickel], inclusive of all services including inquiry and full premium reporting [Rolls Royce] versus $.20, $.30, $.40 per message, even higher, from the Chevrolet which provides inadequate reporting.

QUESTION NO. 1 FOR THE COMMITTEE

Why, when the RBOCs and Bellcore have a fully functional means of providing B&C services through ICS at $.05 per message did the FCC approve B&C Tariffs that reflected rates to the interexchange carrier [IXC] market that were as much as 1200% greater than the rates the RBOCs charged themselves?

WHAT WAS SOME OF THE IMPACT OF TWO B&C SYSTEMS

As a result of AT&T having to pay the Tariffed B&C rates, the RBOCs were able to fully recover pre-Divestiture revenues, in essence - WINDFALL PROFITS.

At the same time the RBOCs have maintained a monopolistic [oligopoly] intercompany settlement billing system for their own use, at a fraction of the cost being charged to the IXC industry. How many of the IXCs in the industry today have B&C rates of $.05 per message, with inquiry, detail reporting and, ***100% ON NET CAPABILITY?***

The artificially inflated costs associated with B&C, which were part of the 1983 tariffs filed at the FCC, pursuant to Divestiture, were essentially the same tariff structures and rates that the BOCs filed in each of your states during this time frame. The ITCs also used the same poison data as the CSO filed the tariffs for the ECA ["NECA" as you know it today], based on the cost information compiled by the infamous Task Force. This affected every consumer in the country as these artificially inflated B&C costs resulted in higher rates.

[Note: November 2004 - As of 2004, estimated overcharges to consumers {wireline only} exceeds $400,000,000,000, AT&T Competitors exceeds $300,000,000,000]

POST DIVESTITURE RESULTS

The Task Force, via the J. Goldberg costing methodology, had already shifted ALL B&C service costs down into the basic rate elements of the service, so regardless of the rate of return, windfall profits would exist, corrupting the FCC's decision to place a 12.75 maximum rate of return on billing services.

On February 17, 1984, the FCC released Memorandum Opinion and Order, CC Docket No. 83-1145, [FCC 84-51, 34298], Investigation of Access and Divestiture Related Tariffs.

In this document the FCC states that the common line rate elements represent a $10.8 Billion revenue requirement, of which the BOCs claim $8.53 Billion or 79%. This is the ... "best estimate of future costs"... represented in the BOCs tariffs, however the FCC stated and I quote,

"The budget view is a list of 59 items relating to unseparated investment, expenses, taxes, and reserves listed in work papers. However, no documentation is presented to explain the source for all the figures which are used to derive interstate amounts, and thus the basis for all the access costs and rates, the discussion of the budget view occupies less than two and a half pages in each BOC filing."

They went on to say;

"...it is not possible from these filings to evaluate or verify the figures in the budget view. First, the sources of the budget view figures are not clearly specified and cannot be checked."

The FCC then predicted the future by stating that if the figures are wrong the whole industry would be affected. [Fruit from the poison tree], I quote again;

"As we pointed out, the budget view is of crucial importance in these filings as the direct basis for the BOC's claimed revenue requirements, is the root for every individual rate. It is additionally important because of the BOC and ECA top - down methodology. Any errors in the budget view would affect essentially every rate under this approach."

To my knowledge, at no time has the FCC or any other Federal agency ever fully investigated or audited the component costs of the RBOC billing services to determine if the costs applied to the billing elements were true, reasonable, and not overstated. The FCC went on to say;

" ...that given their inability to understand and evaluate these rates, they were going to determine whether billing and collection should be detariffed."

Billing & Collection Services were subsequently detariffed under CC Docket No. 85-88. effective January 1, 1987. **[NOTE: 2004 - The Bert Halprin Doctrine, which made him a rich man in post FCC service, representing the BOCs].**

[NOTE: 2004 - Keep in mind that the MFJ required the Bell operating Companies to provide AT&T's competitors the same services as AT&T were receiving in *"...like, quality, and price."*

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QUESTION NO. 2 FOR THE COMMITTEE

Considering the overwhelming evidence that indicates the costs associated with Billing & Collection were intentionally artificially inflated, costing consumers hundreds of billions of dollars in higher rates, why hasn't anyone audited the BOCs component costs associated with billing services? I hope this committee will also ask why the FCC just walked away, or turned their heads from what they new to be an obvious problem and will you [NARUC] investigate?

AT&T new it was a problem, that's why they were filing emergency petitions in late 1983 and early 1984. AT&T said they would loose roughly 60% of there interstate revenue based on the costs and tariffs filed by the BOCs and ECA.

To calm AT&T the BOCs settled with AT&T outside the FCC and the BOCs gave AT&T a present to sooth the wound. That present was called **"Stargate"**. Cincinnati Bell was AT&T's sponsoring LEC into the CMDS I / BOC CATS billing system. This included access to the ICS system and the $.05 price.

In 1987, the Department of Justice investigated SNAFA ("Shared Network Access Facilities Agreement"). For some reason DOJ [Philip Sauntry] completely missed ???? the entire calling card scheme. They missed the fact that AT&T still maintained their original billing system CMDS & CATS. Someone was asleep at the wheel, or ????.

By 1988, AT&T was now issuing calling cards based on Cincinnati Bell's ("CBT") RAOs and Caribbean LECs RAO numbers. Mass marketing began on these new AT&T joint use calling cards. AT&T's use of the RAOs assigned to CBT and the Caribbean LECs went unchallenged by Bellcore or the BOCs.

In 1989, Card Issuer Identifier ("CIID" Numbers) were being talked about by Bellcore as a solution for universal calling cards.

In 1990, CIID Numbers are assigned to requesting carriers.

In 1991, the FCC finds CBT guilty of discrimination for violating Title Two of the Communications Act, in connection with there refusal to supply validation information about the AT&T Special Number calling cards to other IXCs. CBT's response is they will get out of the Calling card business, yet Bellcore reassigns CIID numbers to AT&T that just happen to match AT&T's RAO based Special Number joint use calling cards, issued in connection with CBT and the Caribbean LECs. This brings us to;

QUESTION NO. 3 FOR THE COMMITTEE

Why is it that no other IXC, other than AT&T and now UNITEL a Canadian Long distance carrier, have a universally accepted calling card based on any Bellcore assigned CIID numbers almost 11 years after Divestiture. This is an important question as I know it's not because no other IXC wants to go to market with one.

In closing, I urge the committee and NARUC to launch an investigation into the anti-competitive barriers put up by the BOCs which have prevented any other IXC from being able to compete head to head with AT&T, the LECs, and now UNITEL in the lucrative calling card business. The monopoly by which the BOCs control Billing & Collection has got to be disassembled. The bottleneck on billing services is worse today than in 1984.

The MFJ not only required divestiture of the Bell System local exchange operations, but also required the dissolution of the partnership arrangements among the Bell System Companies. Preferential partnership arrangements between AT&T and the BOCs have cost consumers Hundreds of billions of dollars in overcharges.

The industry has lost hundreds of billions of dollars because of anti-competitive barriers controlled by the BOCs and something you probably don't know, most states and the federal government, have lost an incredible amount of tax dollars due to the inflated costs associated with billing services which have been used to wrongfully deduct expenses from tax returns. This has happened at every telephone company in America.

I urge this committee and NARUC to begin a thorough investigation into the BOCs and AT&T regarding their preferential partnership agreements that violate the MFJ and prevent the rest of the industry from enjoying the right to compete in a free market, void of antitrust and anti-competitive behavior.

It is important that you look at Billing & Collection as it is the most misunderstood, yet probably the most important aspect of the entire telecommunication industry. B&C services are not even close to being competitive. The BOCs bottleneck controls everyone accept AT&T as no one is allowed to use the system as the court originally intended, accept the BOCs. Everyone else, except AT&T, is being held hostage, some have been put out of business for challenging the BOCs control, while attempting to compete.

[Note: 2004 – It was American TeleDial Corp (ATC) & National TeleProcessing, Inc. (NTI) that were illegally put out of business for legally accessing the ICS (InterCompany Settlement System), via Fidelity Telephone, beginning in March 1992. It is the Fidelity court settlement {lawsuit filed by ATC as litigation manager on behalf of Fidelity that has been voided by TMA International Trusts who owned ATC & NTI}. Fidelity assigned, via contract in 1992, all of their legal claims over to ATC].

If the BOCs had been given approval to go into the interstate long distance business, no one, and I emphasize NO ONE would be able to compete head to head with them accept AT&T because each BOC has installed their own version of the billing system locally for their own control region by region. This is why all new deals between AT&T and the BOCs are now locally negotiated whereas before AT&T worked primarily through CBT and Bell South.

[NOTE: 2004 – VoIP is going to eliminate the cash cow known as ICS as it relates to wireline, however the SINS for 20 years of abuse are enormous. By combining wireline overcharging associated with the ICS and wireless overcharging associated with the ICS, the defendants in the upcoming class actions are looking at treble damages approximately in the amount of $2.5 TRILLION in "Joint & Several" liability. The Cingular AT&T Wireless merger can be reversed based on serious anticompetitive issues associated with the ICS never taken into consideration by DOJ. We are in the process of educating DOJ's Antitrust Division and the FCC as the merger is not final via the Tunney Act. It will not be final for about six weeks.

When you sell a service to the general public it's important to be able to collect your money in an efficient manner. Billing services are not competitive today, they never have been competitive, and we are 10 years, 11 months, and 12 days after Divestiture and the "Country Clubs" strangle hold on the industry is tighter than ever. The evidence of foul play warrants your attention and the attention of Washington, inclusive of Congress.

I hope you take appropriate steps to protect the consumers and the industry from further erosion. The Supreme Court said it best in the case *International Salt Co. V. United States;*

> " it is not necessary that all of the untraveled roads to [anticompetitive conduct] be left open and that only the worn one be closed. The usual ways to the prohibited goals may be blocked against the proven transgressor."

To put it all in perspective, had MCI been given the same billing services and opportunities as AT&T, their roadside billboards claiming how much money they have saved consumers would have to be twice as wide to accommodate the extra zeros.

Ladies and Gentlemen you know who the proven transgressors are, you also know about anti-competitive conduct. I hope you will do something about it.

End of Speech

Page 12 (Telcordia – Warburg – Providence)

See the attached letter regarding my stolen money. Now for case number 1.

William Lovern, Sr. et al v. SBC Communications et al

This is the lawsuit to collect the approximate **$1,700,000,000.00**, my partners and I lost as a result of being illegally blocked from using the ICS. In 1992, SWBT in their capacity as "Contract Administrator for the ICS, along with the other Bellcore Client Companies (BCCs) who acted as "Hosts" to the ICS, intentionally blocked Fidelity's [my contractual partner - access to the system]. Fidelity signed over all their legal claims to me and my company American TeleDial Corp (ATC). I filed suit in state court in Missouri and forced SWBT to open access to the ICS, via a TRO. Bellcore was a defendant in this case.

The case was bumped to federal court in Kansas, City MO, where eventually Fidelity [after being threatened by SWBT who told Fidelity the BOCs would put Fidelity out of business], through their St. Louis Law Firm, conspired with the BOCs, Bellcore et al, to illegally settle the case without my approval. The settlement was accepted by the court and sealed. Myself, my partners, nor ATC received one penny of compensation for our losses. Today we can prove SWBT, Fidelity and their lawyers committed fraud on the court, as well committing fraud etc against myself and ATC. The Fidelity settlement has nothing to do with today's claims.

We proved in March that the federal courthouse in Kansas City where the settlement took place, had no legal jurisdiction. The state of Missouri never transferred legal jurisdiction [Missouri Code 12.030 & 12.040 in conjunction with Title 40 U.S.C., Sec. 255, in conjunction with Art. I, Sec. 8, cl. 17 U.S. Constitution - {Also, see Criminal Resource Manual (DOJ Title 9) Sec.'s 664, 665, 668, and, see **Jurisdiction Over Federal Areas Within the States, Report of the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States, ordered by President Eisenhower 1958].** The state has confirmed the lack of jurisdiction; hence, the Judge had no jurisdiction, therefore the settlement is null and void. This is just icing on the cake, over and above our other evidence. Jurisdiction is a moot issue as to whether or not we can prove our claims.

This creates an enormous problem for SWBT (SBC) and Bellcore (Telcordia) as the entire industry has been hiding behind this illegal worthless settlement for 11 years. The BCCs and AT&T made Billions of dollars off this illegal scam. Collectively they made **Hundreds of Billions of Dollars**, all in violation of the MFJ. My use of the ICS was completely legal and in accordance with the MFJ. Judge Green gave all LECs the legal right to use the system, he just didn't order the BOCs to educate anyone how to use it. Nullifying the settlement is NOT necessary for me to bring the class action case[s]. The overall $2.5 Trillion in liability is over and above the Fidelity settlement.

During the 1992 preliminary hearing in federal court BOC / Bellcore experts and lawyers perjured themselves. SBC's lawyers subordinated perjury. The Bellcore BOC lawyers intentionally withheld discovery that was later obtained in 1994 – 2004. Today those lawyers claim discovery had not completed back 1992, therefore they technically did not withhold.

Page 13 (Telcordia – Warburg – Providence)

The documents obtained post 1993 include confidential internal bulletins from Bellcore, to the BCCs, explaining to them how to covertly bill AT&T messages so as to not expose the secret billing system, inclusive of flow charts showing how the money was going to be laundered.

The secret billing system got its foot on the ground as a result of RBOC proposals sent to AT&T, part and parcel to the August 1985 letter enclosed. Soon after the RBOCs all agreed to bill AT&T messages covertly, CMDS II was created [paid for by AT&T], which allowed AT&T to covertly go into the ICS and manage its toll messages throughout North America, Canada, and the Caribbean.

When DOJ ordered the RBOCs to cancel AT&T's 12 million line based BOC issued calling cards because they violated the MFJ, AT&T had no way to replace the 12 million cards, so they purchased the right to use Caribbean LEC RAO numbers [four] owned by Cable & wireless, plus, Cincinnati Bell (CBT) received two CIID numbers from Bellcore. Each RAO/CIID number was good for 2 million calling card combinations; hence, the 12 million cancelled cards were replaced, except with one very serious difference. The new AT&T proprietary calling cards had scrambled numbers on them, which made it impossible for AT&T's competitors to format a billable call record, which resulted in 100% of these message being sent back to AT&T's competitors marked unbillable. Bottom line, when someone other than AT&T transported a call charged to one of the AT&T scrambled calling cards the IXC who transported the call never got paid. The industry thought the AT&T customer was getting free long distance. WRONG! Through a sophisticated illegal scheme now known as "Reverse Translation" stolen messages were all collected by the BCCs in their capacity as "Hosts", then sent to CBT who sold the receivables to AT&T via PARIS [accounting system designed for AT&T, part and parcel to the secret billing system] on paper, who then in turn sold them back to CBT [decoding the messages in the process], which said messages were then submitted by CBT [domestic] Bellsouth {International] into the secret billing system [ICS] coded 000 [means transported by the BCC LEC] in the carrier identification code in the EMR format instead of 288 [AT&T's carrier identification code]. By being coded 000 it appeared that the messages had been transported by the BCC LEC, therefore the revenue belonged to BCC. Between 1985 and 1992 the vast majority of the messages were laundered through CBT including interstate interLata messages. The big problem was CBT did not transport interstate messages outside OHIO. Millions of interstate message revenue were credited to CBT's BCC CATS account. Alex Abjornson has testified that before retiring from Bellcore he noticed all this money being credited to CBT and he questioned his boss, Bill Micou, who promptly told Alex that it was a secret deal for AT&T called "Stargate" and that if he said anything about it he would be fired and lose his pension. Mr. Abjornson has since told all. CBT was being credited Millions of Dollars by Bellcore for interstate messages, via their CATS account / reports, which I have in my possession. I obtained these documents through a subpoena. CBT to this day denies ever billing AT&T interstate messages, even though the physical evidence is undeniable.

ATC and its sister company National Teleprocessing, Inc. (NTI) had signed billing & collection contracts in 1992 with AT&T competitors who had been using the seven RBOCs, CBT and Southern New England Telephone (SNET) {nine companies are known as the Bellcore Client Companies BCCs – they are still in place today with SWBT still the Contract Administrator, or as we know them, the "KingPin" of the Racketeering Enterprise. [today the BCCs are called Direct Participants].

Page 14 (Telcordia – Warburg – Providence)

Our B&C Contracts in 1992 were worth about $300 Million over a three year period, and each one had two, 3 year extensions, total value about $900 Million. At 7% compound interest that is about $1.7 Billion today. The industry was flocking to us for Billing & Collection (B&C) services because we could provide a better product [Rolls Royce – ICS] than they were getting from the RBOCs / BCCs [Chevrolet, or outer circle as described in my speech]. The Sacred Cash Cow was in jeopardy as ATC / NTI had forced the "Country Club" to open its membership. The way they reacted one would have thought I was an African American trying to join Augusta National in 1960. Their panic was almost humorous it was so animated, however it was outrageous, and incredibly arrogant. When they called meetings with us it was always in a secret location where no one would see us meeting. It was like they were discussing Black Opts for the CIA.

The bottom line, with 7% compound interest on the money that would have been generated by our signed contracts, ATC lost approximately **$1.7 Billion**. The BOCs made Hundreds of Billions. I want my money, and I intend to get it, even if I have to take down all the remaining Bell Operating Companies in the process, via multiple lawsuits, inclusive of shareholder litigation for securities fraud already committed. They made their money illegally. They took away my legal opportunity to succeed in the billing industry and now you're going to have to pay back my money, plus deal with the $2.5 trillion in consumer and industry liability now that you own Telcordia. Even if SAIC indemnified you, their indemnification is worthless in this matter because of the massive liability as SAIC cannot cover it. It took us 13 years to put this case together and gather all the necessary evidence, inclusive of former RBOC employee testimony from individuals who actually worked and operated the secret ICS billing service inside the RBOCs. Everything in life is timing. The BOCs are hurting now, fighting off litigation, losing local access lines. Today the collective defendants are weaker than ever before post 1993. The timing is good.

SBC is in so much trouble I can't even begin to tell you. They have committed securities fraud with their 1st, 2nd, & 3rd quarter 2004 SEC filings, inclusive of Sarbanes-Oxley. SBC Chairman, Ed Whitacre, General Counsel James Ellis, senior lawyer Al Richter, have been covering up the criminal enterprise since 1992. SBC's $6 Billion Credit Agreement with Citibank, set up to help pay for AT&T Wireless, [SBC owns 60% of Cingular] is fraudulent, and has been fraudulent since the day it was signed October 18, 2004. Article III, Sec. 3.01 (b) of the Agreement has been in default since the execution of the Agreement. Citibank is hiding the default. The Cingular acquisition of AT&T Wireless is in danger of being reversed as it is populated with antitrust violations overlooked by the Justice Department's Antitrust Division. Once Cingular begins bundling wireless and wireline on one bill, no one can compete with Cingular, including Verizon and they have access to the criminal enterprise.

Ernst & Young has knowingly participated in SBC's securities fraud in their capacity as corporate auditor. Whitacre, Ellis and Richter have refused to meet to examine undeniable evidence that proves these allegations, evidence that includes employee testimony. These three men are in the process of destroying SBC's shareholder equity, and the SBC Audit Committee Directors have refused to investigate as required by SEC Rule 10A-3. ED Whitacre's ego is going to destroy the Company, along with himself, Qwest, Verizon, Bellsouth, Cincinnati Bell, Telcordia, and you, if you elect to hang on to your aspirations of owning Telcordia.

Page 15 (Telcordia – Warburg – Providence)

JP Morgan who arranged the sale on behalf of SAIC was warned by us to disclose Telcordia's liability prior to any sale. It appears JP Morgan hid the liability from you, as did SAIC who also was told to disclose. You purchased the ultimate LEMON.

The Missouri Public Service Commission (PSC) has been covering-up this fraudulent scam since 1985 as no Tariff has ever been filed by SWBT, even though they are required by law to file B&C tariffs in Missouri ever since divestiture. The PSC new about the ICS all along. They saw the Millions of Dollars in revenue when they audited SWBT, but the auditors kept it quiet.

The statute of limitations on conspiracy does not begin to run until the last overt act has been committed. Overt acts are committed every day, and have been since March 29, 1992.

This brings us to Case Number 2 - William Lovern, Sr. et al v. Telcordia Technologies et al

The AT&T monopoly was not finally broken up until late 1994, after AT&T got caught by me, which required the RBOCs to kick AT&T out of the "Country Club." Look at AT&T today, a mere shell of a company they use to be. The RBOCs had to sell Bellcore to try and hide their tracks. SAIC intentionally covered up Bellcore's racketeering enterprise, all in the name of GREED. The RBOCs paid SAIC Bellcore's operating budget for several years after the sale. Since when did the RBOCs ever give away money. The sale was for nothing more than to try and hide their tracks. I personally sent enough physical evidence to SAIC shortly after they obtained Bellcore to make any reasonable peron take notice. They simply swept it under the carpet. Back in April SBC lawyers told SAIC lawyers "to sit tight, don't do anything with Lovern." In other words, don't try and settle. Hold the party line. We'll handle it. SBC didn't do a very good job, which is why SAIC sold Telcordia to you, and why it was done quietly through JP Morgan, who has committed fraud in the sale.

Gentlemen, I do not suggest you try and hold the party line for SBC, unless you want to go bankrupt and possibly be prosecuted. I have ample evidence to prove my allegations, inclusive of Bellcore / Telcordia internal secret documents. You can trust your entire financial position in life with SBC et al, but I do not advise it as Telcordia is not worth it. I'm going to take Ed Whitacre down right along with his partners in crime. Whitacre has paid himself hundreds of Millions over the years.

Keep in mind the ICS is the focal point in the ongoing Gambino Crime Family criminal indictment, whereby they used the ICS, via USP&C, to overcharge consumers up to $800,000 per day, over a Billion Dollars total. Consumers lost over $400 Billion, Industry over $300 Billion, plus treble damages, about $2.5 Trillion in joint & several liability. SAIC cannot indemnify you for Telcordia's end share of this liability I'll be in touch today to discuss your options.

Yours truly,

William Lovern, Sr.
President

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December 9, 2004

SBC COMMUNICATIONS INC. (NYSE: SBC)
Edward Whitacre & All Directors
175 E. Houston
San Antonio, Texas 78205-2233
Pacific Telesis Group, Ameritech, SNET

Via fax: 210-351-3507

RE: William Lovern, Sr. et al v. SBC Communications, Inc. et al
William Lovern, Sr. et al v. Telcordia Technologies et al

Dear Directors et al:

Be advised that the continuing criminal enterprise being operated under the name Intercompnay Settlement System (ICS) is going to be litigated, exposed, and forced legally to be opened up to the entire industry. Your arrogance, criminal conduct, lies, securities fraud, and racketeering activities are going to stop. Your $6 Billion Credit Agreement at Citibank is fraudulent. Your SEC Filings are fraudulent. Your Audit Committee is facing criminal prosecution along with the Executives.

You are facing joint & several liability in excess of $2.5 Trillion. Get ready.

Yours truly,

William Lovern, Sr.
President

Cc: Beasley Allen, Rose & Rose
Diamond Hasser & Frost, R&L Associates
Warburg Pincus, Providence Equity Partners, DOJ

WLS/mb

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R & L Associates, PLLC - rlassociates@tmaittma.com — Phone & Fax: 206-339-3549

November 11, 2004

SBC COMMUNICATIONS INC. (NYSE: SBC)
Edward Whitacre, James Ellis
Al Richter
175 E. Houston — Via fax: 210-351-3507
San Antonio, Texas 78205-2233

RE: Demand for payment of stolen money

Dear Gentlemen:

In the summer of 1992, the three of you authorized the theft of $554,000 of my money billed and collected through the InterCompany Settlement System (ICS) under the protection of a Missouri Court Order. SWBT in their capacity as "Contract Administrator" allowed my money, with your approval, to be transferred to AT&T even though the money did not belong to AT&T. Al participated in conference calls with myself and AT&T lawyers whereby AT&T admitted to having my money but refused to give it back.

SWBT as contract administrator had the authority to debit the money back through Cincinnati Bell and Bellsouth pursuant to Bellcore CIID Card Processing Guidelines, Issue 90-111 dated April 30, 1990. The three of you elected not to return my money. The criminal and civil statutes of limitation have not run out, therefore, I demand payment in the amount of **$554,000** at 7% compound interest for 13 years, total payment due is **$1,335,054.13**. If I do not receive payment today, I will use the full force of the law to recover, including criminal prosecution. This is not a settlement offer. It is a demand for payment and I suggest you take it seriously.

Yours truly,

William Lovern, Sr.
President

Cc: DOJ Antitrust Division
F.B.I.
Missouri Attorney General's Office

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November 12, 2004

SBC COMMUNICATIONS INC. (NYSE: SBC)
Edward Whitacre, James Ellis
Al Richter
175 E. Houston
San Antonio, Texas 78205-2233

Via fax: 210-351-3507

RE: Non Payment of Stolen Money

Dear Gentlemen:

Under the Missouri Penal Code 570.010 (8) "Deprive" means: (a) "To withhold property from the owner permanently." (12) "Property" means anything of value, whether real or personal, tangible or intangible, in possession or in action. **Aggregation of amounts involved in stealing.** 570.050. Amounts stolen pursuant to one scheme or course of conduct, whether from the same or several owners and whether at the same or different times, constitute a single criminal episode and may be aggregated in determining the grade of the offense. 7. Any offense in which the value of property or services is an element is a class B felony if the value of the property or services equals or exceeds twenty-five thousand dollars.

Under federal law, Title 18 U.S.C., Sec. 1961 et seq. (1) "racketeering activity" means B) any act which is indictable under any of the following provisions of title 18, United States Code: section 1343 (relating to wire fraud); section 1951 (relating to interference with commerce, robbery); section 1956 (relating to the laundering of monetary instruments); section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity). **Section 1963. Criminal penalties** (a) Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years, and shall forfeit to the United States, irrespective of any provision of State law -

(1) any interest the person has acquired or maintained in violation of section 1962;

(2) any -

(A) interest in;

(B) security of;

Page 2 (SBC Stolen Money)

(C) claim against; or

(D) property or contractual right of any kind affording a source of influence over; any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, i violation of section 1962; and (3) any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962.

(b) Property subject to criminal forfeiture under this section

includes -

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

I was in hopes that you would decide not to hold my money any longer, however, for whatever reason here we are at November 12, 2004, 12 years + after the fact and you still will not make good the money that was stolen from me under the protection of a Missouri Court Order. It is now time to do what I have to do. The only question remaining is… how many co-conspirators are there?

Yours truly,

William Lovern, Sr.
President

Cc: DOJ Antitrust
F.B.I.
Missouri Attorney General
Missouri PSC

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Phone: 206-333-0098

November 8, 2004

All Commissioners
Missouri Public Service Commission
C/O Mr. D. Joyce, Esq.
Governor Office Building
200 Madison Street
Jefferson City, MO 65102-0360

Via fax: (573)-751-9285

Dear Commissioners:

Please provide a copy of the Commission Order where the Commission exempted InterCompany Settlement System (ICS) billing & collection services beginning in 1984, whether LEC to LEC [one Missouri LEC providing B&C for another Missouri LEC, or out-of-state LEC through the ICS], or, LEC to IXC [a Missouri LEC providing B&C for an IXC physically located in Missouri or out-of-state], OSP, etc... The ICS billing & collection service is based on ICS Direct Cost, not the Fully Allocated Costing Methodology used for the current B&C tariffed product, or second tier system.

Thank you for your prompt response. This will make sure we are not going to sue the Commissioners improperly. Our research shows no such order.

Yours truly,

William Lovern, Sr.
President

Cc: Antitrust Litigation Team

WLS/mb

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December 10, 2004

SBC COMMUNICATIONS INC. (NYSE: SBC)
Edward Whitacre, James Ellis
Al Richter
175 E. Houston
San Antonio, Texas 78205-2233

Via fax: 210-351-3507

RE: Demand for payment of stolen money

Dear Gentlemen:

You received the enclosed letter a month ago demanding payment of the money you stole from me in 1992. There is no statute of limitations. I now make my final demand for payment today. If it is not paid today I will initiate formal hearings before the PSC and file all legal remedies.

Enclosed is also a letter to the PSC demanding the Order that exempted the ICS. There is no exemption. I want my money Mr. Whitacre, today!

Yours truly,

William Lovern, Sr.
President

Cc: DOJ Antitrust Division
F.B.I.
Missouri Attorney General's Office November 11, 2004

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December 10, 2004

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175 E. Houston
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Via fax: 210-351-3507

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President

Cc: DOJ Antitrust Division
F.B.I.
Missouri Attorney General's Office November 11, 2004

[FR Doc. 05–3926 Filed 3–1–05; 8:45 am]
BILLING CODE 4410–11–C

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States: 2005 Adverse Effect Wage Rates, Allowable Charges for Agricultural and Logging Workers' Meals, and Maximum Travel Subsistence Reimbursement

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice of Adverse Effect Wage Rates (AEWRs), allowable charges for meals, and maximum travel subsistence reimbursement for 2005.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department or DOL) is issuing this notice to announce: the 2005 AEWRS for employers seeking to employ temporary or seasonal nonimmigrant alien workers to perform agricultural labor or services (H–2A workers) or logging (H–2 logging workers); the allowable charges for 2005 that employers seeking H–2A workers and H–2 logging workers may levy upon their workers when three meals a day are provided by the employer; and the maximum travel subsistence reimbursement which a worker with receipts may claim in 2005.

AEWRs are the minimum wage rates the Department has determined must be offered and paid to U.S. and alien workers by employers of H–2A workers or H–2 logging workers. AEWRs are established to prevent the employment of these aliens from adversely affecting wages of similarly employed U.S. workers. The Department announces the AEWRs for 2005.

The Department also announces the new rates for 2005 which covered agricultural and logging employers may charge their workers for three daily meals.

Under specified conditions, workers are entitled to reimbursement for travel subsistence expenses. The minimum reimbursement is the charge for three daily meals as noted above. The Department also announces the current maximum reimbursement that may be claimed in 2005 by workers with receipts.

EFFECTIVE DATE: March 2, 2005.

FOR FURTHER INFORMATION CONTACT: William Carlson, Chief, Division of Foreign Labor Certification, U.S. Department of Labor, Room C–4312, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The U.S. Citizenship and Immigration Services may not approve an employer's petition for admission of H–2A workers or H–2 logging workers in the United States unless the petitioner has received from DOL an H–2A or H–2 labor certification, as appropriate. Approved labor certifications attest: (1) There are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a),1184(c), and 1188.

DOL's regulations for the H–2A and H–2 program require covered employers to offer and pay their U.S., H–2A, and H–2 workers no less than the applicable hourly AEWR in effect at the time the work is performed. 20 CFR 655.102(b)(9) and 655.202(b)(9). *See also* 20 CFR 655.107 and 655.207. Reference should be made to the preamble of the final rule, 54 FR 28037 (July 5, 1989), which explains in great depth the purpose and history of AEWRs, DOL's discretion in setting AEWRs, and the AEWR computation methodology at 20 CFR 655.107(a). *See also* 52 FR 20496, 20502–20505 (June 1, 1987).

A. Adverse Effect Wage Rates for 2005

AEWRs are the minimum wage rates which DOL has determined must be offered and paid to U.S. and alien workers by employers of H–2A workers or H–2 logging workers. DOL emphasizes, however, that employers of H–2A workers must pay the highest of (i) the AEWR in effect at the time the work is performed, (ii) the applicable prevailing wage, or (iii) the statutory minimum wage, as specified in the regulations. 20 CFR 655.102(b)(9). Employers of H–2 logging workers must pay at least the AEWR. 20 CFR 655.202(b)(9).

Except as otherwise provided in 20 CFR part 655, subpart B, the region-wide AEWR for all agricultural employment (except those occupations deemed inappropriate under the special circumstance provisions of 20 CFR 655.93) for which temporary H–2A certification is being sought, is equal to the annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the U.S. Department of Agriculture (USDA). 20 CFR 655.107(a). USDA does not provide data on Alaska.

20 CFR 655.107(a) requires the Assistant Secretary, Employment and Training Administration, to publish USDA field and livestock worker (combined) wage data as AEWRs in a **Federal Register** notice. Accordingly, the 2005 AEWRs for agricultural work performed by U.S. and H–2A workers on or after the effective date of this notice are set forth in the table below:

2005 ADVERSE EFFECT WAGE RATES

State	2005 AEWR
Alabama	$8.07
Arizona	7.63
Arkansas	7.80
California	8.56
Colorado	8.93
Connecticut	9.05
Delaware	8.48
Florida	8.07
Georgia	8.07
Hawaii	9.75
Idah	8.20
Illinois	9.20
Indiana	9.20
Iowa	8.95
Kansas	9.00
Kentucky	8.17
Louisiana	7.80
Maine	9.05
Maryland	8.48
Massachusetts	9.05
Michigan	9.18
Minnesota	9.18
Mississippi	7.80
Missouri	8.95
Montana	8.20
Nebraska	9.00
Nevada	8.93
New Hampshire	9.05
New Jersey	8.48
New Mexico	7.63
New York	9.05
North Carolina	8.24
North Dakota	9.00
Ohio	9.20
Oklahoma	7.89
Oregon	9.03
Pennsylvania	8.48
Rhode Island	9.05
South Carolina	8.07
South Dakota	9.00
Tennessee	8.17
Texas	7.89
Utah	8.93
Vermont	9.05
Virginia	8.24
Washington	9.03
West Virginia	8.17
Wisconsin	9.18
Wyoming	8.20

The AEWRs for all logging employment shall be the prevailing wage rates in the area of intended employment. 20 CFR 655.207(a).

B. Allowable Meal Charges

Among the minimum benefits and working conditions which DOL requires

employers to offer their U.S., H–2A, and H–2 logging workers are three meals a day or free and convenient cooking and kitchen facilities. 20 CFR 655.102(b)(4) and 655.202(b)(4). Where the employer provides meals, the job offer must state the charge, if any, to the worker for meals.

DOL has published at 20 CFR 655.102(b)(4) and 655.111(a) the methodology for determining the maximum amounts that covered H–2A agricultural employers may charge their U.S. and foreign workers for meals. The same methodology is applied at 20 CFR 655.202(b)(4) and 655.211(a) to covered H–2 logging employers. These rules provide for annual adjustments of the previous year's allowable charges based upon Consumer Price Index (CPI) data.

Each year the maximum charges allowed by 20 CFR 655.102(b)(4) and 655.202(b)(4) are adjusted by the same percentage as the twelve-month percent change in the CPI for all Urban Consumers for Food (CPI–U for Food) between December of the year just concluded and December of the year prior to that. ETA may permit an employer to charge workers no more than the higher maximum amount set forth in 20 CFR 655.111(a) and 655.211(a), as applicable, for providing them with three meals a day, if justified and sufficiently documented. Each year, the higher maximum amounts permitted by 20 CFR 655.111(a) and 655.211(a) are changed by the same percentage as the twelve-month percent change in the CPI–U for Food between December of the year just concluded and December of the year prior to that. The program's regulations require DOL to make the annual adjustments and to publish a notice in the **Federal Register** each calendar year, announcing annual adjustments in allowable charges that may be made by covered agricultural and logging employers for providing three meals daily to their U.S. and alien workers. The 2004 rates were published in the **Federal Register** notice, 69 FR 10063, (March 3, 2004).

DOL has determined the percentage change between December of 2003 and December of 2004 for the CPI–U for Food was 3.4 percent. Accordingly, the maximum allowable charges under 20 CFR 655.102(b)(4), 655.202(b)(4), 655.111, and 655.211 were adjusted using this percentage change, and the new permissible charges for 2005 are as follows: (1) Charges under 20 CFR 655.102(b)(4) and 655.202(b)(4) shall be no more than $9.08 per day, unless ETA has approved a higher charge pursuant to 20 CFR 655.111 or 655.211; (2) charges under 20 CFR 655.111 and 655.211 shall be no more than $11.25 per day, if the employer justifies the charge and submits to ETA the documentation required to support the higher charge.

C. Maximum Travel Subsistence Expense

The regulations at 20 CFR 655.102(b)(5) establish that the minimum daily subsistence expense related to travel expenses, for which a worker is entitled to reimbursement, is equivalent to the employer's daily charge for three meals or, if the employer makes no charge, the amount permitted under 20 CFR 655.104(b)(4). The regulation is silent about the maximum amount to which a qualifying worker is entitled.

The Department, in Field Memorandum 42–94, established the maximum meals component of the standard continental United States (CONUS) per diem rate established by the General Services Administration (GSA) and published at 41 CFR part 301. The CONUS meal component is now $31.00 per day. Workers who qualify for travel reimbursement are entitled to reimbursement up to the CONUS meal rate for related subsistence when they provide receipts. In determining the appropriate amount of subsistence reimbursement, the employer may use the GSA system under which a traveler qualifies for meal expense reimbursement per quarter of a day. Thus, a worker whose travel occurred during two quarters of a day is entitled, with receipts, to a maximum reimbursement of $15.50. If a worker has no receipts, the employer is not obligated to reimburse above the minimum stated at 20 CFR 655.102(b)(4) as specified above.

Signed in Washington, DC, this 22nd day of February, 2005.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. E5–824 Filed 3–1–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health; Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Maritime Advisory Committee for Occupational Safety and Health; Notice of meeting.

SUMMARY: The Maritime Advisory Committee for Occupational Safety and Health (MACOSH) was established to advise the Assistant Secretary of Labor for OSHA on issues relating to occupational safety and health in the maritime industries. The purpose of this Federal Register notice is to announce the March 2005 meeting of the committee.

DATES: The full committee will meet from 8:30 a.m. to 4:30 p.m. on March 31, 2005. The MACOSH work groups (shipyard, longshoring, container safety, traffic safety, safety culture and health) will meet from 9 a.m. until 4:30 p.m. on March 30, 2005.

ADDRESSES: MACOSH will meet at the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; phone: (202) 693–2086; fax: (202) 693–1663. Mail comments, views, or statements in response to this notice to Jim Maddux, Director, Office of Maritime, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; phone (202) 693–2086; FAX: (202) 693–1663.

FOR FURTHER INFORMATION CONTACT: For general information about MACOSH and this meeting: Jim Maddux, Director, Office of Maritime, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; phone: (202) 693–2086. For information about the submission of comments and requests to speak: Vanessa L. Welch, Office of Maritime, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; Phone: (202) 693–2086. Individuals with disabilities wishing to attend the meeting should contact Vanessa L. Welch at (202) 693–2086 no later than March 15, 2005 to obtain appropriate accommodations.

SUPPLEMENTARY INFORMATION: All MACOSH meetings, including work group meetings, are open to the public. All interested persons are invited to attend MACOSH at the times and place listed above. The MACOSH meeting on March 31, 2005 will include discussions of MACOSH work group reports. Specific topics will include exposure monitoring information on beryllium and silica, shipyard practices on the control of hazardous energy (lockout/tagout), and analyses of accident causation data. MACOSH has several active work groups. The container safety, longshoring, and shipyard work groups will meet on the morning of March 30. The work groups dealing with health issues, traffic safety, and safety culture will meet on the afternoon of March 30.

Public Participation: Written data, views or comments for consideration by MACOSH on the various agenda items listed above should be submitted to Vanessa L. Welch at the address listed above. Submissions received by March 15, 2005, will be provided to committee members and will be included in the record of the meeting. Requests to make oral presentations to the Committee may be granted as time permits. Anyone wishing to make an oral presentation to the Committee on any of the agenda items listed above should notify Vanessa L. Welch by March 15, 2005. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Authority: Jonathan L. Snare, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656, the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR part 1912.

Signed at Washington, DC this 24th day of February, 2005.

Jonathan L. Snare,

Acting Assistant Secretary of Labor.

[FR Doc. 05–3994 Filed 3–1–05; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–033)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Every Little Bit, Inc., 1638 South Main, Tulsa, OK 74119, has applied for a Exclusive license to practice the inventions described in NASA Case Number LAR–16324–1 for which a U. S. Patent has issued and LAR–16324–2 for which a Patent Application was filed, both entitled ''Self-Activating System And Method For Alerting When An Object Or A Person Is Left Unattended'' and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

DATES: Responses to this notice must be received by March 17, 2005.

FOR FURTHER INFORMATION CONTACT: Kurt G. Hammerle, Patent Attorney, Langley Research Center, Mail Stop 141, Hampton, VA 23681–2199. Telephone 757–864–2470; Fax 757–864–9190.

Dated: February 17, 2005.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. 05–4030 Filed 3–1–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation National Science Board and its Subdivisions.

DATE AND TIME: March 1, 2005 11 a.m.–12 Noon.

PLACE: Room 545, Stafford II, The National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, *http://www.nsf.gov/nsb.*

CONTACT FOR INFORMATION: Michael P. Crosby, Executive Officer, NSB (703) 292–7000.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: Tuesday, March 1, 2005

- General discussion: Charge to the Task Force on Transformative Research
- Initial ideas to implement Charge

Michael P. Crosby,

Executive Officer, NSB.

[FR Doc. 05–4099 Filed 2–28–05; 12:07 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection: Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The Title of the Information Collection:* 10 CFR part 20—Standards for Protection Against Radiation.

2. *Current OMB Approval Number:* 3150–0014.

3. *How Often the Collection is Required:* Annually for most reports and at license termination for reports dealing with decommissioning.

4. *Who is Required or Asked to Report:* NRC licensees, including those requesting license termination.

5. *The Estimated Number of Annual Respondents:* 4,512.

6. *The Number of Hours Needed Annually to Complete the Requirement or Request:* 128,669 hours (4,909 hours for reporting [9.68 hours per response] plus 123,760 hours for recordkeeping [27.43 hours per recordkeeper]).

7. *Abstract:* 10 CFR part 20 establishes standards for protection against ionizing radiation resulting from activities conducted under licenses issued by the NRC. These standards require the establishment of radiation protection programs, maintenance of radiation records, recording of radiation received by workers, reporting of incidents which could cause exposure to radiation, submittal of an annual report to NRC of the results of individual monitoring, and submittal of license termination information. These mandatory requirements are needed to protect occupationally exposed individuals from undue risks of excessive exposure to ionizing radiation and to protect the health and safety of the public.

Submit, by May 2, 2005, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7233, or by

Internet electronic mail to *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 23rd day of February 2005.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 05–3979 Filed 3–1–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IA–2362/803–179]

Parkland Management Company, L.L.C.; Notice of Application

February 24, 2005.

AGENCY: Securities and Exchange Commission (''SEC''); Notice of Application.

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940 (''Advisers Act'').

Applicant: Parkland Management Company, L.L.C. (''Applicant'').

Relevant Advisers Act Sections: Exemption requested under section 202(a)(11)(F) from section 202(a)(11).

Summary of Application: Applicant requests an order declaring it to be a person not within the intent of section 202(a)(11), which defines the term ''investment adviser.''

Filing Dates: The application was filed on December 4, 2003 and amended on June 28, 2004, September 8, 2004, and January 18, 2005.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 21, 2005 and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Parkland Management Company, L.L.C., c/o Leo Krulitz, 1001 Lakeside Avenue, Suite 900, Cleveland, Ohio 44114.

FOR FURTHER INFORMATION CONTACT: Daniel S. Kahl, Senior Counsel, or Jamey Basham, Branch Chief, at (202) 942–0719 (Division of Investment Management, Office of Investment Adviser Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant was organized as an Ohio corporation in 1987 by the H.R.H. Family Trust (the ''Trust''), which owned all of Applicant's outstanding stock. The Trust beneficiaries were certain members of the Harry R. Horvitz and Lois U. Horvitz family. In 1998, Applicant was reorganized as a single member Ohio limited liability company, and in January 2003, ownership was transferred equally to the three children of Harry R. Horvitz and Lois U. Horvitz.

2. Applicant operates as the ''family office'' for Lois U. Horvitz and (i) the lineal descendants of Lois and her now-deceased husband Harry R. Horvitz, (ii) the spouses of those lineal descendants, (iii) the sister of one such spouse and (iv) the mother and two children of that sister (collectively the ''Family''). In addition to the Family, Applicant's other clients consist of (i) trusts, partnerships, limited liability companies, corporations, and other entities that both (A) are wholly-owned or controlled by members of the Family and (B) were created either for the sole benefit of Family members or for the benefit of both Family members and charitable organizations and (ii) foundations created by members of the Family (collectively ''Clients'').

3. Applicant represents that the ''family office'' services it provides to Clients include: developing asset allocation strategies; serving as the general partner to three partnerships wholly owned by the Family, which hold investments in private equity funds and hedge funds managed by third parties; recommending investment advisers and monitoring and recommending termination of such advisers; managing cash; preparing financial and tax reports; developing tax planning strategies; implementing estate planning activities; bill paying; travel planning; household staff supervision and payroll administration; and administering grant and scholarship programs for foundations established by the Family.

4. Applicant represents that the fees it receives have not generated, and are not intended to generate, a profit for Applicant. Applicant represents that its fees are structured so that fees it receives from Clients only cover its direct costs and overhead costs.

5. Applicant represents that it does not hold itself out to the public as an investment adviser. Applicant represents that it is not listed in any local telephone book as an investment adviser and is listed in the building directory merely by its name, which does not connote investment advisory activities. Applicant represents that it does not engage in any advertising, attend any investment management-related conferences as a vendor, or conduct any marketing activities whatsoever.

6. Applicant represents that it has no public retail or institutional clients, and has never solicited, and does not plan to solicit or accept clients from the retail or institutional investing public. Applicant further represents that its sole purpose is to serve as a ''family office'' for the Family, and at no time will it seek or accept investment advisory clients other than Clients.

Applicant's Legal Analysis

1. Section 202(a)(11) of the Advisers Act defines the term ''investment adviser'' to mean any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities . . . .'' Section 202(a)(11)(F) of the Advisers Act authorizes the SEC to exclude from the definition of ''investment adviser'' persons that are not within the intent of section 202(a)(11).

2. Section 203(a) of the Advisers Act requires investment advisers to register with the SEC. Section 203(b) of the Advisers Act provides exemptions from this registration requirement.

3. Applicant asserts that it does not qualify for any of the exemptions provided by section 203(b). Applicant also asserts that it is not prohibited from registering with the SEC under Section 203A(a) because it has assets under management of not less than $25,000,000.

4. Applicant requests that the SEC declare it to be a person not within the intent of section 202(a)(11). Applicant states that there is no public interest in requiring it to be registered under the Advisers Act. Applicant states that it is a private organization that was formed to be the ''family office'' for the Family. Applicant represents that all of its clients are either members of the Family or are entities created by or for the

benefit of the Family. Applicant states that it has no public clients in the sense of retail or institutional investors, and that it has no plans to solicit or accept clients from the retail or institutional public. Applicant also states that it does not hold itself out to the public as an investment adviser, does not engage in any advertising, or attend investment management-related conferences as a vendor or conduct any marketing activities. Applicant asserts that serving as the ''family office'' for the Family has been, is, and will continue to be the sole purpose for its existence and operation.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–826 Filed 3–1–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26775; 812–13168]

Boston Safe Advisors, Inc., et al.; Notice of Application and Temporary Order

February 24, 2005.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

Summary of Application: Applicants have received a temporary order exempting them and other companies of which CIBC Mellon Trust Company (''CIBC Mellon'') is or becomes an affiliated person (''Covered Persons'') from section 9(a) of the Act with respect to a securities-related injunction entered against CIBC Mellon on February 24, 2005 by the U.S. District Court for District of Columbia (the ''Injunction'') until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order with respect to the Injunction.

Applicants: Boston Safe Advisors, Inc., The Boston Company Asset Management LLC, Dreyfus Service Corporation (''Dreyfus Service''), The Dreyfus Corporation, Founders Asset Management LLC, Franklin Portfolio Associates LLC, Mellon Capital Management Corporation, Mellon Equity Associates LLP, Mellon Funds Distributor, L.P. (''Mellon Funds''), Newton Capital Management Limited, Pareto Partners and Standish Mellon Asset Management Company LLC (together, ''Applicants,'' included in the term Covered Persons).

Filing Date: The application was filed on February 17, 2005.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 21, 2005, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Mellon Financial Corporation, One Mellon Center, 500 Grant Center, Pittsburgh, Pennsylvania 15258–0001.

FOR FURTHER INFORMATION, CONTACT: Shannon Conaty, Attorney-Adviser, or Todd F. Kuehl, Branch Chief, at (202) 551–6809 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application for a permanent order. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. CIBC Mellon, a Canadian corporation, is engaged in the business of providing transfer agent and corporate trust services. Applicants (other than Dreyfus Service and Mellon Funds) serve as investment adviser or sub-adviser for one or more registered investment companies (''Funds''). Dreyfus Service and Mellon Funds act as the depositor or principal underwriter for certain Funds.

2. On February 24, 2005, the U.S. District Court for the District of Columbia entered the Injunction against CIBC Mellon in a matter brought by the Commission.[1] The Commission alleged in the complaint (''Complaint'') that CIBC Mellon violated sections 5(a)(1) and (2) of the Securities Act of 1933, sections 10(b), 15(a) and 17A of the Securities Exchange Act of 1934 (''Exchange Act'') and rule 10b–5 under the Exchange Act. The Complaint alleged that CIBC Mellon participated in a fraudulent scheme to promote, distribute and sell the stock of a now defunct Canadian telecommunications company by supplying the perpetrators of the scheme with a virtually limitless supply of purportedly ''free trading'' stock and that CIBC Mellon failed to register with the Commission as a transfer agent and as a broker-dealer. The Injunction enjoined CIBC Mellon, its agents, servants, employees, attorneys and all persons in active concert or in participation with them from violating the provisions of the federal securities laws cited in the Complaint. Without admitting or denying the allegations in the Complaint, CIBC Mellon consented to the entry of the Injunction as well as the payment of disgorgement and penalties and other equitable relief.

Applicants' Legal Analysis

Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered UIT or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that CIBC Mellon is an affiliated person of the Applicants within the meaning of section 2(a)(3) of the Act. Applicants state that the entry of the Injunction would result in Applicants being subject to the disqualification provisions of section 9(a) of the Act.

1. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have

[1] *Securities and Exchange Commission* v. *CIBC Mellon Trust Company*, 1:05CV0333 (D.D.C., filed February 24, 2005) (the ''Action'').

filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting the Covered Persons from the disqualification provisions of section 9(a) of the Act.

2. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

3. The Applicants state that the alleged violations giving rise to the Injunction did not involve any of the Applicants or any Fund. The Applicants also state that no current or former officer or employee of any of the Applicants participated in any way in the conduct giving rise to the Injunction. Additionally, Applicants state that the personnel at CIBC Mellon who were involved in the conduct that forms the basis for the Injunction have had no involvement in providing advisory, sub-advisory or principal underwriting services to the Funds. Applicants state that CIBC Mellon does not serve, nor has it served, as transfer agent to any Fund or as trustee to any registered unit investment trust.

4. Applicants will distribute written materials, including an offer to meet in person to discuss the materials, to the board of directors or trustees of each Fund (each, a ''Board''), including the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Fund, and their independent legal counsel, if any, regarding the Injunction, any impact on the Funds, and this application. Applicants will provide the Boards with all information concerning the Injunction and this application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

5. Applicants state that the inability to continue providing advisory and sub-advisory services to the Funds and the inability to continue serving as principal underwriter to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establish an expertise in advising and underwriting Funds.

6. A predecessor to Covered Persons, The Boston Company Advisors, Inc., previously was subject to an injunction that triggered section 9(a) and received an exemption under section 9(c).[2]

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

> Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly, *It is hereby ordered,* pursuant to section 9(c) of the Act, that the Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunction subject to the condition in the application, until the Commission takes final action on an application for a permanent order.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–827 Filed 3–1–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26764; 812–13159]

Goldman, Sachs & Co., et al.; Notice of Application and Temporary Order

February 23, 2005.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

Summary of Application: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Goldman, Sachs & Co. (''Goldman Sachs'') on February 8, 2005 by the United States District Court for the Southern District of New York (the ''Injunction''), until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

Applicants: Goldman Sachs, Goldman Sachs Asset Management, L.P., Goldman Sachs Asset Management International, and Goldman Sachs Princeton LLC (together, the ''Applicants'').[1]

Filing Dates: The application was filed on January 25, 2005. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 21, 2005, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Howard Surloff, Esq., Goldman, Sachs & Co., 37th Floor, One New York Plaza, New York, NY 10004.

FOR FURTHER INFORMATION, CONTACT: Courtney S. Thornton, Senior Counsel, or Mary Kay Frech, Branch Chief, at 202–551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone 202–942–8090).

Applicants' Representations

1. Each Applicant is an investment adviser registered under the Investment Advisers Act 1940 (the ''Advisers Act''). Goldman Sachs, a New York limited partnership, is a global investment banking and securities firm. Goldman

[2] *E.F. Hutton & Company Inc, et al.*, Investment Company Act Release Nos. 16401 (May 16, 1988)(notice) and 17036 (Jun. 30, 1989)(order).

[1] Applicants request that any relief granted pursuant to the application also apply to any other company of which Goldman Sachs is or hereafter becomes an affiliated person in the future (together with Applicants, ''Covered Persons'').

Sachs is also registered as a broker-dealer under the Securities Exchange Act of 1934 (the ''Exchange Act''). Goldman Sachs acts as principal underwriter of certain registered investment companies (''Funds'') and, at the time of the violations alleged in the Complaint (as defined below), served as an adviser and subadviser of certain of the Funds. Each of the other Applicants currently serves as investment adviser or subadviser to one or more of the Funds or expects to serve as investment adviser or subadviser to an investment company whose registration statement has not yet been declared effective.

2. On February 8, 2005, the United States District Court for the Southern District of New York entered the Injunction against Goldman Sachs in a matter brought by the Commission.[2] The Commission alleged in the complaint (''Complaint'') that Goldman Sachs violated Rule 101 of Regulation M under the Exchange Act by attempting to induce, or inducing, certain institutional customers to place orders for shares in the aftermarket for certain initial public offerings (''IPOs'') it underwrote during the restricted period of such IPOs. The alleged violations occurred in connection with certain IPOs underwritten by Goldman Sachs during 1999 and 2000. Without admitting or denying any of the allegations in the Complaint, except as to jurisdiction, Goldman Sachs consented to the entry of the Injunction as well as the payment of a civil penalty of $40 million.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that Goldman Sachs is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3) of the Act because they are under the common control of The Goldman Sachs Group, Inc. Applicants state that, as a result of the Injunction, they would be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that, to the best of their knowledge, none of their officers or employees who are engaged in the provision of investment advisory or underwriting services to the Funds participated in any way in the conduct underlying the Injunction. Applicants further state that the conduct underlying the Injunction did not involve any Funds.

5. Applicants state that the inability to continue providing advisory services to the Funds (and, with respect to GS Princeton, the investment company for which it anticipates that it will begin to provide investment advisory services when its registration statement is declared effective by the Commission) and the inability to continue serving as principal underwriter to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also state that they have distributed, or will distribute as soon as reasonably practical, written materials, including an offer to meet in person to discuss the materials, to the boards of directors or trustees of the Funds (the ''Boards''), including the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of such Funds and their independent legal counsel, as defined in rule 0–1(a)(6) under the Act, if any, regarding the Injunction, any impact on the Funds, and the application. The Applicants will provide the Boards with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the Federal securities laws.

6. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establish an expertise in underwriting, advising and subadvising Funds. Applicants recently applied for an exemption pursuant to section 9(c) of the Act for conduct relating to certain research analysts' conflicts of interest.[3] In addition, Goldman Sachs previously sought and received exemptions under section 9(c) of the Act on two occasions.[4]

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly, it is hereby ordered, pursuant to section 9(c) of the Act, that Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective as of the date of the Injunction, solely with respect to the Injunction, subject to the condition in the application, until the date the Commission takes final action on an application for a permanent order.

[2] *Securities and Exchange Commission* v. *Goldman, Sachs & Co.*, 05 CV 853 (S.D.N.Y. Feb. 8, 2005).

[3] Goldman, Sachs & Co., Investment Company Act Release Nos. 26242 (Oct. 31, 2003) (notice and temporary order) and 26603 (Sept. 20, 2004) (permanent order).

[4] Goldman, Sachs & Co., Investment Company Act Release Nos. 8342 (May 2, 1974) (notice and temporary order) and 8553 (Oct. 22, 1974) (permanent order); and Goldman, Sachs & Co., Investment Company Act Release Nos. 6189 (Sept. 15, 1970) (notice and temporary order) and 6200 (Sept. 30, 1970) (permanent order).

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–825 Filed 3–1–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51242; File No. SR–PCX–2004–131]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to FOCD Forms Due Date

February 23, 2005.

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 December 23, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. 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 PCX proposes to amend the PCXE rules to change the due date of Financial and Operational Compliance Department (''FOCD'') Forms relating to SEC Rule X–17A–5. The text of the proposed rule change is below. Proposed new language is in italics. Proposed deletions are in brackets.

Rules of the Pacific Exchange, Inc.

Rule 4—Capital Requirements, Financial Reports, Margins

* * * * *

Part II Quarterly Reports

Rule 4.5 (c) Two manually signed copies of Part II of SEC Form X–17A–5 shall be filed for each calendar quarter by any OTP Holder or OTP Firm which carries or clears accounts for customers. Such report shall be due by the *seventeenth* [fifteenth] *business* [calendar] day following the end of the calendar quarter being reported upon.

Part IIA Quarterly Reports

Rule 4.5 (d) Two manually signed copies of Part IIA of SEC Form X–17A–5 shall be filed for each calendar quarter by any OTP Holder or OTP Firm which does not carry or clear accounts for customers. Such report shall be due by the *seventeenth* [fifteenth] *business* [calendar] day following the end of the calendar quarter being reported upon.

Part II or Part IIA Filings on Other Than Calendar Quarters

Rule 4.5 (e) An OTP Holder or OTP Firm shall file an additional Part II or Part IIA of SEC Form X–17A–5, as appropriate, within *seventeen* [fifteen] *business* [calendar] days after the date selected for the annual audited financial statements of the OTP Holder or OTP Firm, pursuant to the provisions of Rule 4.10, where such date does not coincide with the end of a calendar quarter.

* * * * *

Rules of PCX Equities, Inc.

Rule 4—Capital Requirements, Financial Reports, Margins

* * * * *

Part II Quarterly Reports

Rule 4.5 (b) Two manually signed copies of Part II of SEC Form X–17A–5 shall be filed for each calendar quarter by any ETP Holder which carries or clears accounts for customers. Such report shall be due by the *seventeenth* [fifteenth] *business* [calendar] day following the end of the calendar quarter being reported upon.

Part IIA Quarterly Reports

Rule 4.5 (c) Two manually signed copies of Part IIA of SEC Form X–17A–5 shall be filed for each calendar quarter by any ETP Holder which does not carry or clear accounts for customers. Such report shall be due by the *seventeenth* [fifteenth] *business* [calendar] day following the end of the calendar quarter being reported upon.

Part II or Part IIA Filings on Other Than Calendar Quarters

Rule 4.5 (e) An ETP Holder shall file an additional Part II or Part IIA of SEC Form X–17A–5, as appropriate, within *seventeen* [fifteen] *business* [calendar] days after the date selected for the annual audited financial statements of the ETP Holder, pursuant to the provisions of Rule 4.10, where such date does not coincide with the end of a calendar quarter.

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

Purpose

The Exchange proposes to amend PCX Rules 4.5(c)–(e) and PCXE Rules 4.5(b)–(d) to update the due date of Quarterly Reports (SEC Form X–17A–5). The PCX proposes to amend the PCXE rules to adopt new fees for late Financial and Operational Compliance Department (''FOCD'') required forms. The Exchange currently requires that SEC Form X–17A–5 be filed the fifteenth calendar day following the end of the quarter being reported upon. The Exchange proposes to amend the date to the seventeenth business day following the end of the calendar quarter being reported upon. This modification is an administrative change to make the Exchange rule due dates consistent with the filing requirements for such forms set forth in SEC Rule 17a–5.[3]

Basis

The Exchange believes that the proposal is consistent with Section 6(b)[4] of the Act, in general, and Section 6(b)(4)[5] of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its OTP Holders, OTP Firms, ETP Holders, issuers, and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will 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] 17 CFR 240.17a–5.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) [6] of the Act and subparagraph (f)(3) of Act Rule 19b–4 thereunder,[7] because it is concerned solely with the administration of the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission could have summarily abrogated such rule change if it appeared to the Commission that such action was necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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–PCX–2004–131 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2004–131. 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. 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 inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. 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–PCX–2004–131 and should be submitted on or before March 23, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–828 Filed 3–1–05; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(3).

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Region 1—Maine District Advisory Council Public Meeting; Correction

The U.S. Small Business Administration, Maine District Advisory Council, located in the geographical area of Augusta, Maine, will be hosting a public meeting to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present. Previously, the meeting was scheduled for Tuesday, March 22, 2005, and has been canceled for a later date. The meeting has been rescheduled for Wednesday, March 30, 2005, at 10 a.m. The meeting will take place at the U.S. Small Business Administration, Maine District Office, 68 Sewall Street, Room 510, Augusta, Maine.

Anyone wishing to attend must contact Mary McAleney in writing or by fax. Mary McAleney, District Director, U.S. Small Business Administration, 68 Sewall Street, Room 512, Augusta, Maine 04330, (207) 622–8386 telephone, (207) 622–8277 fax.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. 05–3984 Filed 3–1–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5007]

Advisory Committee on International Economic Policy; Notice of Open Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet from 1:30 p.m. to 4:30 p.m. on Wednesday, March 16, 2005, in Room 1107, U.S. Department of State, 2201 C Street NW., Washington, DC. The meeting will be hosted by Assistant Secretary of State for Economic and Business Affairs E. Anthony Wayne and Committee Chairman R. Michael Gadbaw. Topics for the meeting are (1) a discussion of U.S. visa policy, and (2) the Central American—Dominican Republic Free Trade Agreement. The ACIEP serves the U.S. Government in a solely advisory capacity concerning issues and problems in international economic policy.

This meeting is open to the public as seating capacity allows. Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public planning to attend should provide, by March 10, their name, professional affiliation, social security number (or other identification, such as driver's license), date of birth, and citizenship to Gwendolyn Jackson by fax (202) 647–5936, e-mail (*jacksongl@state.gov*), or telephone (202) 647–0847.

For additional information, contact David Freudenwald, Office of Economic Policy and Public Diplomacy, Bureau of Economic and Business Affairs, at (202) 647–2231 or *freudenwalddj@state.gov*.

Dated: February 25, 2005.

Daniel Clune,

Office Director, Office of Economic Policy Analysis and Public Diplomacy, Department of State.

[FR Doc. 05–4119 Filed 3–1–05; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA–02–11392]

Insurer Reporting Requirements; Reports Under 49 U.S.C. on Section 33112(c)

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of availability.

SUMMARY: This notice announces publication by NHTSA of the annual

insurer report on motor vehicle theft for the 1999 reporting year. Section 33112(h) of Title 49 of the U.S. Code, requires this information to be compiled periodically and published by the agency in a form that will be helpful to the public, the law enforcement community, and Congress. As required by section 33112(c), this report provides information on theft and recovery of vehicles; rating rules and plans used by motor vehicle insurers to reduce premiums due to a reduction in motor vehicle thefts; and actions taken by insurers to assist in deterring thefts.

ADDRESSES: Interested persons may obtain a copy of this report and appendices by contacting the U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are from 10 am to 5 pm]. Requests should refer to Docket No. 2002–11392. This report without appendices may also be viewed on-line at: *http://www.nhtsa.dot.gov/cars/rules/theft*.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: The Motor Vehicle Theft Law Enforcement Act of 1984 (Theft Act) was implemented to enhance detection and prosecution of motor vehicle theft (Pub. L. 98–547). The Theft Act added a new title VI to the Motor Vehicle Information and Cost Savings Act, which required the Secretary of Transportation to issue a theft prevention standard for identifying major parts of certain high-theft lines of passenger cars. The Act also addressed several other actions to reduce motor vehicle theft, such as increased criminal penalties for those who traffic in stolen vehicles and parts, curtailment of the exportation of stolen motor vehicles and off-highway mobile equipment, establishment of penalties for dismantling vehicles for the purpose of trafficking in stolen parts, and development of ways to encourage decreases in premiums charged to consumers for motor vehicle theft insurance.

Title VI (which has since been recodified as 49 U.S.C. chapter 331), was designed to impede the theft of motor vehicles by creating a theft prevention standard which required manufacturers of designated high-theft car lines to inscribe or affix a vehicle identification number onto major components and replacement parts of all vehicle lines selected as high theft. The theft standard became effective in Model Year 1987 for designated high-theft car lines.

The Anti Car Theft Act of 1992 (Pub. L. 102–519) amended the law relating to the parts-marking of major component parts on designated high-theft vehicles. One amendment made by the Anti Car Theft Act was to 49 U.S.C. 33101(10), where the definition of ''passenger motor vehicle'' now includes a ''multipurpose passenger vehicle or light-duty truck when that vehicle or truck is rated at not more than 6,000 pounds gross vehicle weight.'' Since ''passenger motor vehicle'' was previously defined to include passenger cars only, the effect of the Anti Car Theft Act is that certain multipurpose passenger vehicle (MPV) and light-duty truck (LDT) lines may be determined to be high-theft vehicles subject to the Federal motor vehicle theft prevention standard (49 CFR part 541).

Section 33112 of Title 49 requires subject insurers or designated agents to report annually to the agency on theft and recovery of vehicles, on rating rules and plans used by insurers to reduce premiums due to a reduction in motor vehicle thefts, and on actions taken by insurers to assist in deterring thefts. Rental and leasing companies also are required to provide annual theft reports to the agency. In accordance with 49 CFR part 544.5, each insurer, rental and leasing company to which this regulation applies must submit a report annually not later than October 25, beginning with the calendar year for which they are required to report. The report would contain information for the calendar year three years previous to the year in which the report is filed. The report that was due by October 25, 2002 contains the required information for the 1999 calendar year. Interested persons may obtain a copy of individual insurer reports for CY 1999 by contacting the U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are from 10 am to 5 pm]. Requests should refer to Docket No. 2002–17376.

The annual insurer reports provided under section 33112 are intended to aid in implementing the Theft Act and fulfilling the Department's requirements to report to the public the results of the insurer reports. The first annual insurer report, referred to as the Section 612 Report on Motor Vehicle Theft, was prepared by the agency and issued in December 1987. The report included theft and recovery data by vehicle type, make, line, and model which were tabulated by insurance companies and, rental and leasing companies. Comprehensive premium information for each of the reporting insurance companies was also included. This report, the fifteenth, discloses the same subject information and follows the same reporting format.

Issued on: February 18, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–3986 Filed 3–1–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2003–16114; Notice 2]

Michelin North America, Inc.; Grant of Application for Decision That a Noncompliance Is Inconsequential to Motor Vehicle Safety

Michelin North America, Inc. (MNA) has determined that approximately 31,266 Michelin Pilot Sport/Alpin tires have been imported into the United States with sidewall markings that do not meet the labeling requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 109 ''*New Pneumatic Tires.*''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), MNA has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of the application was published, with a 30-day comment period, on October 14, 2003, in the **Federal Register** (68 FR 59235). NHTSA received no comment on this application.

The affected tires are those whose sidewalls labeling includes a maximum psi inflation pressure marking which rounds from the metric value to the *nearest* whole number (in this case down), rather than rounding up to the *next higher* whole number as specified by FMVSS No. 109 S4.3.4 (a). The tires in question meet or exceed all other requirements of FMVSS 109. The provisions of FMVSS No. 109 applicable to 340 kPa tires that are the subject of the petition require that the psi units be rounded ''to the next higher whole number'' even when the nearest whole number, would require rounding down, rather than up. The correct marking for the maximum inflation pressure required by FMVSS No. 109 for these tires is: ''340 kPa (50 psi).'' The

noncompliant tires were incorrectly marked: ''340 kPa (49 psi).'' The actual conversion of 340 kPa to psi units yields 49.35 psi before rounding to whole numbers (340 kPa divided by a conversion factor of 6.895 equals 49.35 psi).

The labeling requirements of FMVSS No. 109 *New Pneumatic Tire* S4.3.4 (a) mandate that each tire have permanently molded into or onto both sidewalls the maximum permissible inflation pressure in pounds per inch (psi) rounded to the next higher whole number.

MNA argues that this noncompliance will have no impact on either the performance of the tire on a motor vehicle, or on motor vehicle safety itself. MNA argues that NHTSA has recently studied the impact of tire labeling information on safety in the context of its rulemaking efforts under the Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act. This analysis found that sidewall maximum inflation pressure labeling is poorly understood by the general public, and indicated that those consumers that are aware of sidewall maximum inflation pressure labeling commonly misuse this information. A number of commenters on both the Advanced Notice of Proposed Rulemaking and the Notice of Proposed Rulemaking for tire labeling recommended that the maximum inflation pressure labeling be removed from the sidewall because of its limited safety value and its propensity to confuse consumers. NHTSA ultimately decided to retain maximum inflation pressure labeling requirements as an aid in preventing over-inflation. The mislabeling issue in this case will in no way contribute to the risk of over-inflation because the value actually marked is lower than the value required by the regulations.

Also, MNA states that, this mislabeling is clearly inconsequential with respect to safety for all of the following stated reasons: (1) The noncompliance is one solely of rounding to the nearest whole number and labeling; (2) The actual labeling is one psi less than that required by the regulation; (3) Rounding 49.35 psi to 49 psi, the nearest whole number, is more accurate in this case than rounding to the next higher whole number (50) as required by the regulations; (4) All performance requirements of FMVSS No. 109 are met or exceeded; (5) These tires are marked with the correct metric maximum inflation pressure (as allowed by FMVSS No. 109 and as shown on pages 1–32 of the 2003 Tire and Rim Association yearbook); (6) Use of the sidewall label as a source of information for the maximum inflation pressure will not increase the risk of over-inflation of the tire because the actual value is lower than both the actual maximum inflation pressure (by 0.35 psi) and lower than the 50 psi value required for these tires by the regulations; (7) Incorrect use of the sidewall label maximum inflation pressure as a source of information for the recommended inflation pressure will not result in an overloading of the tires or reduce the load capacity of the tires because the 49 psi conversion still remains 8 psi greater than that required to carry the maximum load for these tires. In fact, 340 kPa (50psi) is the higher of two alternative choices for the maximum inflation pressure provided for this tire's load rating per The Tire and Rim Association yearbook. Consequently, MNA believes that the foregoing noncompliance will have an inconsequential impact on motor vehicle safety.

NHTSA believes that the true measure of inconsequentiality to motor vehicle safety in this case is the effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. In this case, MNA selected the lower inflation pressure provided for this tire's load rating per The Tire and Rim Association yearbook. Except for the one psi understated maximum permissible inflation pressure on the sidewall, the subject tires are properly labeled and constructed in accordance with FMVSS No. 109. This labeling noncompliance has no effect on the performance of the subject tires.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance is inconsequential to motor vehicle safety. Accordingly, its application is granted and the applicant is exempted from providing the notification of the noncompliance as required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

(Authority: 49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: February 18, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–3988 Filed 3–1–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–18755; Notice 3]

Coupled Products, Inc., Notice of Appeal of Denial of Petition for Decision of Inconsequential Noncompliance

Coupled Products, Inc. (Coupled Products) has appealed a decision by the National Highway Traffic Safety Administration that denied its petition for a determination that its noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 106, ''Brake hoses,'' is inconsequential to motor vehicle safety.

Notice of receipt of the petition was published on August 5, 2004, in the **Federal Register** (69 FR 47484). On December 24, 2004, NHTSA published a notice in the **Federal Register** denying Coupled Products' petition (69 FR 76520), stating that the petitioner had not met its burden of persuasion that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Coupled Products' appeal is published in accordance with NHTSA's regulations (49 CFR 556.7 and 556.8) and does not represent any agency decision or other exercise of judgment concerning the merits of the appeal.

Coupled Products determined that certain hydraulic brake hose assemblies that it produced do not comply with S5.3.4 of 49 CFR 571.106, FMVSS No. 106. S5.3.4 of FMVSS No. 106, tensile strength, requires that ''a hydraulic brake hose assembly shall withstand a pull of 325 pounds without separation of the hose from its end fittings.'' A total of approximately 24,622 brake hose assemblies, consisting of 3,092 assemblies bearing Part Number 5478 and 21,530 assemblies bearing Part Number 5480 may not comply with S5.3.4. The potentially affected hoses were manufactured using a ''straight cup'' procedure rather than the appropriate ''step cup'' procedure. Compliance testing by the petitioner of eight sample hose assemblies from two separate manufacturing lots of these hoses revealed that seven of the eight samples experienced hose separation from the end fittings at loads from 224 to 317 pounds. Coupled Products asserted that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted.

NHTSA reviewed the petition and determined that the noncompliance is not inconsequential to motor vehicle

safety. Coupled Products had stated in its petition that because of the specific vehicle application involved, since the hoses are used in specific boat trailer applications of a single trailer manufacturer, the hoses are installed in such a manner as to make it unlikely that the hose assembly would be subject to the type of forces to which the tensile strength test is directed.

However, NHTSA determined that this was not a persuasive argument, since it is also true of many automobile brake hose applications. NHTSA also pointed out that the tensile strength test is a worst case test, subjecting the crimped joint to a separation pull. The purpose of the tensile strength test is to test only the crimped area in a brake hose. A test conducted at an angle to the end fitting centerline, such as conducted by the Coupled Products, would not measure the strength of the crimped area by itself but also the interaction of the end fitting with the interior wall of the brake hose. This would result in a more lenient test for the crimped area.

In its petition, Coupled Products had also asserted that because the braking system on the trailer is independent of the towing vehicle's braking system, a failure of the hose assembly on the trailer would not result in a loss of braking capability of the towing vehicle, and the driver would be able to stop both vehicles. In response, NHTSA determined that in the event that the failure of the hose assembly occurred, the driver of the towing vehicle would be faced with a potentially serious safety situation due to the reduced stopping capability of the vehicle combination.

The compliance testing by Coupled Products resulted in seven of eight sample hose assemblies experiencing hose separation from the end fittings at loads from 224 to 317 pounds. This represents a noncompliance margin of from 45 percent to 2 percent, respectively, compared to the requirement of 325 pounds, over a total population of 24,622 hose assemblies. NHTSA stated that a noncompliance margin of up to 45 percent presents a serious safety concern.

In consideration of the foregoing, NHTSA decided that the petitioner did not meet its burden of persuasion that the noncompliance it described is inconsequential to motor vehicle safety. Accordingly, its petition was denied.

In its appeal from NHTSA's denial, Coupled Products provided new data. It performed new testing on the noncompliant hoses using a hot impulse test modeled in accordance with SAE J1401, which is to be incorporated into FMVSS No. 106 in 2006 (69 FR 76298, 76324). This test was conducted using both properly crimped and incorrectly crimped brake hoses. The hoses passed the test without failures. In addition, Coupled Products conducted life cycle impulse testing based on SAE J1401, using the maximum brake pressure level (1000 psi) of the trailer for 10,000 cycles, equivalent to two panic stops a day—every day—for ten years, to assess the potential of catastrophic failure or leakage. This test was conducted using correctly and incorrectly crimped brake hoses. Couple Products states that there was no deterioration of hose assembly integrity. Coupled Products' appeal submission containing the specific data can be found in the NHTSA Docket for this petition.

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. *Mail:* Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590–0001. *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on ''Help'' to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: April 1, 2005.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8)

Issued on: February 22, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–3989 Filed 3–1–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–19792; Notice 2]

Unified Marine, Inc., Denial of Petition for Decision of Inconsequential Noncompliance

Unified Marine, Inc. (Unified Marine) has determined that certain combination lamps it distributed for sale, which were produced in 2002 through 2004, do not comply with 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''Lamps, reflective devices, and associated equipment.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Unified Marine has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of Unified Marine's petition was published, with a 30 day comment period, on December 15, 2004, in the **Federal Register** (69 FR 75106). NHTSA received two comments.

Approximately 52,665 combination lamps and combination lamp kits produced between December 2002 and July 2004 and marketed as ''Road Warrior by SeaSense'' are affected. These include the following combination lamps: 1,624 model 50080272 (right hand), 1,001 model 50080274 (left hand), 1,612 model 80272, and 1,947 model 80274, as well as 46,481 model 50080270 combination lamp kits that consist of two lamps per kit.

The subject rear combination lamps contain taillamps, stop lamps, turn signal lamps, rear reflex reflectors, and side marker lamps. In addition, the combination lamps designated for the left (driver's) side of the vehicle contain license plate lamps. FMVSS No. 108, S5.8.1, requires that each lamp, reflective device, or item of associated equipment manufactured to replace any lamp, reflective device, or item of associated equipment on any vehicle to which this standard applies, be designed to conform to the standard. As such, in order to comply with S5.8.1, the combination lamps must be designed to conform to the photometry, color, and other requirements specific to

the devices incorporated into the lamp combination.

Unified Marine's noncompliance report indicates that the lamps may have incorrectly positioned circuit boards that, consequently, cause insufficient light output to meet the minimum color and photometry requirements of the standard.

Unified Marine believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Unified Marine states that

> * * * our light has some deficiencies that are only detectable by highly sensitive testing equipment and not by visual means in actual use and therefore is not a safety issue. Upon review and extensive research, we have found out that the variations are not perceivable to the naked eye, and they are indeed inconsequential as they may only be seen in the laboratory environment. The lights are in no way unsafe in our opinion, and in fact much safer than the millions of conventional lights currently used in the marketplace.

NHTSA has reviewed the petition and has determined that the noncompliance is not inconsequential to motor vehicle safety. In our review, we considered the two comments to the **Federal Register** notice, both of which favored denying this petition. One comment was from the Transportation Safety Equipment Institute (TSEI), a non-profit trade association representing North American manufacturers of vehicle safety equipment including vehicle lighting equipment. TSEI stated, ''the noncompliance appears to be systemic, pervasive and substantial, thereby creating a significant safety risk to the motoring public.'' TSEI offered the following as the basis for its assertions:

> Unified Marine has failed to provide specific data demonstrating that, with respect to each of the lamp functions that do not meet the photometric requirements, the reduced photometric output at the specified test points and zones [is inconsequential to motor vehicle safety]. * * * Unified Marine suggests that the sealed design of the subject products and the use of LEDs, rather than conventional lights, make its product safer than a fully compliant lamp. * * * [T]he fact that the noncompliant lamps used LED rather than conventional bulbs does not excuse Unified Marine from the photometric and other requirements of FMVSS No. 108. * * * [In addition,] without providing test results or any other supporting documentation or data, Unified Marine argues that its product ''has some deficiencies that are only detectable by highly sensitive testing equipment and not by visual means in actual use.'' * * * TSEI testing of the petitioner's product—using the same ''highly-sensitive,'' industry-standard equipment apparently used by Unified Marine—reveals that it deviates substantially from the photometric requirements of FMVSS No. 108. * * * TSEI's own testing data reveal that the subject products overwhelmingly fail the photometric requirements specified in FMVSS No. 108.

The second comment was from Peterson Manufacturing Company (Peterson), a manufacturer of safety lighting equipment for all size vehicles. Peterson provided the following rationale for denial of the petition:

> Unified Marine states that the deficiencies are only detectable by ''highly sensitive testing equipment'' and not by visual means in actual use and therefore is not a safety issue. The photometric testing equipment referred to is common in the lighting industry as most manufacturers rely upon it for consistency, quality and reliability. * * * Unified Marine does not offer supporting test data to substantiate its claim of inconsequential noncompliance. Comparative test data show failures in 5 functions of the 5-function light and 6 functions of the 6-function light. The reflex readings were barely detectable and certainly discernable as failures to the naked eye. The side marker lamp failed 6 of 9 test points (67% failure rate) and the stop and turn function failed 4 of 5 zones (80% failure rate). These are not inconsequential.

NHTSA agrees with the rationale presented by the two commenters. Unified Marine admits that the noncompliances are detectable by testing equipment, and as stated by TSEI and Peterson, this test equipment is the standard used by the lighting industry for consistency, quality and reliability.

Additionally, NHTSA conducted its own testing [1] of two UMI model 50080270 kits (4 lamps) and found numerous photometry failures for this lamp model. For instance, all four stop lamps failed to meet the minimum required photometry for 3 of 5 required zones with failures ranging from 35% to 49% below the minimum required values. Further, all four stop lamps failed to meet the minimum taillamp/stop lamp intensity ratio at all four test points that require a stop lamp intensity of at least 5 times the taillamp intensity. The intensity ratio failures were in the range of 22% to 28% below the required minimum. When tested with an observation angle of 0.2 degrees, all four reflex reflectors exhibited failures at every test point ranging from 92% to 100% below the minimum required values. Further, all four side marker lamps exhibited failures at 45 degree test points with failures ranging from 12% to 76% below the required minimums. Finally, of the two combination lamps that included license plate lamps, both license plate lamps failed to meet the minimum requirements at the same four (out of eight) required zones. These failures were all more than 73% below the required minimum values. These data show that these lamp models deviate substantially from the photometric requirements specified in FMVSS No. 108.

Unified Marine has not provided convincing objective data regarding the inconsequentiality of its noncompliance. NHTSA believes that the noncompliance margins described above represent a substantial reduction in performance below a minimally compliant device and this reduction is consequential to motor vehicle safety.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance it describes is inconsequential to safety. Accordingly, its petition is hereby denied. Unified Marine must now fulfill its obligation to notify and remedy under 49 U.S.C. 30118(d) and 30120(h).

Authority: 49 U.S.C. 30118(d) and 30120(h); delegations of authority at CFR 1.50 and 501.8.

Issued on: February 22, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–3990 Filed 3–1–05; 8:45 am]

BILLING CODE 4910–59–P

[1] Calcoast Report No. 108–CCITL–04–1 may be found Docket No. NHTSA–2004–19792.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–20274; Notice 1]

Workhorse Custom Chassis, Receipt of Petition for Decision of Inconsequential Noncompliance

Workhorse Custom Chassis (Workhorse) has determined that certain incomplete motor home chassis it produced in 2000 through 2004 do not comply with S3.1.4.1 of 49 CFR 571.102, Federal Motor Vehicle Safety Standard (FMVSS) No. 102, ''Transmission shift lever sequence, starter interlock, and transmission braking effect.'' Workhorse has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Workhorse has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Workhorse's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are a total of approximately 42,524 incomplete motor home chassis built between July 2000 and December 31, 2004. S3.1.4.1 of FMVSS No. 102 requires that

> if the transmission shift lever sequence includes a park position, identification of shift lever positions * * * shall be displayed in view of the driver whenever any of the following conditions exist: (a) The ignition is in a position where the transmission can be shifted. (b) The transmission is not in park.

Workhorse describes its noncompliance as follows:

> In these vehicles when the ignition key is in the ''OFF'' position, the selected gear position is not displayed. ''OFF'' is a position not displayed, but located between lock and run. The gear selector lever can be moved while the ignition switch is in ''OFF.''

Workhorse believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Workhorse states that:

> [T]he vehicles will be in compliance with FMVSS No. 102 during normal ignition activation and vehicle operation. Workhorse believes that the purpose of the rule is to provide the driver with transmission position information for the vehicle conditions where such information can reduce the likelihood of shifting errors. This occurs primarily when the engine is running, and Workhorse's PRNDL is always visible when the engine is running.
>
> Should the shift lever be in any position other than park or neutral, the ignition will not start * * * Should the Workhorse vehicle be in neutral at the time the ignition is turned to start, the display will immediately come on and be visible to the driver.
>
> There are a number of safeguards to preclude the driver from leaving the vehicle with the vehicle in a position other than in the park position. First, if the driver should attempt to remove the key, the driver will discover that the vehicle is not in park because the key may not be removed. * * * If the driver were to attempt to leave the vehicle without removing the key, the audible warning required by FMVSS No. 114 would immediately sound reminding the driver that the key is still in the vehicle.

Workhorse states that this situation is substantially the same as for two petitions which NHTSA granted, one from General Motors (58 FR 33296, June 16, 1993) and the second from Nissan Motors (64 FR 38701, June 19, 1999). Workhorse says, ''In both of those cases, the PRNDL display would not be illuminated if the transmission was left in a position other than 'park' when the ignition key was turned to 'OFF.' ''

Workhorse states that it has no customer complaints or accident reports related to the noncompliance.

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. *Mail:* Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590–0001. *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on ''Help'' to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: April 1, 2005.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: February 22, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–3991 Filed 3–1–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34638]

San Diego & Imperial Valley Railroad Company, Inc.—Lease and Operation Exemption—BNSF Railway Company [1]

San Diego & Imperial Valley Railroad Company, Inc. (SDIV), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate, pursuant to an agreement with BNSF Railway Company (BNSF), approximately 1.35 miles of BNSF's permanent and exclusive reserved rail freight service easement located between milepost 19.85, west of Escondido, and at or near milepost 21.2, at the eastern end of the rail corridor in Escondido, in San Diego County, CA.

SDIV certifies that its projected annual revenues as a result of this transaction will not result in SDIV's becoming a Class II rail carrier, and further certifies that its projected annual revenues will not exceed $5 million.

The transaction is expected to be consummated on March 1, 2005.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34638, must be filed with the Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Gary A. Laakso, Esq., Vice President Regulatory Counsel, San Diego & Imperial Valley Railroad Company, Inc., 5300 Broken Sound Blvd., NW., Boca Raton, FL 33487, and Louis E. Gitomer, Esq., Of Counsel, Ball Janik LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 22, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–3985 Filed 3–1–05; 8:45 am]

BILLING CODE 4915–01–P

[1] Effective January 20, 2005, the name of ''The Burlington Northern and Santa Fe Railway Company'' was changed to ''BNSF Railway Company.''

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Proposed Collection; Comment Request for Request for a Specific License To Visit an Immediate Family Member in Cuba

AGENCY: Office of Foreign Assets Control, 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 Office of Foreign Assets Control (''OFAC'') within the Department of the Treasury is soliciting comments concerning OFAC's ''Request for a Specific License to Visit an Immediate Family Member in Cuba who is a National of Cuba once in a three year period'' Application Form TD–F 90–22.60 and TD–F 90–22.60 (SP).

DATES: Written comments should be received on or before May 2, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to the Records Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex—2d Floor, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information about the filings or procedures should be directed to Licensing Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., 1500 Pennsylvania Avenue, Annex—2d Floor, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Title: OFAC Form ''Request for a Specific License to Visit an Immediate Family Member in Cuba who is a National of Cuba once in a three year period.''

Agency Form Number: TD–F 90–22.60 and TD–F 90–22.60 (SP).

OMB Number: 1505–0202.

Abstract: On October 10, 2003, the President announced the establishment of a Commission for Assistance to a Free Cuba, which he tasked with identifying ways to hasten Cuba's transition to a free and open society. On May 1, 2004, the Commission delivered its Report to the President recommending, among other things, changes to the U.S. sanctions with respect to Cuba. On May 6, 2004, the President directed the implementation of certain of the Commission's recommendations. The Office of Foreign Assets Control (''OFAC'') issued an interim final rule on June 16, 2004, implementing these recommendations through amendments to the Cuban Assets Control Regulations, effective June 30, 2004.

These amendments, among other things, changed the rules regarding travel-related transactions incident to visiting relatives in Cuba. Prior to the amendments, a person with a Cuban national close relative (defined to include second cousins) in Cuba could engage in travel-related transactions incident to visiting that relative once every 12 months under a general license (no application necessary) and more often pursuant to a specific license, if requested. Effective June 30, 2004, the once-per-twelve-months general license was eliminated. OFAC now issues specific licenses authorizing travel-related transactions incident to visits to members of a person's immediate family (defined much more narrowly) who are nationals of Cuba once per three-year period and for no more than 14 days.

In order to ensure that the one-trip-per-three-year-period and other requirements are not violated, OFAC uses forms TD–F 90–22.60 and TD–F 90–22.60 (SP) to collect information on the traveler and the family members in Cuba whom the traveler is visiting. The form is provided in English and Spanish to accommodate those persons for whom Spanish is the primary language. The use of the form provides a standardized method of information collection, ensures uniform and consistent compliance, and allows OFAC to maintain detailed records that enable OFAC to verify that travelers are not exceeding the restriction of the frequency of visits to Cuba and that they are only visiting members of their immediate family.

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.

Estimated Number of Respondents: 35,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 5,833.

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 Office of Management and Budget (''OMB'') control number. Books or records relating to a collection of information must be retained for five years.

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 has 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: February 23, 2005.

Robert W. Werner,

Director, Office of Foreign Assets Control.

[FR Doc. 05–4006 Filed 3–1–05; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Proposed Collection; Comment Request for Travel Service Provider and Carrier Service Provider Submission

AGENCY: Office of Foreign Assets Control, 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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Foreign Assets Control (''OFAC'') within the Department of the Treasury is soliciting comments concerning OFAC's Travel

Service Provider and Carrier Service Provider information collection.

DATES: Written comments should be received on or before May 2, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Merete Evans, Chief, Records Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex—2d Floor, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information about the filings or procedures should be directed to David W. Mills, Chief, Licensing Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., 1500 Pennsylvania Avenue, Annex—2d Floor, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Title: Travel Service Provider and Carrier Service Provider Submission.

OMB Number: 1505–0168.

Abstract: The information is required of persons who have been authorized by the Office of Foreign Assets Control of the Department of the Treasury (''OFAC'') to handle travel arrangements to, from, and or within Cuba or to provide charter air service to Cuba. Travel service providers are required to collect information on persons traveling on direct flights to Cuba and forward that information to carrier service providers, for ultimate submission to OFAC.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and businesses.

Estimated Number of Respondents: 228,000.

Estimated Time Per Respondent: 5 minutes per entry for travel service providers, or up to 570,000 minutes annually for travel service providers in the aggregate (9,500 hours); and up to 5 minutes per entry for carrier service providers, or up to 570,000 entries annually for carrier service providers in the aggregate (9,500 hours).

Estimated Total Annual Burden Hours: 19,000.

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 Office of Management and Budget (''OMB'') control number. Books or records relating to a collection of information must be retained for five years.

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 has 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: February 23, 2005.

Robert W. Werner,

Director, Office of Foreign Assets Control.

[FR Doc. 05–4007 Filed 3–1–05; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–39–89]

Proposed Collection; Comment Request for Regulation Project

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, Pub. L. 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, Limitation on Passive Activity Losses and Credits—Treatment of Self-Charged Items of Income and Expense (Section 1.469–7(f)).

DATES: Written comments should be received on or before May 2, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6512, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, Room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Limitation on Passive Acitivity Losses and Credits—Treatment of Self-Charged Items of Income and Expense.

OMB Number: 1545–1244.

Regulation Project Number: PS–39–89.

Abstract: Section 1.469–7(f)(1) of this regulation permits entities to elect to avoid application of the regulation in the event the passthrough entity chooses to not have the income from leading transactions with owners of interests in the entity recharacterized as passive activity gross income. The IRS will use this information to determine whether the entity has made a proper timely election and to determine that taxpayers are complying with the election in the taxable year of the election and subsequent taxable years.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 100.

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: February 24, 2005.

Paul Finger,

IRS Reports Clearance Officer.

[FR Doc. 05–4021 Filed 3–1–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Minority Thrift Certification Form

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before April 1, 2005.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Mark D. Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503, or e-mail to *mmenchik@omb.eop.gov;* and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov,* (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Minority Thrift Certification Form.

OMB Number: 1550–0096.

Form Number: OTS Form 1661.

Description: This information is needed to help OTS maintain a reliable source of information regarding the universe of minority-owned thrifts, in accordance with our responsibilities under Section 308 of FIRREA.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 26.

Estimated Burden Hours per Response: .5 hours.

Estimated Frequency of Response: Annually.

Estimated Total Burden: 13 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Mark D. Menchik, (202) 395–3176, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: February 23, 2005.

By the Office of Thrift Supervision

James E. Gilleran,

Director.

[FR Doc. 05–4015 Filed 3–1–05; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to assist claimants in obtaining evidence of radiation exposure during active duty military service.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 2, 2005.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4)

ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Statement of Radiation Exposure during Military Service, VA Form 21–0783.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: VA will use the information collected on VA Form 21–0783 to assist claimants in obtaining supporting documentation to substantiate their claim of radiation exposure during military service and, when applicable, a radiation dose assessment. The information collected will be used to establish claimants' eligibility for disability benefit.

Affected Public: Individuals and households.

Estimated Annual Burden: 1,680 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,680.

Dated: February 15, 2005.

By direction of the Secretary:

Cindy Stewart,

Program Analyst, Records Management Service.

[FR Doc. 05–3966 Filed 3–1–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments needed to determine a claimant's eligibility to receive transportation or reimbursement for travel to VA or authorized non-VA health care providers.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 2, 2005.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *ann.bickoff@mail.va.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Regulation on Beneficiary Travel (38 U.S.C. 111).

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: VA will use the data collected to determine a claimant's eligibility for transportation or reimbursement for travel to VA or authorized non-VA health care providers. VA personnel will collect verbal and possibly written information in a form of a bill, receipt or appointment letter from the claimant when transportation or reimbursement for travel is requested.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 390,708 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 4,688,496.

Dated: February 15, 2005.

By direction of the Secretary:

Cindy Stewart,

Program Analyst, Records Management Service.

[FR Doc. 05–3967 Filed 3–1–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0179]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 1, 2005.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, fax (202) 273–5981 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0179.'' Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0179'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Application for Change of Permanent Plan (Medical) (Change to a policy with a lower reserve value), VA Form 29–1549.

OMB Control Number: 2900–0179.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the insured to establish his/her eligibility to change insurance plans from a higher reserve to a lower reserve value.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 12, 2004 at page 65507.

Affected Public: Individuals or households.

Estimated Annual Burden: 14 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 28.

Dated: February 15, 2005.

By direction of the Secretary.

Cindy Stewart,

Program Analyst, Records Management Service.

[FR Doc. 05–3968 Filed 3–1–05; 8:45 am]

BILLING CODE 8320–02–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0139]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 1, 2005.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, fax (202) 273–5981 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0139.'' Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0139'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Notice-Payment Not Applied (Government Life Insurance), VA Form 29–4499a.

OMB Control Number: 2900–0139.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–4499a is used by policy holders to reinstate their National Service Life Insurance (NSLI) policy. The information collected is used to determine the insurer's eligibility for reinstatement to government life insurance.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 12, 2004 at page 65507.

Affected Public: Individuals or households.

Estimated Annual Burden: 300 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,200.

Dated: February 15, 2005.

By direction of the Secretary.

Cindy Stewart,

Program Analyst, Records Management Service.

[FR Doc. 05–3969 Filed 3–1–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0404]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 1, 2005.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0404.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0404'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Veteran's Application for Increased Compensation Based on Unemployability, VA Form 21–8940.

OMB Control Number: 2900–0404.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–8940 is used by veterans to file a claim for increased VA disability compensation based on unemployability. The claimant is required to provide current medical, educational, and occupational history in order to determine whether he or she is unable to secure or follow a substantially gainful occupation due to service-connected disabilities.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 17, 2004 at pages 67388–67389.

Affected Public: Individuals or households.

Estimated Annual Burden: 18,000 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 24,000.

Dated: February 17, 2005.

By direction of the Secretary.

Cindy Stewart,

Program Analyst, Records Management Service.

[FR Doc. 05–3971 Filed 3–1–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0029]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed from a private sector sales broker to submit an offer to VA on behalf of a prospective buyer of a VA-acquired property.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 2, 2005.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0029'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Offer to Purchase and Contract of Sale, VA Form 26–6705.

b. Credit Statement of Prospective Purchaser, VA Form 26–6705b.

c. Addendum to VA Form 26–6705 Offer to Purchase and Contract of Sale, VA Form 26–6705d.

OMB Control Number: 2900–0029.

Type of Review: Extension of a currently approved collection.

Abstract:

a. VA Form 26–6705 is completed by private sector sales broker to submit an offer to purchase VA acquired property on behalf of a prospective buyer. VA Form 26–6705 becomes a contract of sale if VA accepts the offer to purchase. It serves as a receipt for the prospective buyer for his/her earnest money deposit, describes the terms of sale, and eliminates the need for separate transmittal of a purchase offer.

b. VA Form 26–6705b is used as a credit application to determine the prospective buyer creditworthiness in instances when the prospective buyer seeks VA vendee financing. In such sales, the offer to purchase will not be accepted until the buyer's income and credit history have been verified and a loan analysis has been completed.

c. VA Form 26–6705d is an addendum to VA Form 26–6705 for use in the state of Virginia. The forms requires that the buyer be informed of the State's law at or prior to closing the transaction.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA Form 26–6705—20,000 hours.

b. VA Form 26–6705b—15,000 hours.

c. VA Form 26–6705d—250 hours.

Estimated Average Burden Per Respondent:

a. VA Form 26–6705—20 minutes.

b. VA Form 26–6705b—20 minutes.

c. VA Form 26–6705d—5 minutes.

Frequency of Response: On occasion.

Estimated Number of Total Respondents:

a. VA Form 26–6705—60,000.

b. VA Form 26–6705b—45,000.

c. VA Form 26–6705d—3,000.

Dated: February 17, 2005.

By direction of the Secretary.

Cindy Stewart,

Program Analyst, Information Management Service.

[FR Doc. 05–3972 Filed 3–1–05; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
March 2, 2005

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR 679 and 6805

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 679 and 6805

[Docket No. 040831251–5032–02; I.D. 082504A]

RIN 0648–AS47

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule implementing Amendments 18 and 19 to the Fishery Management Plan for Bering Sea/Aleutian Islands (BSAI) King and Tanner Crabs (FMP). Amendments 18 and 19 amend the FMP to include the Voluntary Three-Pie Cooperative Program (hereinafter referred to as the Crab Rationalization Program or Program). Congress amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to require the Secretary of Commerce to approve and implement the Program. The action is necessary to increase resource conservation, improve economic efficiency, and improve safety. This action is intended to promote the goals and objectives of the Magnuson-Stevens Act, the FMP, and other applicable law.

DATES: Effective on April 1, 2005.

ADDRESSES: Copies of Amendments 18 and 19, the Final Regulatory Flexibility Analysis (FRFA), and the Environmental Impact Statement (EIS) for this action may be obtained from the NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall, and on the Alaska Region, NMFS, Web site at *http://www.fakr.noaa.gov/sustainablefisheries/crab/eis/default.htm.* The EIS contains as appendices the Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and Social Impact Assessment (SIA) prepared for this action.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS, Alaska Region, and by e-mail to *David_Rostker@omb.eop.gov,* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Susan Salveson, 907–586–7228 or *sue.salveson@noaa.gov.*

SUPPLEMENTARY INFORMATION: In January 2004, the U.S. Congress amended section 313(j) of the Magnuson-Stevens Act through the Consolidated Appropriations Act of 2004 (Pub. L. 108–199, section 801). As amended, section 313(j)(1) requires the Secretary to approve and implement by regulation the Program, as it was approved by the North Pacific Fishery Management Council (Council) between June 2002 and April 2003, and all trailing amendments, including those reported to Congress on May 6, 2003. In June 2004, the Council consolidated its actions on the Program into the Council motion, which is contained in its entirety in Amendment 18. Additionally, in June 2004, the Council developed Amendment 19, which represents minor changes necessary to implement the Program. The Notice of Availability for these amendments was published in the **Federal Register** on September 1, 2004 (69 FR 53397). NMFS approved Amendments 18 and 19 on November 19, 2004.

NMFS published a proposed rule to implement Amendments 18 and 19 in the **Federal Register** on October 29, 2004 (69 FR 63200). NMFS solicited public comments on the proposed rule through December 13, 2004. NMFS received 49 letters of public comment. NMFS summarized these letters into 234 separate comments, and responded to them under Response to Comments, below.

The Program allocates BSAI crab resources among harvesters, processors, and coastal communities. The Council developed the Program over a 6-year period to accommodate the specific dynamics and needs of the BSAI crab fisheries. The Program builds on the Council's experiences with the halibut/sablefish Individual Fishing Quota (IFQ) program and the American Fisheries Act (AFA) cooperative program for Bering Sea pollock. The Program is a limited access system that balances the interests of several groups who depend on these fisheries. The Program addresses conservation and management issues associated with the current derby fishery, reduces bycatch and associated discard mortality, and increases the safety of crab fishermen by ending the race for fish. Share allocations to harvesters and processors, together with incentives to participate in crab harvesting cooperatives, will increase efficiencies, provide economic stability, and facilitate compensated reduction of excess capacities in the harvesting and processing sectors. Community interests are protected by Community Development Quota (CDQ) allocations and regional landing and processing requirements, as well as by several community protection measures.

This preamble first provides a Crab Rationalization Program overview that presents a general description of all of the Program components. Subsequent sections address the response to public comments and changes in the rule from proposed to final. Please refer to the proposed rule for additional information on the Program.

Crab Rationalization Program Overview

The Program applies to the following BSAI crab fisheries: Bristol Bay red king crab (*Paralithodes camtschaticus*), Western Aleutian Islands (Adak) golden king crab (*Lithodes aequispinus*)—west of 174° W. long., Eastern Aleutian Islands (Dutch Harbor) golden king crab—east of 174° W. long., Western Aleutian Islands (Adak) red king crab—west of 179° W. long., Pribilof Islands blue king crab (*P. platypus*) and red king crab, St. Matthew Island blue king crab, Bering Sea snow crab (*Chionoecetes opilio*), and Bering Sea Tanner crab (*C. bairdi*). Golden king crab is also known as brown king crab. In this document, the phrases ''crab fishery'' and ''crab fisheries'' refer to these fisheries, unless otherwise specified. A License Limitation Program (LLP) license will no longer be required to participate in these crab fisheries.

Several crab fisheries under the FMP are excluded from the Program, including the Norton Sound red king crab fishery, which is operated under a ''superexclusive'' permit program intended to protect the interests of local, small-vessel participants. Also excluded from this Program are the Aleutian Islands Tanner crab fishery, Aleutian Islands red king crab fishery east of 179° W. long., and the Bering Sea golden king crab, scarlet king crab (*L. couesi*), triangle Tanner crab (*C. angulatus*), and grooved Tanner crab (*C. tanneri*) fisheries. An LLP license will be required to participate in the FMP crab fisheries excluded from the Program.

Harvest Sector

Qualified harvesters are allocated quota share (QS) in each crab fishery. To receive a QS allocation, a harvester must hold a permanent, fully transferable LLP license endorsed for that crab fishery. Using LLP licenses for defining eligibility in the Program maintains current fishery participation. Quota

share represents an exclusive but revokable privilege that provides the QS holder with an annual allocation to harvest a specific percentage of the total allowable catch (TAC) from a fishery. IFQs are the annual allocations of pounds of crab for harvest that represent a QS holder's percentage of the TAC. A harvester's allocation of QS for a fishery is based on the landings made by his or her vessel in that fishery. Specifically, each allocation is the harvester's average annual portion of the total qualified catch during a specific qualifying period. Qualifying periods were selected to balance historical and recent participation. Different periods were selected for different fisheries to accommodate closures and other circumstances in the fisheries in recent years.

Quota share is designated as either catcher vessel (CV) shares or catcher/processor (CP) shares, depending on the nature of the LLP license and whether the vessel processed the qualifying harvests on board. Catcher vessel IFQ will be issued in two classes, Class A IFQ and Class B IFQ. Crabs harvested with Class A IFQ will require delivery to a processor holding unused processing quota. Class A IFQ landings also will be subject to a regional delivery requirement. Under this regional requirement, landings will be delivered either in a North or in a South region (in most fisheries). Crabs harvested with Class B IFQ can be delivered to any processor and will not be regionally designated. Landings in excess of IFQ will be forfeited in all cases. Class B IFQ are intended to provide ex-vessel price negotiating leverage to harvesters. For each region of each fishery, the allocation of Class B IFQ will be 10 percent of the total allocation of IFQ to the CV sector.

Transfer of QS and IFQ, either by sale or lease, will be allowed, subject to limits including caps on the amount of shares a person may hold or use. To be eligible to receive transferred QS or IFQ, a person must meet specific eligibility criteria. Initial recipients of QS, CDQ groups, and eligible crab community entities are exempt from the transfer eligibility criteria.

Separate caps will be imposed to limit the amount of QS and IFQ a person can hold and to limit the use of IFQ on board a vessel. These caps are intended to prevent negative impacts from what can be described as excessive consolidation of shares. Excessive share holdings are prohibited by the Magnuson-Stevens Act. Different caps were chosen for the different fisheries because fleet characteristics and dependence differ across fisheries. Separate caps on QS holdings are established for CDQ groups, which represent rural western Alaska communities. Processor holdings of QS will also be limited by caps on vertical integration. Quota share holders can retain and use initial allocations of QS above the caps.

Crew Sector

To protect their interests in the fisheries, qualifying crew will be allocated 3 percent of the initial QS pool. These shares are intended to provide long term benefits to captains and crew. The Council originally intended this provision to apply only to vessel captains. However, NMFS has determined that documentation necessary to allocate Crew QS, called C shares by the Council, requires that these shares be initially issued to individuals who hold a State of Alaska Interim Use Permit. In most cases, this individual will be the captain; however, the State does not require that the holder of the Interim Use Permit be the vessel captain. The allocation to crew will be based on the same qualifying years and computational method used for QS allocations to LLP license holders. Crew (C) QS will be issued as CVC QS and CPC QS, depending on the activity in the qualifying years. To ensure that Crew QS and IFQ benefit at-sea participants in the fisheries, Crew IFQ can be used only when the IFQ holder is on board the vessel.

To be eligible to receive an allocation, an individual is required to have historic and recent participation. Historic participation is demonstrated by at least one landing in each of three of the qualifying years. Recent participation is demonstrated by at least one landing in two of the three most recent seasons, with some specific exceptions.

CV Crew IFQ (called CVC IFQ) will be required to be delivered to shore-based processors for processing. CVC IFQ is not subject to specific delivery requirements until July 1, 2008. After July 1, 2008, CVC IFQ will be subject to the Class A IFQ/Class B IFQ distinction with commensurate regional delivery requirements unless the Council determines, after review, not to apply those designations. Before July 1, 2007, the Council intends to review CVC IFQ landing patterns to determine whether the distribution of landings among processors and communities of CVC IFQ differs from the distribution of IFQ landings.

CP crew will be allocated CPC QS and IFQ that include a harvesting and on-board processing privilege. Crab harvested with CPC IFQ also can be delivered to shore-based processors.

Crew QS and IFQ can be transferred to eligible individuals. Leasing of Crew IFQ is permitted before July 1, 2008. After July 1, 2008, leasing will be permitted only in the case of a documented hardship (such as a medical hardship or loss of vessel) for the term of the hardship, subject to a maximum of 2 years over a 10-year period. Use caps apply to individual Crew QS holdings.

Processing Sector

A processing privilege, analogous to the harvesting privilege allocated to harvesters, will be allocated to processors. Qualified processors will be allocated processor quota share (PQS) in each crab fishery. PQS represents an exclusive but revocable privilege to receive deliveries of a specific portion of the annual TAC from a fishery. The annual allocation of pounds of crab based on the PQS is IPQ. IPQ will be issued for 90 percent of the IFQ allocated harvesters, equaling the amount of IFQ allocated as Class A IFQ. Processor privileges will not apply to the remaining TAC allocated as Class B IFQ, or for Crew IFQ until July 1, 2008. IPQs will be regionally designated for processing (corresponding to the regional designation of the Class A IFQ).

PQS allocations are based on processing history during a specified qualifying period for each fishery. A processor's initial allocation of PQS in a fishery will equal its share of all qualified pounds of crab processed in the qualifying period. Processor shares are transferable, including the leasing of IPQs and the sale of PQS, subject to caps and to community protection measures. IPQs can be used without transfer at any facility or plant operated by a processor. New processors can enter the fishery by purchasing PQS or IPQ or by purchasing crab harvested with Class B IFQ or crab harvested by CDQ groups or the Adak community entity.

A PQS holder is limited to holding 30 percent of the PQS issued for a fishery, except that initial allocations of shares above this limit can be retained and used. In addition, in the snow crab fishery, no processor is permitted to use or hold in excess of 60 percent of the IPQs issued for the Northern region.

Catcher/Processor Sector

Catcher/processors (CPs) have a unique position in the Program because they participate in both the harvesting and processing sectors. To be eligible for CP QS, a person is required to hold a permanent, fully transferable LLP license designated for CP use. In

addition, a person must have processed crab on board the CP, whose history gave rise to the LLP license, in either 1998 or 1999. Persons meeting these qualification requirements will be allocated CP QS in accordance with the allocation rules for QS for all qualified catch that was processed on board. These shares represent a harvest privilege and an on-board processing privilege. Catcher/Processor QS does not have regional designations.

Regionalization

The regional delivery requirements for QS are intended to preserve the historic geographic distribution of landings in the fisheries. Communities in the Pribilof Islands are the prime beneficiaries of this regionalization provision. Two regional designations will be created in most fisheries. The North region is all areas in the Bering Sea north of 56°20′ N latitude. The South region is all other areas. Catcher vessel QS, Class A IFQ, PQS, and IPQ will be regionally designated. Crab harvested with regionally designated IFQ will be required to be delivered to a processor in the designated region. Likewise, a processor with regionally designated IPQ is required to accept delivery of and process crab in the designated region. Legal landings in a region in the qualifying years will result in QS and PQS designated for that region.

The Program has two exceptions to the North/South regional designations. In the Western Aleutian Islands golden king crab fishery, 50 percent of the Class A IFQ and IPQ will be designated as west shares to be delivered west of 174° W. longitude. The remaining 50 percent of the Class A IFQ and IPQ will have no regional designation and will not be subject to a regional delivery requirement. The west designation will be applied to all Class A IFQ and IPQ regardless of the historic location of landings in the fishery. A second exception is the Bering Sea Tanner crab fishery, which will have no regional designation. This fishery is anticipated to be conducted primarily as a concurrent fishery with the regionalized Bristol Bay red king crab and Bering Sea snow crab fisheries, making the regional designation of Tanner crab landings unnecessary.

Crab Harvesting Cooperatives

Harvesters may form voluntary crab harvesting cooperatives in order to collectively harvest their IFQ holdings. A minimum membership of four unique QS holders is required for crab harvesting cooperative formation. A crab harvesting cooperative is required to apply for a crab harvesting cooperative IFQ permit. The crab harvesting cooperative IFQ permit will display the aggregate amount of IFQ in each crab fishery that will be yielded by the collective QS holdings of the members. IFQ could be transferred between crab harvesting cooperatives, subject to NMFS' approval. For inter-cooperative transfers, the crab harvesting cooperative will need to designate the crab harvesting cooperative member engaged in the transaction for purposes of applying the use cap of that member to the IFQ that is being transferred to the crab harvesting cooperative. Crab harvesting cooperative members will be allowed to leave a crab harvesting cooperative or change crab harvesting cooperatives on an annual basis prior to the August 1 deadline for the annual crab harvesting cooperative IFQ permit application. Vessels that are used exclusively to harvest crab harvesting cooperative IFQ will not be subject to use caps. Crab harvesting cooperatives are free to associate with one or more processors to the extent allowed by antitrust law.

Community Protection Measures

The Program includes several provisions intended to protect communities from adverse impacts that could result from the Program. Communities eligible for the community protection measures are those with 3 percent or more of the qualified landings in any crab fishery included in the Program. Based on these criteria, NMFS has determined that the following crab communities meet this criteria: Adak, Akutan, Unalaska, Kodiak, King Cove, False Pass, St. George, St. Paul, and Port Moller. All of these communities are identified as eligible crab communities (ECCs) for purposes of community protection measures.

''Cooling off'' provision. Until July 1, 2007, PQS and IPQ based on processing history from the ECCs can not be transferred from those communities. The use of IPQ outside the community during this period is limited to 20 percent of the IPQ and for specific hardships. PQS and IPQ from three crab fisheries are exempt from the cooling off provision: Tanner crab, Western Aleutian Islands red king crab, and Western Aleutian Islands golden king crab.

IPQ issuance limits. IPQ issuance limits are established to limit the annual issuance of IPQ in seasons when the Bristol Bay red king crab or snow crab TAC exceeds a threshold amount. Under these circumstances, Class A IFQ issued in excess of these thresholds will not be required to be delivered to a processor with IPQ but will be subject to the regional delivery requirements.

Sea time waiver. Sea time eligibility requirements for the purchase of QS are waived for CDQ groups and community entities in ECCs, allowing those communities to build and maintain local interests in harvesting. CDQ groups and ECCs are eligible to purchase PQS but are not permitted to purchase Crew QS.

Right of first refusal (ROFR). ECCs, except for Adak, will have a ROFR on the transfer of PQS and IPQ originating from processing history in the community if the transfer will result in relocation or use of the shares outside the community. Adak is not eligible for the ROFR provision because Adak will receive a direct allocation of Western Aleutian Islands golden king crab. In addition, the City of Kodiak and the Kodiak Island Borough in the Gulf of Alaska (GOA) have a ROFR on the transfer of PQS and IPQ from communities in the GOA north of 56°20′ N. latitude.

Community Development Quota Program and Community Allocations

Community Development Quota Program. The CDQ Program is be expanded to include the Eastern Aleutian Islands golden king crab fishery and the Western Aleutian Islands red king crab fishery. In addition, the CDQ allocations in all crab fisheries covered by the Program are increased from 7.5 to 10 percent of the TAC. The increase will not apply to the CDQ allocation of Norton Sound red king crab because this fishery is excluded from the Program. The crab CDQ fisheries will be managed as separate commercial fisheries by the State under authority deferred to it under the FMP. The State will establish observer coverage requirements, State permitting requirements, and transfer provisions among the CDQ groups. It also will monitor catch to determine when IFQ have been reached, enforce any penalties associated with IFQ overages, and monitor compliance with the requirement that CDQ groups must deliver at least 25 percent of their allocation to shore-based processors.

Crab harvested under the CDQ allocations (except Norton Sound red king crab) are subject to some of the Federal requirements that apply to all crab fisheries under the Program including permitting, recordkeeping and reporting, a vessel monitoring system, and the cost recovery fees.

CDQ groups can participate in the crab fisheries as holders of both QS and PQS. Some CDQ groups will be initial

recipients of QS because they hold LLP licenses and the appropriate catch history. In addition, CDQ groups are exempt from the transfer eligibility requirement related to sea time so they are eligible to obtain QS by transfer, subject to QS use caps for CDQ groups. CDQ groups also will be able to obtain PQS by transfer because there are no transfer restrictions on who can hold PQS. While harvesting crab with IFQ, CDQ groups are subject to the same regulations as apply to other IFQ holders. The purchase and holding of QS and PQS by the CDQ groups is subject to the administrative regulations for the CDQ Program at 50 CFR part 679. These regulations include information on reporting, prior approval, and use requirements for all CDQ investments, which include QS and PQS.

Adak allocation. An allocation of 10 percent of the TAC of Western Aleutian Islands golden king crab will be made to the community of Adak. The allocation to Adak will be made to a nonprofit entity representing the community, with a board of directors elected by the community. As an alternative and in the interim, the allocation and funds derived from it could be held in trust by the Aleut Enterprise Corporation for a period not to exceed 2 years, if the Adak community non-profit entity is not formed prior to implementation of the Program. Oversight of the use of the allocation for ''fisheries related purposes'' is deferred to the State under the FMP. NMFS will have no direct role in oversight of the use of this allocation. The State will provide an implementation review to the Council to ensure that the benefits derived from the allocation accrue to the community and achieve the goals of the fisheries development plan. The Adak allocation will be managed as a separate commercial fishery by the State in a manner similar to management of the crab CDQ fisheries. As with the CDQ allocations, crab harvested under the Adak allocation will be subject to several requirements that apply to all crab fisheries under the Program including permitting, recordkeeping and reporting, a vessel monitoring system, and the cost recovery fees.

Community purchase. Any non-CDQ community in which 3 percent or more of any crab fishery was processed could form a non-profit entity to receive QS, IFQ, PQ and IPQ transfers on behalf of the community. The non-profit entity will be called an eligible crab community organization (ECCO).

Protections for Participants in Other Fisheries

The Program will greatly increase the flexibility for crab fishermen to choose when and where to fish for their IFQ, and this increased flexibility will provide crab fishermen with increased opportunity to participate in other fisheries. Restrictions on participation in other fisheries, also called sideboards, will restrict a vessel's harvests to its historical landings in all GOA groundfish fisheries (except the fixed-gear sablefish fishery). Restrictions will be applied to vessels but will also restrict landings made using a groundfish LLP license derived from the history of a vessel so restricted, even if that LLP license is used on another vessel. Groundfish sideboards in the GOA will be managed by NMFS through fleet-wide sideboard directed fishing closures in Federal waters and for the parallel fishery in state waters.

Arbitration System

BSAI crab fisheries have a history of contentious price negotiations. Harvesters have often acted collectively to negotiate an ex-vessel price with processors, which at times delayed fishing. The Arbitration System was developed to resolve failed price negotiations arising from the creation of QS/IFQ and PQS/IPQ. The complications include price negotiations that could continue indefinitely and result in costly delays and the ''last person standing'' problem where the last Class A IFQ holder deliveries will have a single IPQ holder to contract with, effectively limiting any ability to use other processor markets for negotiating leverage. To ensure fair price negotiations, the Arbitration System includes a provision for open negotiations among IPQ and IFQ holders as well as various negotiation approaches, including: (a) A share matching approach where IPQ holders make known to unaffiliated IFQ holders that have uncommitted IFQ available the amount of uncommitted IPQ they have available so the IFQ holder can match up its uncommitted IFQ by indicating an intent to deliver its catch to that IPQ holder; (b) a lengthy season approach that allows parties to postpone binding arbitration until sometime during the season; and (c) a binding arbitration procedure to resolve price disputes between an IPQ holder and eligible IFQ holders.

The arbitration process will begin preseason with a market report for each fishery prepared by an independent market analyst selected by the PQS and QS holders and the establishment of a non-binding fleet wide benchmark price formula by an arbitrator who has consulted with fleet representatives and processors. Information provided by the sectors for these reports will be historical in nature and at least 3 months old. This non-binding price will guide the above described negotiations. Information sharing among IPQ and IFQ holders, collective negotiations, and release of arbitration results will be limited to minimize the antitrust risks of participants in the Program. The participants in the Arbitration System will also select Contract Arbitrators who will assist in Binding Arbitration.

The binding arbitration procedure is a last best (or final) offer format. The IPQ holder, each IFQ holder, and each crab harvesting cooperative could submit an offer. For each IFQ holder or cooperative, the arbitrator will select between the IFQ holder's offer and the IPQ holder's offer. After an arbitration decision is rendered, an eligible IFQ holder with uncommited IFQ could opt-in to the completed contract by accepting all terms of the arbitration decision as long as the IPQ holder held sufficient uncommitted IPQ.

Monitoring and Enforcement

NMFS and the State of Alaska will coordinate monitoring and enforcement of the crab fisheries. Harvesting and processing activity will need to be monitored for compliance with the implementing regulations. Methods for catch accounting and catch monitoring plans will generate data to provide accurate and reliable round weight accounting of the total catch and landings to manage QS and PQS accounts, prevent overages of IFQ and IPQ, and determine regionalization requirements and fee liabilities. Monitoring measures will include landed catch weight and species composition, bycatch, and deadloss to estimate total fishery removals.

Economic Data Collection

The Program includes a comprehensive economic data collection program to aid the Council and NMFS in assessing the success of the Program and developing amendments necessary to mitigate any unintended consequences. An Economic Data Report (EDR), containing cost, revenue, ownership, and employment data, will be collected on a periodic basis from the harvesting and processing sectors. The data will be used to study the economic impacts of the Program on harvesters, processors, and communities. Pursuant to section 313(j) of the Magnuson-Stevens Act, the data and identifiers will also be used for

Program enforcement and determination of qualification for QS. Consequently, identifiers and data will be disclosed to NOAA Enforcement, NOAA GC, the Antitrust Division of the Department of Justice, the Federal Trade Commission, and RAM. With limited exceptions, participation in the data collection program is mandatory for all participants in the crab fisheries.

Cost Recovery and Fee Collection

NMFS will establish a cost recovery fee system, required by section 304(d)(2) of the Magnuson-Stevens Act, to recover actual costs directly related to the management and enforcement of the Program. The crab cost recovery fee will be paid in equal shares by the harvesting and processing sectors and will be based on the ex-vessel value of all crab harvested under the Program, including CDQ crab and Adak crab. NMFS also will enter into a cooperative agreement with the State of Alaska to use IFQ cost recovery funds in State management and observer programs for BSAI crab fisheries. The crab cost recovery fee is prohibited from exceeding 3 percent of the annual ex-vessel value. Within this limit, the collection of up to 133 percent of the actual costs of management and enforcement under the Program is authorized, which provides for fuller reimbursement of management costs after allocation of 25 percent of the cost recovery fees to the crew loan program.

Crew Loan Program

To aid captains and crew in purchasing QS, a low interest loan program (similar to the loan program under the halibut and sablefish IFQ program) will be created. This program will be funded by 25 percent of the cost recovery fees as required by the Magnuson-Stevens Act. Loan money will be accessible only to active participants and could be used to purchase either QS or Crew QS. Quota share purchased with loan money will be subject to all use and leasing restrictions applicable to Crew QS for the term of the loan. This final rule does not contain regulations to implement the crew loan program. The loan program will be developed by NMFS Financial Services.

Annual Reports and Program Review

NMFS, in conjunction with the State of Alaska, will produce annual reports on the Program. Before July 1, 2007, the Council will review the PQS, binding arbitration, and C share components of the Program. After July 1, 2008, the Council will conduct a preliminary review of the Program. A full review of the entire Program will be undertaken in 2010. Additional reviews will be conducted every 5 years. These reviews are intended to objectively measure the success of the Program in achieving the goals and objectives specified in the Council's problem statement and the Magnuson-Stevens Act. These reviews will examine the impacts of the Program on vessel owners, captains, crew, processors, and communities, and include an assessment of options to mitigate negative impacts.

Summary of Regulation Changes in Response to Public Comments

This section provides a summary of the major changes made to the final rule in response to public comments. All of the specific changes, and the reasons for making these changes, are contained under Response to Comments.

Harvester, Crew, and Processor Sectors

The following significant changes from the proposed to final rule in response to public comments are necessary to meet the requirements of Amendment 18 and 19. In the final rule NMFS:

(1) Revised the way in which Class A IFQ and Class B IFQ are allocated to individual IFQ holders who hold PQS or IPQ, or who are affiliated with PQS or IPQ holders, so that Class A IFQ is issued in proportion to the amount of IPQ that is held by the IPQ holder or affiliates.

(2) Revised the definition of ''affiliation'' to clarify the term ''otherwise controls''.

(3) Clarified that CVC QS and IFQ are not subject to regional designation and the Class A and Class B IFQ assignment for the first three years of the program—until July 1, 2008.

(4) Revised the QS use caps that apply to non-individual PQS and IPQ holders so that the application of those caps considers the QS holding of that PQS and IPQ holder and the total QS holdings of all persons affiliated with that PQS or IPQ holder.

(5) Revised the PQS and IPQ use caps that apply to PQS and IPQ holders so that the PQS or IPQ holdings of that PQS or IPQ holder and the total PQS or IPQ holdings of all persons affiliated with that PQS or IPQ holder are used in the calculation of the PQS or IPQ holder's caps.

(6) Clarified that an ''individual and collective'' rule applies for computing QS use caps for individual PQS holders, CDQ groups, and all other QS holders. This methodology sums all QS holdings by a person and the percentage of ownership by that person in any QS holding entity. This method is more consistent with Amendment 18.

(7) Added provisions on applying limits on the amount of ''custom processing'' that may be undertaken at any one processing facility, or at any facility, or group of facilities that is owned by an IPQ holder.

(8) Clarified the limited exemption that applies to using legal landings based on the activities of a vessel which received an LLP by transfer in order to remain in a fishery.

Crab Harvesting Cooperatives

In response to Council and public comments, NMFS removed the requirement in § 680.21 that crab harvesting cooperatives be formed under the Fishermen's Collective Marketing Act (FCMA, 15 U.S.C. 512). With this change, QS holders that hold PQS and IPQ, as well as QS holders affiliated with PQS and IPQ holders, can participate in crab harvesting cooperatives. To address antitrust concerns, NMFS: (1) Clarified that issuance of a crab harvesting cooperative IFQ permit is not a determination that the crab harvesting cooperative is formed or is operating in compliance with antitrust laws; and (2) added that members of crab harvesting cooperatives, that are not FCMA cooperatives, should consult counsel before commencing any activity under the crab harvesting cooperative if members are uncertain about the legality under the antitrust laws of the crab harvesting cooperative's proposed conduct. Additionally, NMFS added definitions of crab harvesting cooperatives and FCMA cooperatives at § 680.2.

Additionally, NMFS changed the regulations at § 680.42(c)(5) so that a CVC or CPC QS holder is subject to the owner on board restriction regardless of whether he or she joins a crab harvesting cooperative. NMFS revised the final rule at § 680.21(a)(1)(iii)(B) to allow CVC QS holders who join a crab harvesting cooperative to withhold their Class B IFQ from submission to the crab harvesting cooperative. This will take effect after the third year of the Program when CVC QS becomes subject to the Class A/Class B IFQ split. NMFS revised the final rule at § 680.21(a)(1)(iii)(A)–(B) to permit QS holders to hold memberships in one crab harvesting cooperative per fishery. If a QS holder joins a crab harvesting cooperative for fishery, all of that QS holder's IFQ for that fishery will be submitted to the crab harvesting cooperative.

NMFS revised intercooperative transfers at § 680.21(e) to require the designation of the members of the crab

harvesting cooperatives that are engaged in the transfer for purposes of applying the use caps of the members to the cooperative IFQ that is being transferred between the crab harvesting cooperatives.

ROFR

The final rule revises proposed provisions for an ECC's ROFR of purchase of PQS or IPQ that is being proposed by a PQS/IPQ holder for use outside the community. These revisions are in response to public comment and are intended to more closely reflect the original intent of the Council. First, the final rule clarifies that an ECC has discretion on whether or not to designate an ECC entity to represent it in ROFR and enter into civil contract arrangements for this purpose. If an ECC entity is not designated within a reasonable period of time, then the ECC permanently waives its opportunity to exercise ROFR. Second, statute terms for civil contracts establishing ROFR between eligible ECCs and holders of PQS/IPQ have been removed from the regulations. Instead, the regulations now refer to the provisions in section 313(j) of the Magnuson-Stevens Act. This approach ensures consistency with the Magnuson-Stevens Act and is appropriate because NMFS does not enforce these contract terms.

Arbitration System

NMFS made the following significant changes from the proposed to final rule in response to public comments. These changes are necessary to meet the requirements of Amendment 18 and 19. In the final rule NMFS:

(1) Clarified that only IFQ holders can initiate the Binding Arbitration procedure.

(2) Revised the timeline for the 2005 season for QS holders and PQS holders to join an Arbitration Organization which is responsible for selecting a group of experts that can assist in price negotiations: the market analyst, formula arbitrator, and contract arbitrator.

(3) Revised the mechanism for exchanging information between uncommitted IPQ holders and uncommitted Arbitration IFQ holders to allow for a third-party to provide data in an arms-length relationship.

(4) Established a minimum of 25 percent of the total IFQ held by an FCMA cooperative that must be committed to an IPQ holder in order to engage in share matching.

(5) Clarified the timing under which a Binding Arbitration procedure must occur and the process whereby it can occur.

(6) Clarified the ability of persons to participate in FCMA cooperatives and collectively negotiate, and the limits to which FCMA cooperatives may exchange information among cooperatives.

(7) Removed the requirement that the transferors require persons receiving QS/IFQ or PQS/IPQ by transfer to join an Arbitration Organization, and requiring the transferees to do that themselves.

(8) Required that CVO IFQ, CVC IFQ after July 1, 2008, and IPQ would not be issued for a crab QS fishery until the Market Analyst, Formula Arbitrator, or Contract Arbitrators have been selected for that fishery.

(9) Clarified the type of Arbitration Organization which a person must join depending on their holdings of QS/IFQ and PQS/IPQ.

Monitoring and Enforcement

NMFS made two major changes to requirements for CPs as a result of public comment. Both changes reduce the burden on participants in the crab fishery. First, NMFS reduced the required reporting interval for crab catch by CPs from once every twenty four hours to weekly. Second, NMFS removed requirements for CPs to provide an observer work area on board their vessels. NMFS also clarified regulations governing the use of the Interagency Electronic Reporting System (IERS) to ensure that vessels that are unable to use the Internet may report catch using an alternative, NMFS approved, method such as an email attachment to report catch.

Economic Data Collection

In response to public comment requesting additional time to prepare and submit the historic EDRs, the submission interval for the EDR is increased from 60 days to 90 days at §§ 680.6(a)(2), 680.6(c)(2), 680.6(e)(2) and 680.6(g)(2), to provide both the time to gather records and complete an accurate EDR. Also in response to public comment, the time interval allowed for verification of data by all submitters is extended in the final rule at § 680.6(i)(2) to 20 days from the 15 days interval identified in the proposed rule.

Cost Recovery and Fee Collection

The cost recovery fee system remains relatively unchanged from the proposed rule. NMFS received only one comment for the cost recovery fee system. NMFS responded affirmatively to this comment by adjusting the methodology by which CPs must calculate and submit fees to reduce any disparity between fees paid by CPs and shoreside processors. An explanation of the revised methodology for CP fee calculation is contained in the response to comments.

Response to Comments

Harvest Sector

Comment 1: QS should belong to the American public, not fishing industry. It is not fair to the American public to have the interests of only those who enrich themselves have a say over the resource.

Response: Allocating QS and PQS to fishery participants is a provision of Amendment 18. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program provisions as specified in Amendment 18.

Comment 2: If a vessel sinks, it should lose all rights to fish forever.

Response: The sunken vessel provision that allocates QS to LLP license holders who have had a vessel sink are part of Amendment 18. Under section 313(j) of the Magnuson-Stevens Act, NMFS does not possess the discretion to alter the sunken vessel provision as it exists in Amendment 18. Any change to this provision requires an amendment to the Program and should be addressed with the Council.

Comment 3: The term ''IFQ TAC'' used in § 680.40(h)(5)(ii) in the calculation of the Class A IFQ allocation and the IPQ allocation is not defined. Care should be taken in defining the term to show that prior to July 1, 2008, CVC QS yield IFQ that are not subject to the Class A IFQ landing requirements and that IPQ should be issued for 90 percent of the CVO IFQ allocation. After July 1, 2008, CVC QS holders will receive Class A IFQ and IPQ will be issued for 90 percent of the CVO and CVC IFQ allocation. Clarify definition and calculation of IPQ and Class A IFQ allocations.

Response: NMFS agrees and has modified the final rule at § 680.40(h)(5)(ii) to more clearly reflect the nature of the Class A IFQ, the allocations that may occur, and the definition of CVC and CVO QS and IFQ.

Comment 4: Section 680.41(c)(2)(ii)(D)(2)(i) and (ii) does not adequately parallel the Council motion. For corporations and other entities, one ''owner'' (not ''member'') must meet the sea time requirement. In addition, that same owner must hold at least a 20 percent ownership interest in the entity. The section does not exactly parallel these requirements. Use language from the Council motion.

Response: NMFS agrees and has modified the final rule at

§ 680.41(c)(2)(ii)(D)(2)(i) and (ii) to more clearly show that one individual must meet both requirements in order to receive QS or IFQ by transfer. However, the final rule maintains the term ''member'' because not all persons who may hold QS or PQS will have ''owners.'' As an example, non-profit corporations don't have ''owners.''

Comment 5: The provisions § 680.41(l)(2) and (4) concerning the transfer of CVO QS and CVC QS, respectively, should be deleted in their entirety. They specifically provide, ''Notwithstanding QS use limitations under § 680.42, CVO (CVC) QS may be transferred to any person eligible to receive CVO or CPO (CVC or CPC) QS as defined under paragraph (c) of this section.'' These provisions appear to override any use caps contained at § 680.42 (the only section of the regulation defining use caps).

Response: NMFS agrees and has revised § 680.41(i)(5) in the final rule to clarify that the approval criteria for transfer do not preclude the use caps at § 680.42.

Comment 6: The rule limiting the acquisition of LLP licenses (and history) in excess of the cap after June 10, 2002, should apply to § 680.42(b)(3) and (4) (CDQ caps and vertical integration caps), as well as the general caps. Add in control date to this section.

Response: NMFS agrees and has revised § 680.42(a)(1) to accommodate this comment. This revised regulatory text also notes that a ''person will not be issued QS in excess of the use cap established in this section based on QS derived from landings attributed to an LLP license obtained via transfer after June 10, 2002,'' except under limited conditions addressed under the response to comment 40. This provision would apply to both CDQ groups and the vertical integration caps.

Comment 7: For CDQ groups, the individual and collective rule should be used to determine holdings for applying the caps at § 680.42(b)(3).

Response: NMFS agrees and has modified the final rule at § 680.42(b)(3) to clarify that the QS and IFQ use caps apply individually and collectively to CDQ groups to meet the intent of Amendment 18.

Comment 8: Table 7 mixes the concepts of eligibility and qualification. Eligibility defines the persons eligible to receive an allocation. For CVO and CPO, holders of permanent LLP licenses are eligible for an initial allocation. For CVC and CPC, persons meeting the historical participation requirement (*i.e.*, landings in 3 of the qualifying years for vessels) and recency requirements (*i.e.*, landings in 2 of the 3 most recent years) are considered eligible. Once persons are found eligible, their allocations are based on the qualifying years shown in Column B. The same subset of years would apply to all participants (CVO, CPO, CVC, and CPC). Column E is incorrect. In addition, Columns C and D define CVC and CPC eligibility, not qualification. Revise table to reflect difference between eligibility and qualification.

Response: NMFS agrees and has revised Table 7 in the final rule to the reflect the difference between eligibility and qualification.

Comment 9: Table 7 leaves out the season beginning in 1991 for Bering Sea Tanner crab. The seasons shown in (2) and (3) are one season, not two. Revise dates in the table to include the 1991 BS Tanner season.

Response: NMFS agrees and has revised the dates in Table 7 to include the 1991 BS Tanner crab season in the final rule.

Comment 10: Table 7 defines seasons with an opening and closing date. Often the last landing of the season is made after the closing date. The regulation should be clear that legal landings made after the closing date will be counted for allocations. Clarify that these landings will count for determining allocations.

Response: NMFS will consider legal landings made after the closing date of the fishery in the calculation of PQS and QS to be issued provided that the harvests were made during the periods established in Table 7.

Comment 11: Allocating QS only for fisheries for which the holder's LLP license is endorsed is unfair, inequitable, and dramatically limits the amount of QS an LLP license holder will receive. Specifically, if a vessel has substantial history in a crab fishery, but did not qualify for an LLP license endorsement for that fishery, then the LLP license holder should receive QS based on that history.

Response: Allocating QS only for catch history in fisheries for which the holder's LLP license is endorsed is a provision of the Council's motion, which is Amendment 18. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program provisions as specified in Amendment 18. The Council developed the method for distributing QS based on a linkage to permanent fully transferrable LLP license (with limited exemptions) after considerable debate and analysis in the EIS/RIR/IRFA prepared to support Amendment 18 and this final rule.

Comment 12: NMFS should explain how QS distribution will accommodate resolution of appeals on LLP licenses and on QS allocation after initial QS allocation.

Response: NMFS anticipates that all LLP license appeals that affect the interim status of crab LLP licenses will be resolved by the time that this action is effective and the application period commences. However, other potential sources of Program application claims, for example, regarding landings and processing histories, will likely not be complete until during or after the application period. Some features of the Program such as one-time permanent regional QS and PQS assignments require that NMFS base its primary initial issuance computations and distribution on as complete a QS/PQS pool as possible. Therefore it is essential that all persons who believe they may be eligible for QS/PQS apply during the open application period, whether or not their LLP license status or other situation makes them ineligible for QS/PQS at that time. NMFS would not issue QS unless and until a person's crab LLP license gained appropriate status or other claim was resolved in their favor by Final Agency Action of RAM, the Office of Administrative Appeals, or the Regional Administrator. At that time, NMFS would issue QS or PQS as appropriate to their application.

However, no distribution of annual IFQ or IPQ would be made for the newly issued QS/PQS until the next time at which NMFS makes a distribution of annual TAC to QS/PQS holders for that crab fishery so as not to disrupt the balance of existing QS and PQS amounts, arbitration agreements, use cap credits, etc. Regional assignments of QS/PQS issued initially but on a delayed basis would be based on original regional ratios computed from data developed for the primary initial QS issuance event.

Comment 13: Council intent, as stated in Amendment 18, was to calculate each holder's QS as a weighted average. The proposed rule, at § 680.40(c)(2), uses a simple average determined by calculating the holder's percentage in each of the history years, adding up the percentages, and dividing by the number of years. This section should be changed to comply with Council intent. The Council followed AFA, where the boats rejected the simple average approach in favor of adding up all the QS holder's pounds in the aggregate, and then dividing by the aggregate total pounds in all of the history years (weighted average). Guideline harvest level (GHL) volatility in snow crab, for example, illustrates why. The aggregate annual landings vary significantly over the history years, meaning that a QS holder with very high landings in a low

GHL year would get more QS than a consistent participant. Someone who sat out a low GHL year (good idea for the health of the industry and fishery) would be severely penalized.

Response: The methodology used at § 680.40(c)(2) does use a weighted average when calculating the amount of QS that will be issued. The method requires determining the percentage of the total qualified landings a person and summing up the percentage of the total qualified landings of all persons that are qualified to receive QS. A person's percentage of the total qualified landings is divided by the percentage of the percentage of all the qualified landings in that fishery. This methodology is explained in detail in the preamble to the proposed rule (see 69 FR 63208) and in the final rule at § 680.40(c)(2)(iv).

Comment 14: The QS pool is so large that overfishing results. Quotas should be cut by 50 percent this year and 10 percent each year thereafter.

Response: NMFS disagrees. The QS pool represents the portion of available TAC for a fishery that will be allocated to QS holders annually. The QS pool yields IFQ every year which is the pounds of crab the QS holder may harvest, based on the amount of crab available for harvest. Each year, the TAC is determined through a scientific process that is designed to maintain healthy stocks and reduce the risk of overfishing.

Comment 15: The surviving spouse provision in the proposed rule at § 680.41(n) provides that if a QS holder dies, his spouse has 3 years to lease out his QS. There are no additional regulations in the proposed rule to explain what happens after that time. If this provision is similar to the halibut/sablefish QS surviving spouse provision, then the surviving spouse will have to either sell the QS or qualify to have the QS transferred to their name. They qualify by having 150 days of sea time-fishing only, no tendering or research vessel time. If they do qualify, then they have to be on board during the harvesting and delivery of the product.

This would be a hardship for a surviving spouse of a crab QS holder. Crab fishing is much different than halibut fishing, and provides a large portion of a family's annual income. A surviving spouse probably would not be able to leave the children and job and go out to the Bering Sea to crab fish for weeks at a time, a few times a year, even if she could qualify. I don't think it is the wish or intention of QS holders to leave their spouses and families in such a bind. In these cases, the spouse, along with the QS holder, have made significant personal and financial investment in this fishery.

Response: Amendment 18 does not make a specific exemption to allow a beneficiary to receive an additional opportunity to lease IFQ or IPQ, other than the provisions established under the rule. In fact, the three year lease period allowed for beneficiaries of QS and PQS to use the IFQ or IPQ is designed to mirror existing leasing by beneficiaries under the halibut and sablefish IFQ program. Extending this limited leasing ability beyond three years would frustrate the overall intent of the Program, which is to limit leasing after several years have transpired.

A beneficiary of QS or PQS may sell the QS or PQS, or fish the IFQ or IPQ themselves after the three year period. Additionally, for CVO and CPO QS, if the beneficiary owns at least 10 percent of a vessel, they can hire someone else to fish the IFQs after the three year period. This provision is unlike the halibut/sablefish IFQ program where second generation QS holders cannot hire skippers to fish for them.

Comment 16: It is important that any active fisherman who holds Class B IFQ have the ability to transfer those shares to any other active fisherman. For example, an active fisherman who holds Class B IFQ for red king crab and golden king crab should be able to transfer his shares for either or both species to another active fisherman. This accommodates the fact that an active fisherman may have earned IFQ for a species that he is not fishing in a particular season, but should be able to transfer to another active fisherman who is fishing that species in that same season.

Response: Under the rule, Class B IFQ may be transferred to any eligible recipient mid-season, including an active participant in the fisheries.

Comment 17: The final rule should clearly instruct RAM to initially allocate our BSAI crab IFQs directly and individually to the owners of IFQ qualified vessels (corporations, LLCs, and partnerships) in proportion to their stock ownership or interest in the vessels that earned each respective BSAI crab fishing history. This will help NMFS avoid numerous, time-consuming transfers and sale procedures, and substantially reduce federal paperwork.

Response: QS will be issued to the holder of the LLP license at the time of application, and not to the owners of a corporation, or other organization, that holds the LLP license. The exact allocation of QS among the owners of a corporation would be an additional administrative burden on NMFS and the exact allocation may be subject to contractual agreements among the owners that NMFS would be required to interpret and would be subject to appeal. In some cases, owners may wish to have the LLP license holding corporation also hold the QS. NMFS will allocate QS to the entity that holds the LLP license. If the owners of a corporation wish to receive a portion of the QS, that can be accomplished by a subsequent transfer from the QS holding corporation to the corporation's owners. The rule has not been modified.

Comment 18: The final rule should include a provision that provides for post delivery transfers of IFQ. Too often small errors in estimating the average weight of crab has adversely affect the crew's ability to judge the poundage of crab on board. Allowing transfers of IFQ after delivery would provide vessel operators with the flexibility needed to make the right decisions, and be consistent with national standard 1 of the Magnuson-Stevens Act.

Response: Transfers of IFQ after deliveries are particularly problematic for NMFS to track and monitor. In particular, NMFS does not have the ability to keep ''real time'' accounts accurate enough to allow this type of transfer. Amendment 18 does not provide any provisions for IFQ overages or the ability to undertake post-delivery transfers. While there may be some overages in some of the fisheries, NMFS does not anticipate that these overages will be severe in most cases and after the Program has been in place for a period of time, the likelihood of these overages will decrease.

Comment 19: The final rule should include language that allows flow thru of grandfathered ownership to an individual past the current one percent cap. For example, in the proposed rule an individual is allowed their historic ownership of QS past the one percent cap if earned in the qualification years and vessel history is acquired prior to January 1, 2002. Because QS will be awarded to LLP license ownership groups initially, the regulations should make sure the QS can flow thru to individual owners based on their ownership make up with no penalty assessed if their grandfathered QS exceeds one percent.

Response: Amendment 18 is clear that the exemption to the QS and IFQ use caps for corporations or other entities that are initially issued QS or IFQ in excess of the use caps do not extend to the individual members that comprise that corporation or other entity. The use cap exemption is limited to the entity that initially received the QS or IFQ, not to its constituent members who can only receive QS or IFQ from the entity

through transfers. Therefore, each member of that entity is subject to the QS and IFQ use caps without exemption. The exemption to the QS and IFQ use caps does not extend to persons who receive QS or IFQ by transfer.

Comment 20: The proposed rule at § 680.41(l)(2) and (4) incorrectly waives all use caps with respect to harvest shares. The motion establishes use caps.

Response: NMFS agrees and has modified the wording in the final rule at § 680.42(i)(5). See also response to comment 5.

Comment 21: The proposed rule at § 680.42(b)(4) exempts all PQS holders from the individual IFQ caps and applies a higher use cap to those persons. The motion intended a very limited exemption that would not apply to individuals.

Response: NMFS agrees and has modified the provision in the final rule at § 680.42(b)(4) to better reflect the intent of Amendment 18 by establishing that individual PQS holders do not receive an exemption to the overall QS and IFQ use cap that applies to non-individual PQS holders who also hold QS or IFQ.

Comment 22: If all vessels with catch history in the Eastern Aleutian Islands golden king crab fishery in the qualifying years were granted QS then there would not be such a concentration of QS holders in that fishery. Allocating QS only to holders of an LLP license endorsed for that fishery would result in a violation of the excessive shares provision of the Magnuson-Stevens Act.

Response: NMFS agrees that allocating QS to all vessels with catch history in the fishery would result in more QS holders in that fishery, however, Amendment 18 is clear that QS will only be issued for catch history for which the holder's LLP license is endorsed, with one limited exemption. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program as specified in Amendment 18.

Comment 23: In the early stages of the Crab Rationalization Program, it was discussed whether or not golden king crab should be included; as it was a fishery that still had never fully been utilized. Instead of excluding golden king crab, the opposite took place, in that the golden king crab fishery qualification period of 1996–2000, all years, is the most stringent of all crab fisheries. The golden king crab qualifications are further compounded because golden king crab is the only crab fishery that is not allowed to drop one year in its calculations. Not allowing the dropping of a year is a blatant discriminatory measure. The golden king crab IFQ qualification years are years in which the golden king crab fishery GHLs were not fully harvested and the fishery lasted 12 months. The golden king crab fishery GHL has only become fully utilized for the first time in the year 2000. The proposed window of years for golden king crab was when the smallest number of approximately 15–17 vessels, had ever participated in the history of the golden king crab fishery.

The result is a select group of vessels will receive excessive golden king crab QS. Approximately 6 to 8 vessels would receive approximately 70 percent to 80 percent of the QS. Therefore, the golden king crab window of years has disenfranchised many of the other golden king crab LLP license holders; to benefit a select group of excessive share recipients. Golden king crab is the only fishery that ''must'' use the recent years of history up until implementation, as the GHLs were finally fully harvested.

There was a lot of testimony to the Council requesting the qualification period include the current years in which the GHLs were finally fully harvested. NOAA General Counsel also stated on the record that fishing history up until time of final action should be considered. Additionally the court ruling over the Halibut IFQ lawsuit, stated that fishing history up until final action should be considered. Yet the Council did not consider the years of history beyond 2000.

In conclusion, the qualification period for the golden king crab fishery does not conform to the National Standards under the Magnuson-Stevens Act. National Standards state that no such measure shall have economic allocation as its sole purpose. It is easy to point out that the specific years selected for golden king crab are for the sole purpose of economic allocation to a select few vessels. National standards state that ''allocations should be fair and equitable to all fisherman'', not just a select few vessels as in golden king crab fishery. National Standards state that allocations shall be carried out in such a manner that no particular entity acquires an excessive share, not the excessive shares that are proposed in golden king crab fishery. National Standards must be adhered to.

Response: Amendment 18 establishes the qualifying years for the golden king crab fishery. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program as specified in Amendment 18. Therefore, this provision does not violate the Magnuson-Stevens Act and the rule has not been modified. The Council considered recent participation in the golden king crab fishery in developing this Program. The allocation of QS or PQS in the golden crab fishery is based on an extensive decision making process and the EIS/RIR/IRFA prepared for this action considered a variety of years for the initial allocation of QS.

Comment 24: The proposed rule at § 680.40(c)(2)(vii) requires an interim LLP license as a condition of eligibility for an LLP license/catch history exemption contemplated by the Council; and also disallows severability of catch history from an LLP license for initial allocation of QS. Additionally, § 680.40(b)(4)(ii)(B)(E) disallows severability of landings and history from LLP licenses. By requiring an interim LLP license to qualify for the exemption, the proposed rule excludes a vessel for which there was no interim LLP license, but which otherwise would qualify for the exemption. The proposed Council motion did not require an interim LLP license as a qualification for the history exemption, and it was not the intent of the Council to exclude the vessels in question. The final regulations should allow the history exemption for a very limited number of vessels in question (must have conducted a transfer by January 1, 2002) by removing the requirement of an interim LLP license for eligibility under this provision and providing an exception from the proposed rule which disallows severability of landings and catch history from the LLP license.

Response: NMFS agrees and has modified the final rule at § 680.40(b)(4)(vii) to remove the requirement of an interim LLP license for eligibility under this provision, based on this comment and comments 42 and 43. This provision is intended to address a specific situation in which LLPs were transferred between vessels so that a vessel could legally remain in the fishery. Amendment 18 did not specify that an interim LLP was a requirement to qualify for this provision.

Comment 25: The proposed rule at § 680.40(h)(4) provides that persons with 10 percent common ownership with a PQS holder would receive all Class A IFQ (and no Class B IFQ). The motion intended that the exclusively Class A IFQ allocation be limited to the amount of IFQ ''controlled'' by the IPQ holder, with the remainder allocated as Class A and Class B IFQ. Eligibility to receive an allocation of Class B IFQ in the Council motion relies on whether the processor ''controls'' delivery of the IFQ. Use of a ''control'' standard for determining whether Class B IFQ will be allocated has two effects: First, if the processor holds a limited amount of

IPQ, the Class A IFQ only allocation should be limited to an amount of IFQ that offset the IPQ holding, with the remainder of the allocation subject to the Class A/Class B IFQ split. Using this approach, a person receives a Class A only IFQ allocation for only those IFQ that are controlled by the processor, with the remainder of the allocation (which is beyond the control of the processor) as a Class A/Class B allocation. Second, if the processor does not control deliveries (regardless of the number of IPQ held), the Class B IFQ allocation will be necessary for negotiating strength of the person controlling deliveries in their negotiations with processors generally. If a ''control'' affidavit is used for determining who will receive Class B IFQ, the term ''control'' must be well-defined, so that the signatory to the affidavit knows what the attestation means.

Allocation of ''only Class A IFQ'' should be limited to the amount of controlled IFQ. The remainder of the allocation should be subject to the Class A/Class B division of fully independent harvesters. Additionally, the definition of control should be revised to reflect the nature of control at issue (*i.e.*, does the IPQ holder control the delivery of the IFQ). This definition may rely to some extent on ''affiliation,'' but control of deliveries should be paramount.

Response: Amendment 18 provides that:

(1) Crab harvester QS held by IPQ processors and persons affiliated with IPQ processors will only generate Class A annual IFQ, so long as such QS is held by the IPQ processor or processor affiliate.

(2) IPQ processors and affiliates will receive Class A IFQ at the full poundage appropriate to their harvesters QS percentage.

(3) Independent (non-affiliated) harvesters will receive Class B IFQ pro rata, such that the full Class B QS percentage is allocated to them in the aggregate.

(4) ''Affiliation'' will be determined based on an annual affidavit submitted by each QS holder. A person will be considered to be affiliated, if an IFQ processor controls delivery of a QS holder's IFQ.

The commenter raises two separate points in this comment: (1) What is control for purposes of determining the amount of Class A IFQ that is to be issued to a person holding QS that is an IPQ processor or affiliate; and (2) how much Class A IFQ should be allocated to an IPQ processor or affiliate? Both of these questions must be answered to address the commenter's question.

(1) What Is Control?

The proposed rule measured control by requiring that each year in the Annual Application for Crab IFQ/IPQ the applicant provide documentation of affiliation declaring any and all affiliations using affiliation as defined in § 680.2 (See § 680.4(f)). Affiliation for purposes of determining a linkage with a PQS or IPQ holder is defined as: (1) Common ownership, either directly or indirectly by the PQS or IPQ holder of more than 10 percent of the QS or IFQ holding entity; (2) control of a 10 percent or greater interest by a PQS or IPQ holding entity in a QS or IFQ holding entity by controlling ownership or voting stock; and (3) a PQS or IPQ holder otherwise controlling a QS or IFQ holding entity through any other means whatsoever. This definition of affiliation is intended to broadly include activities that would allow a PQS or IPQ holding entity to exercise control over the activities of a QS or IFQ holder—specifically, the control of where the IFQ crab would be delivered. The definition of ''otherwise controls'' in the affiliation definition is intended to be broad and would encompass a range of arrangements either contractual or otherwise that could be used to express control. The current definition of affiliation does not define specific indices of control such as are provided in the AFA (*See* § 679.2 for the definition of affiliation under the AFA) or under regulations that govern the control of a fishing vessel by a non-U.S. citizen as defined under Maritime Administration (MARAD) regulations (*See* 46 CFR 356.11), although those indices of ''control'' would be subsumed under the broad definition of ''otherwise controls'' in the affiliation definition contained in the proposed rule.

Amendment 18 does not expressly define the method for establishing how control is to be measured, what indices should be used, and whether additional factors such as ownership of the IFQ holding entity could be used to define control. NMFS has decided that because control is not specifically defined in Amendment 18 and because control can be expressed in a variety of ways, that the affidavit that is submitted each year should include a definition of control of delivery that includes the ability of the IPQ holder to direct the delivery of the IFQ using measures of ownership and otherwise controlling the operations of the IFQ holder. These two aspects of ''control'' are necessary to ensure that IFQ that is held by an IPQ holder or an affiliate is apportioned the appropriate amount of Class A IFQ. Ownership is frequently used as one index of control in measuring the ability of a person to exercise control over a corporation. Owning a corporation effectively determines the course of the activities of that corporation. The amount of ownership that results in an ability for the IPQ holder to direct the business operations (*i.e.,* where the IFQ crab are delivered) is subject to some debate and business arrangements.

The EIS prepared for the final rule does not provide a specific example of how a PQS or IPQ holder may control the deliveries of an IFQ holder. Section 2.2 of the EIS notes that: only QS holders that are unaffiliated with holders of processing shares would receive Class B IFQs. Holders of processing shares and their affiliates that hold QS would be allocated Class A IFQs for all of their IPQ holdings, with the remainder of their IFQ allocated as Class A IFQ and Class B IFQ at the same ratio as those allocated to independent harvesters. The annual poundage allocation of IFQ arising from the QS would be unaffected by the Class A/Class B IFQ distinctions. For each region of each fishery, the allocation of Class B IFQ would be 10 percent of the total allocation of IFQ. The absence of an affiliation with a holder of processing shares would be established by a harvester filing an annual affidavit stating that the use of any IFQ held by that harvester is not subject to any control of any holder of processing shares.

While this description provides some detail about the actual allocation of the Class A and Class B IFQ, and that affiliation with a processor would be established by an annual affidavit, the indices for control are not defined.

The proposed rule used a 10 percent ownership control standard as a means of measuring the control over an entity based on several factors: (1) The use of a 10 percent standard in several other aspects of Amendments 18; and (2) the standard used under the AFA which is a rationalization program that uses an affiliation definition for purposes of applying use caps and processing sideboard limitations.

Use of the 10 Percent Standard in Amendment 18. There are several sections throughout Amendment 18 where a 10 percent common ownership standard is used for purposes of determining whether or not a linkage occurs. While these standards do not *per se* state that a 10 percent common ownership standard is applicable to establish control, the consistent use of a 10 percent common ownership standard in various aspects of this program suggests that a 10 percent standard was perceived to be a threshold level at

which some form of control is being exercised by one entity over another entity. The principal use of the 10 percent standard is found in the following sections of Amendment 18:

(1) 1.6.2 Leasing of QS (leasing is equivalent to the sale of IFQs without the accompanying QS.). Leasing is defined as the use of IFQ on vessel which a QS owner holds less than 10 percent ownership of vessel or on a vessel on which the owner of the underlying QS is not present

(2) 1.6.4 Controls on vertical integration (ownership of harvester QS by processors): Option 3: Vertical integration ownership caps on processors shall be implemented using both the individual and collective rule using 10 percent minimum ownership standards for inclusion in calculating the cap. PQS ownership caps are at the company level.

(3) 2.7.1 Ownership caps. PQS ownership caps should be applied using the individual and collective rule using 10 percent minimum ownership standards for inclusion in calculating the cap. PQS ownership caps are at the company level.

(4) *Cooperative Section Rules governing cooperatives.* The Council clarified the following rules for governing cooperatives: Four entities are required for a cooperative. The requirement for four owners to create a cooperative would require four unique entities to form a cooperative. Independent entities must be less than 10 percent common ownership without common control (similar to the AFA common ownership standard used to implement ownership caps).

The RIR/IRFA prepared for this action also used a 10 percent ownership standard for purposes of measuring whether a common linkage exists between a processor and a harvester and whether a vessel was considered to be affiliated with a processor. (*See* 3.7.9.4 Shares of processor affiliates, and page 293 of Appendix 1). As is noted in the RIR/IRFA ''[t]his level of ownership and the ownership of affiliates is intended to capture all relationships and influences and was used for determining ownership under the AFA (*See* page 191 of Appendix 1).'' The RIR/IRFA analyzed the potential economic impacts of affiliation using this standard and the potential impacts on affiliated IFQ holders was detailed for each of the crab QS fisheries.

While alternative ownership standards could be chosen, NMFS is relying on the frequent and consistent use of a 10 percent standard throughout Amendments 18 and 19 and the EIS/RIR/IRFA prepared to support this action as the basis for establishing affiliation, and therefore control, as being triggered when one entity holds a 10 percent or great common ownership interest in another entity.

Other Indices of Control. Amendment 18 indicated that control would be expressed ''if an IPQ processor controls delivery of a QS holder's IFQ.'' Amendment 18 does not provide additional guidance on how that control may be expressed. The preamble to the proposed rule provides examples of control based on the definition of affiliation. ''Examples of the types of control that may be encompassed by this definition include the authority to direct the delivery of crab harvested under an IFQ permit held by the second entity to a specific RCR, or when one entity absorbs the majority of costs and normal business risks associated with the operation of a second entity, including the costs associated with obtaining and using any amount of the QS, PQS, IFQ, or IPQ held by the second entity.'' The definition used in the proposed rule is broad, but may not provide an adequate definition for purposes of the affidavit that is required on an annual basis.

NMFS agrees that the definition of ''otherwise controls'' could be clarified by using specific indices in the final rule. NMFS is expanding the definition of ''otherwise controls'' using the indices that are used for determining impermissible control by a non-citizen of a United States fishing vessel under MARAD regulations at (46 CFR 356.11) as a guide for these specific indices. Those indices are detailed in the final rule and include those situation in which a PQS or IPQ holder has:

(1) The right to direct, or does direct, the business of the entity which holds the QS or IFQ;

(2) The right in the ordinary course of business to limit the actions of or replace, or does limit 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 which holds the QS or IFQ;

(3) The right to direct, or does direct, the transfer of QS or IFQ;

(4) The right to restrict, or does restrict, the day-to-day business activities and management policies of the entity holding the QS or IFQ through loan covenants;

(5) The right to derive, or does derive, either directly, or through a minority shareholder or partner, and in favor of a PQS or IPQ holder, a significantly disproportionate amount of the economic benefit from the holding of QS or IFQ;

(6) The right to control, or does control, the management of or to be a controlling factor in the entity holding QS or IFQ;

(7) The right to cause, or does cause, the sale of QS or IFQ;

(8) Absorbs all of the costs and normal business risks associated with ownership and operation of the entity holding QS or IFQ;

(9) Has the ability through any other means whatsoever to control the entity that holds QS or IFQ.

Other factors that may be indica of control include, but are not limited to, the following:

(1) If a PQS or IPQ holder or employee takes the leading role in establishing an entity that will hold QS or IFQ;

(2) If a PQS or IPQ holder has the right to preclude the holder of QS or IFQ from engaging in other business activities;

(3) If a PQS or IPQ holder and QS or IFQ holder use the same law firm, accounting firm, etc.;

(4) If a PQS or IPQ holder and QS or IFQ holder share the same office space, phones, administrative support, etc.;

(5) If a PQS or IPQ holder absorbs considerable costs and normal business risks associated with ownership and operation of the QS or IFQ holdings;

(6) If a PQS or IPQ holder provides the start up capital for the QS or IFQ holder on less than an arm's-length basis;

(7) If a PQS or IPQ holder has the general right to inspect the books and records of the QS or IFQ holder;

(8) If the PQS or IPQ holder and QS or IFQ holder use the same insurance agent, law firm, accounting firm, or broker of any PQS or IPQ holder with whom the QS or IFQ holder has entered into a mortgage, long-term or exclusive sales or marketing agreement, unsecured loan agreement, or management agreement.

(2) How Much Class A IFQ Should Be Allocated to an IPQ Processor or Affiliate?

The second main issue raised by the commenter is how much Class A IFQ is issued to QS or IFQ holders who are affiliated with PQS or IPQ holders. Amendment 18 appears to be somewhat internally inconsistent. It states that ''Crab harvester QS held by IPQ processors and persons affiliated with IPQ processors will only generate Class A annual IFQ, so long as such QS is held by the IPQ processor or processor affiliate.'' However, the next sentence apparently modifies this statement by noting that ''IPQ processors and affiliates will receive Class A IFQ at the full poundage appropriate to their

harvesters QS percentage.'' Section 2.2 of the EIS further supports an approach in which the amount of Class A IFQ that is issued to an IFQ holder or affiliate is based on the proportion of QS held to the amount of PQS held by the PQS holder to which the QS holder is affiliated.

NMFS is interpreting Amendment 18 in the following manner:

(1) If a person holds IPQ and IFQ, than that person will be issued Class A IFQ only for the amount of IFQ equal to the amount of IPQ held by that person. Any remaining IFQ would be issued as Class A and Class B IFQ in a ratio so that the total Class A and Class B IFQ issued in that fishery is issued as 90 percent Class A IFQ and 10 percent Class B IFQ.

As an example, if a person held 100,000 pounds of IPQ in a fishery and 120,000 pounds of IFQ, that person would receive 100,000 pounds of Class A IFQ and 20,000 pounds of IFQ issued in the appropriate Class A and Class B ratio for that person;

(2) If a person holds IPQ in excess of the amount of IFQ held by that person, all IFQ holders affiliated with that IPQ holder will receive only Class A IFQ in proportion to the amount of IFQ held by that person relative to that amount of IPQ held by the IPQ holder to which they are affiliated. Any remaining IFQ would be issued as Class A and Class B IFQ in a ratio so that the total Class A and Class B IFQ issued in that fishery is issued as 90 percent Class A IFQ and 10 percent Class B IFQ.

For example, assume that an IPQ holder holds 200,000 pounds of IPQ and 100,000 pounds of IFQ in a fishery. Also assume that the IPQ holder is affiliated, either through a 10 percent common ownership standard, or through control, with 3 IFQ holders (IFQ holder A, IFQ holder B, and IFQ holder C). IFQ holder A has 100,000 pounds of IFQ, IFQ holder B has 25,000 pounds of IFQ, and IFQ holder C has 175,000 pounds of IFQ. Collectively, the three affiliated IFQ holders have 300,000 pounds of IFQ.

The IPQ holder would be issued all 100,000 pounds of his IFQ holdings as Class A IFQ because the amount of IPQ held (200,000 pounds) exceeds the total amount of IFQ that he holds. The remaining 100,000 pounds of Class A only IFQ would be allocated on a pro rata basis as follows.

(1) The total remaining IPQ (100,000 pounds) is divided by the total IFQ held by all affiliates of the IPQ holder (300,000 pounds). This yields a Class A only ratio of .333.

(2) The IFQ held by each affiliate is multiplied by the Class A only ratio. In our example:

IFQ holder A = 100,000 pounds × (0.333) = 33,333 pounds of Class A only IFQ

IFQ holder B = 25,000 pounds × (0.333) = 8,333 pounds of Class A only IFQ

IFQ holder C = 175,000 pounds × (0.333) = 58,333 pounds of Class A only IFQ.

Any remaining IFQ held by these IFQ holders would be allocated using the Class A and Class B ratio. This example is limited to IFQ holders being affiliated with only one IPQ holder. In cases where an IFQ holder is affiliated with multiple IPQ holders with IPQ in excess of their IFQ holding , this same methodology would apply. This method meets the intent of Amendment 18, and is consistent with the statements in the EIS concerning the allocation of Class A and Class B IFQ among persons affiliated with IPQ holders.

Comment 26: The proposed rule at § 680.40(h)(4) contradicts Amendment 18 and Congressional mandate in applying the affiliation definition of 10 percent or more processor ownership for the allocation of Class B IFQ. This provision would cause severe economic harm to vessels that have affiliation by processors, stifle investment by QS holders in processing activity, and cause a number of serious problems for the development of a successful crab rationalization program. The final rule should define who can receive Class B IFQ as follows: Class B IFQ will be assigned to all eligible recipients except that Class B IFQ will not be assigned to any person whose delivery of crab is controlled by a holder of PQS or IPQ. Control will be determined based on an annual affidavit by each QS holder submitted as part of the annual application for crab IFQ/IPQ permit. A PQS or IPQ holder does not control QS or IFQ if the skipper responsible for delivery of crab harvested under the QS is contractually able to deliver its harvest wherever they choose without direction by the PQS or IPQ holder.

Response: The response to this comment is addressed in the response to comment 25.

Comment 27: The proposed rule at § 680.40(h)(4)(ii) would prohibit issuance of Class B IFQ to holders of PQS or IPQ or to entities affiliated with such holders. An affidavit requirement is set forth in the proposed rule as a criterion for the issuance of Class B IFQ, as specified in the Council motion and is an important element of accountability and enforceability of the system devised by the Council, and should be preserved. The final regulations should provide for an affidavit process for accountability and enforceability of a system devised by the Council for the issuance of B IFQ. Additionally, processor controlled IFQ holders should not be issued Class B IFQ.

Response: The response to this comment is addressed in the response to comment 25. The affidavit is maintained as the standard by which NMFS will determine affiliation with a processor. The Annual Application for IFQ or IPQ will note what standards meet affiliation thresholds. The accountability for accurately supplying this information to NMFS will rest with the applicant.

Comment 28: The test for determining which harvesters are ineligible to receive Class B IFQ should be whether a PQS holder, by any means whatsoever, controls where the harvester's IFQ are delivered. With respect to this test, control should be evaluated on the basis of criteria similar to those employed by the Maritime Administration when evaluating compliance with the AFA citizenship requirements. By focusing on IPQ holder ownership or control of an IFQ holder to the exclusion of other factors, the use of the affiliation standard at § 680.2 leaves open the possibility that Class B IFQ could be controlled by PQS holders in a manner that contravenes the intent expressed in the Council motion.

In order to fully protect the independence of Class B IFQ, each affiliation evaluation should include consideration of indicia of IPQ holder control of an IFQ holder and over IFQ delivery. Accordingly, the definition of affiliation used at § 680.40(h)(4) should be expanded to include indica of direct or indirect control similar to those used for evaluating affiliation in the AFA context and control of U.S. flag fishing vessels (46 CFR 356.11). In each case, these regulations compel a thorough evaluation of both the ownership of an entity and other control factors that may permit a non-owner to none-the-less exercise control over that entity or its actions. An annual evaluation of this control should occur in conjunction with the IFQ application process, and subsequent to this application, applicants should be prohibited, without prior approval by NMFS, from entering into any relationship with a PQS holder or affiliate that modifies the indica of control already evaluated.

Response: The response to this comment is addressed in the response to comment 25. The rule does not specify that IFQ recipients notify NMFS after the issuance of IFQ and IPQ that they have entered into a relationship with a

PQS or IPQ holder that would result in them becoming affiliated or otherwise resulting in increasing control by the PQS or IPQ holder. NMFS did not make this a requirement for several reasons:

(1) NMFS would not be able to reissue Class A or Class B IFQ once the season has begun. Because the amount of IPQ issued in a fishery is equal to the amount of Class A IFQ, modifying the amount of Class A IFQ issued to a person due to a mid-season change in affiliation would require reissuing IPQ as well and would significantly disturb the operation of the fishery;

(2) In some cases an IFQ holder would not be aware of changes in corporate ownership that could increase the degree of control being exerted by an IPQ or PQS holder. As an example, IFQ could be held by a corporation that is in turn owned by several other corporations. If one of those corporations purchased IPQ, the IFQ holding corporation may not be aware of this change in affiliation unless private contracts stipulated that the IFQ holder be notified that such a purchase had occurred. In any case, the IFQ holder would not be able to exercise control over the actions of this party purchasing the IFQ.

The Annual Application for IFQ or IPQ requires each applicant to annually submit their affidavit and provides a reasonable assurance that if affiliation were to change in mid-season, those changes would be reflected in the affidavit for the following year. NMFS established a time period shortly after the annual application is due until IFQ and IPQ is issued where no transfers of IFQ or IPQ would be approved. This will provide NMFS with time to determine affiliations, the amount of Class A IFQ and Class B IFQ to be issued to each IFQ holder, and issue that IFQ and IPQ. Once issued, transfers could occur that could result in Class B IFQ being transferred to IPQ holders or their affiliates. Because we are modifying the way in which Class A IFQ and Class B IFQ is allocated to PQS or IPQ holders and their affiliates, this would be permitted.

Comment 29: An extremely unreasonable burden would be put on harvesters if processors affiliated harvesters were interpreted to include harvesters who have a gear loan from a processor, a tender contract, or some other unforseen link with a processor that would happen with normal business dealings. Ths could prohibit the harvester from receiving Class B IFQ, participating in arbitration, or joining a cooperative. The solution of signing a control affidavit stating that a processor has no control of landings seems unclear. The final rule should carefully define control and affiliation so as to avoid creating a disadvantage to harvesters or creating a risk of having to sign an affidavit that could later be interpreted as fraudulent.

Response: The response to this comment is addressed in the response to comment 25.

Comment 30: I am a fisherman with a partnership to two different crab vessels that will be participating in the upcoming crab rationalization. On one of these vessels I have been a partner for seventeen years with a group that also owns a small part of a processor. We have a co-ownership agreement that gives me complete control of when and where the vessel delivers. In the last seventeen years I have delivered many times to processors not owned by my partners, the choice has always been mine, as stated in our co-ownership agreement. To deny me Class B IFQ shares under § 680.40(h)(4) gives an unfair advantage to the other unaffiliated vessels who may be able to receive a premium for this crab from outside (non-PQS) buyers. I believe if a vessel could make an annual declaration of control, that any concerns of anti-trust violations could be alleviated, especially with a co-ownership agreement showing the ''affiliated'' partner not in control of decision making for the vessel or its QS/IFQ.

Response: The response to this comment is addressed in the response to comment 25.

Comment 31: The allocation of only Class A IFQ to those vessels that are considered affiliated at § 680.40(h)(4) will disadvantage those minority co-owners that have complete operational control over the deliveries of the vessel and IFQ. The definition of control should be revised to reflect the nature of control at issue, taking into account past operating practices. For instance, a vessels may have partial or full ownership by an entity that also has partial ownership in a processing operation. While these vessels might be considered ''affiliated'' with a processor, they have historically acted independent of the processor and will continue to do so. The operator and in some cases the co-owners of the vessel and have full freedom to deliver wherever they wish, even to the point that a large portion of their QS will be in the Northern Region that their affiliated processor has never had operations. An annual declaration of control is a reasonable method for determining who will receive Class B IFQ.

Response: The response to this comment is addressed in the response to comment 25.

Comment 32: I have had a business relationship with a processing company for 16 years. I have been a partner in the vessel for 12 years. They have never told me where to deliver my catch. I do not fish for their processing company and have not for 14 yrs. I have delivered to a different processor mainly for the last 14 years. My partner's attitude has always been its my choice where to deliver my product. I think I have earned my Class B IFQ and deserve them. I think a simple letter stating that I control where I will deliver my product will be sufficient.

Response: The response to this comment is addressed in the response to comment 25. The factors that this commenter raises would be supplied in the affidavit that he submits each year. If there are sufficient indicia to indicate that control exists, then that person would need to indicate that they are affiliated with an IPQ holder. If not, or if it is unclear, NMFS may request additional information.

Comment 33: Comment strongly supports the dual definition of control (by any means) and the 10 percent affiliation standard identified by NMFS in the proposed rule. The Program was developed with PQS included, which is a new concept in fisheries management. Due to the uncertainties in how this will work, the Council stipulated that only those non-affiliated QS holders would receive the IFQ in an Class A/B IFQ split. This is to benefit the independent QS holders and help to maintain a competitive market place. The concept of a simple affidavit stating that control over deliveries is insufficient. Anyone can say that they are not under the control of a processor. The added 10 percent ownership requirement, which is consistent with other definitions of affiliation by the Council and NMFS throughout the motion and the EIS, is appropriate and needed.

Response: The response to this comment is addressed in the response to comment 25.

Comment 34: Nowhere in the Council motion are recipients of Class B IFQ restricted in nearly so severe a manner as in the proposed rule at § 680.40(h)(4)(ii). The Council motion clearly states that if the QS holder is appropriately able to execute an affidavit stating that no IPQ holder controls where the IFQ is delivered, that QS holder is entitled to receive Class B IFQ. If a QS holder executed such a document, and was discovered to have misrepresented the facts, then that QS holder would be liable for fraud under

federal law. By drawing the proposed rule so narrowly, NMFS has created new restrictions to prevent abuse, restrictions which were neither seen to be necessary by the Council nor which acknowledge the very real penalties which already exist under federal laws for fraud. NMFS should redraft the regulations to accurately reflect the Council motion, bearing in mind that industry participants are already appropriately held to the standard of making accurate representations to NMFS.

Response: The response to this comment is addressed in the response to comment 25.

Comment 35: In order to fully protect the independence of Class B IFQ harvesters, each affiliation evaluation should include consideration of a broad range of indicia of ''affiliation/control'', as well as ''affiliation/ownership''. ''Affiliation/control'' and ''affiliation/ownership'' are two separate tests, both of which must be satisfied in order to be eligible for Class B IFQ. These separate tests are spelled out in the April 2003 Council motion on ''Processor Holdings of Harvest Shares'' It is crystal clear from the motion that the truly ''independent (non-affiliated) harvesters'' are to be the recipients of the full allocation of aggregate Class B IFQ. These are all or nothing tests, without any ''proportionality'' component relative to how much PQ is held, nor the degree of affiliation as a function of degree of processor ownership of the harvester QS holder.

Though the words of the April motion do not indicate a specific 10 percent ownership standard for defining ''affiliation,'' 10 percent was the standard that was used in the RIR analysis that was before the Council when it made the motion.

Some have argued that discussion in section 1.6.4, of the EIS pg. 2–41 suggests proportionality in distributing Class B IFQ to non-fully independent harvesters. However, the EIS was not available to Congress when it acted to require implementation of the program as ''approved by the North Pacific Fishery Management Council between June 2002 and April 2003, and all trailing amendments including those reported to Congress on May 6, 2003.'' Thus the 'legislative' history on how to allocate Class B IFQ to independent harvests should rest not on section 1.6.4 of the EIS which was not available, but on the RIR which was available in June 2002 and when the Council motion was made in April 2003, and which consistently used a 10 percent affiliation standard to define ''independence'' as well as incorporating a separate test for ''control.''

Response: The response to this comment is addressed in the response to comment 25.

Comment 36: The Council motion included a trigger mechanism for red king crab and snow crab that would end the Class A/B IFQ designations for harvesting QS. If the red king crab GHL exceeds 20 million pounds and/or the snow crab GHL exceeds 175 million pounds, all harvesting shares above those trigger amounts are to be unrestricted or Class B IFQ. If the proposed rule's definition of affiliation remains in place, what shares will affiliated vessels receive when the trigger numbers are reached? Under the proposed rule they cannot receive Class B or unrestricted IFQ. This outcome, while not yet realized in terms of demonstrated GHL, highlights the inconsistency between the proposed regulation and the intent of the Council. Again, the prohibition to receive Class B IFQ to anyone with a 10 percent ownership standard has far reaching consequences. If the regulation remains unchanged, no holder of QS will dare to invest in processing because he will forfeit his ability to receive Class B IFQ. CDQ groups wishing to increase their participation in crab processing and harvesting will not be able to do so. The vessels whose delivery are uncontrolled but have a greater than 10 percent ownership share held by a PQS holder are also penalized. The regulations should be amended to follow the Council intent to utilize the affidavit process to determine control over delivery as the basis for allocating Class A and B IFQ.

Response: Portions of this comment are addressed in the response to comment 25. For the allocation of IFQ when the TAC for Bristol Bay red king crab or snow crab exceeds the specified amount, the final rule specifies at § 680.4(j)(3) that the allocations are made as a modified form of Class A IFQ that would not be subject to delivery to an IPQ holder, but which still have regional designation requirements as provided in Amendment 18. This differs from Class B IFQ, which are not subject to regional delivery requirements

Comment 37: Class B IFQ should not be held by processor-affiliated entities. The important point here, as in the case of cooperatives, is to achieve, through a definition of ''affiliation,'' a result that is consistent with objectives of the both rationalization program and the antitrust laws. Class B IFQ provide leverage for harvesters, who must bargain in a system which provides 90 percent of IFQ shares are Class A IFQ that must be matched to IPQ. This intended leverage on the part of harvesters is compromised, if processor-controlled entities hold Class B IFQ. However, where a harvester is not controlled by a processor, then the rationale for holding Class B IFQ properly applies. The commenter believes that skippers and crew members of vessels in which there is some, but not controlling, processor interest, should enjoy the intended benefit of Class B IFQ.

Response: The response to this comment is addressed in the response to comment 25.

Comment 38: The test for determining which harvesters are ineligible to receive Class B IFQ should be whether a PQS holder, by any means whatsoever, controls where the harvester's IFQ are delivered. With respect to this test, control should be evaluated on the basis of criteria similar to those employed by the MARAD when evaluating compliance with the AFA citizenship requirements. By focusing on IPQ holder ownership or control of an IFQ holder to the exclusion of other factors, the use of the affiliation standard at § 680.2 leaves open the possibility that Class B IFQ could be controlled by PQS holders in a manner that contravenes the intent expressed in the Council motion.

In order to fully protect the independence of Class B IFQ, each affiliation evaluation should include consideration of indicia of IPQ holder control of an IFQ holder and over IFQ delivery. Accordingly, the definition of affiliation used at § 680.40(h)(4) should be expanded to include indica of direct or indirect control similar to those used for evaluating affiliation in the AFA context and control of U.S. flag fishing vessels (46 CFR 356.11). In each case, these regulations compel a thorough evaluation of both the ownership of an entity and other control factors that may permit a non-owner to none-the-less exercise control over that entity or its actions. An annual evaluation of this control should occur in conjunction with the IFQ application process, and subsequent to this application, applicants should be prohibited, without prior approval by NMFS, from entering into any relationship with a PQS holder or affiliate that modifies the indica of control already evaluated.

Response: The response to this comment is addressed in the response to comment 25.

Comment 39: While the affidavit process does go a long way towards defining processor affiliates, an ownership standard is also necessary, such as the MARAD's definition of the

25 percent rule for foreign ownership of U.S. flagged vessels. This standard should be adopted in both the issuance of Class B IFQ and binding arbitration standards.

Response: The response to this comment is addressed in the response to comment 25. The 10 percent standard for ownership was chosen based on the preponderance of its use in Amendment 18 as a means of establishing linkages among various entities for a variety of applications. This same 10 percent standard was used for analysis in the EIS/RIR/IRFA supporting this action.

Comment 40: The proposed rule at § 680.42(b)(1)(i) could limit the benefits from the LLP license buyback to persons that purchased LLP licenses after June 10, 2002, that were put over the use caps by the buyback. Include a provision that would grandfather any initial allocation in excess of the use caps received from LLP licenses acquired after June 10, 2002, and prior to the referendum on the buyback, to the extent that the allocation would not have been in excess of the cap, but for the buyback.

Response: The comment applies to the final rule at § 680.42(a)(1)(i), which addressed PQS issuance. Neither the proposed rule nor Amendment 18 provided specific guidance on the potential implications of the BSAI Crab Fisheries Capacity Reduction Program, or the ''Buyback'' on persons who received catch history by transfer of an LLP license after June10, 2002, that may result in an increased chance of that person receiving an allocation of QS in excess of the use caps established at § 680.42(a). Amendment 18 notes that ''a cutoff date of June 10, 2002, was established for the QS ownership cap grandfather provision.'' Amendment 18 did not provide a specific exemption to this cut off date in the case of the Buyback being approved, although the Buyback was under development at the time that the Council took final action. Additionally, Congressional action on portions of the Buyback were approved prior to Congressional action on the Crab Rationalization Program.

However, the legislation that enacted the Buyback required that a referendum of eligible voters approve the program before it could be enacted. The final results from the referendum were provided on November 24, 2004. Prior to this time, it is reasonable to assume that an individual would not have known if the Buyback would have been approved, or if it would have an impact on the amount of QS a person would be issued based on LLP licenses transferred after June 10, 2002. This November 24, 2004, deadline is after the publication of the proposed rule implementing the Crab Rationalization Program and NMFS was unable to incorporate the potential effects of the Buyback in the proposed rule because it had not yet been approved by the fleet.

Due to the lack of clear guidance on this issue in Amendment 18, but the potentially adverse and unanticipated effect of the Buyback, NMFS may make specific exemptions to the cutoff date in Amendment 18 to accommodate transfers that occurred after June 10, 2002 but prior to the approval of the Buyback by referendum on November 24, 2004. NMFS has modified the final rule at § 680.42(a)(1)(ii)(B) so that any person who applies to receive QS based on an LLP license transferred after June 10, 2002, but prior to November 24, 2004, will receive the amount of QS associated with that transferred LLP license in excess of the use cap for that crab QS fishery if that transfer would not have resulted in that person exceeding the QS use cap for that fishery if the total fishery catch history had not been reduced by the Buyback Program.

Comment 41: The proposed rule does not provide for a modification of the QS ownership caps as a result of recently approved crab vessel buyback. The purpose of the QS cap was to eliminate speculative purchases of QS above a certain level after the Council's motion passed in June of 2002. The buyback will have the impact of increasing QS holders' percentage ownership by about 10 percent. It was generally understood that the buyback would function so that the ownership cap would increase by the same percentage as the increase resulting from the implementation of the buyback and the final rule should reflect this understanding. If not, those who owned QS at the capped level would not be able to receive the benefits of the buyback program.

The buyback was a legal action that took place after the Council's June 2002 motion. The agency does have authority to implement regulations consistent with the Council's intent. In this case, no individual speculated on the purchase of QS that would put them over the cap. Instead, an industry approved buyback program resulted in every participant that remained in the fishery receiving a greater harvest share. It is in full compliance with the Council's intent that the QS cap be raised accordingly.

Response. This response is addressed in the response to comment 40.

Comment 42: The provisions § 680.40(b)(4)(ii)(B) and (E) of the proposed rule prevent the separation of an LLP license from its history. The provision should allow separation in the case of a person acquiring an LLP license to remain in a fishery (§ 680.40 (c)(1)(vii)). Insert a provision that permits the separation of an LLP license from its history to the extent necessary to achieve the purpose of § 680.40 (c)(1)(vii) of the proposed rule.

Response: The commenter is referring to § 680.40(c)(2)(vii) in the final rule. This provision was intended to address the limited circumstance where a person transferred an LLP license for use on a vessel which otherwise would have been qualified to participate in the fishery. NMFS composed the proposed rule to limit this provision rather narrowly. Amendment 18 notes that ''the underlying principle of this program is one history per vessel.'' The specific provision at § 680.40(c)(2)(vii) is intended as a general exemption to this rule. NMFS modified § 680.40(b)(4)(ii)(B) and (E) in the final rule to note that this general principle is not applied for purposes of complying with § 680.40(c)(2)(vii).

Comment 43: The provision at § 680.40(c)(1)(vii) permits a person that purchased an LLP license to remain in a fishery to use the history of the vessel on which the LLP license was used or on which the LLP license was based. The requirement that the vessel using the LLP license have an interim LLP license could limit the application of this provision to situations where multiple license transfers were required to comply with vessel length limits on LLP licenses. Remove the limitation that the LLP license be an ''interim'' license. The rule should be clear that no history may be credited toward two different allocations and that only one history may be credited to an LLP license.

Response: Amendment 18 does not explicitly limit the application of this exemption to persons with an interim LLP license. NMFS had established this limitation in the proposed rule to tightly constrain the applicability of this provision to the general rule that there should be only one catch history eligible to receive an allocation per vessel. NMFS has removed the exemption's limitation that the LLP license be an interim LLP license. Additionally, the provision at § 680.40(c)(2)(vii) clearly states that only one catch history may be credited to a person who applies to receive QS with a permanent, fully transferable LLP license. The catch history used by that QS applicant may be either that derived from that LLP license or the catch history from the vessel which that LLP was transferred and used, but not both.

Comment 44: The January 1, 2002, cut-off date on the provision, in the

proposed rule at § 680.40(c)(2)(vii), that would allow a person who applies to receive QS with an LLP license endorsed for a fishery to choose to receive the QS based either on the landings made by the vessel that was used to qualify for that LLP license or on the landings made by another vessel, is arbitrary. The cut-off date is unlawful and penalizes LLP license holders who purchased licenses after that date to remain in the fishery by not allowing them to receive QS based on the more extensive catch history of another vessel. Section 680.40(c)(2)(vii) should be revised either to strike the January 1, 2002, date or to accommodate the circumstance of a prospective applicant whose interim LLP license was not invalidated, and who did not purchase a permanent LLP license, until after that date.

Response: The January 1, 2002, cut-off date is a provision of Amendment 18. Amendment 18 was approved by the Council and codified by section 313(j) of the Magnuson-Stevens Act. NMFS does not possess the discretion to alter this provision as it exists in statute. Any change to this provision requires an amendment to the Program and should be addressed with the Council. Therefore, NMFS will not make this change in the final rule. The Council did establish a clear control date prior to final decision on this Program to prevent speculative behavior by interim LLP license holders or those without an LLP license to avoid redistributing QS allocations to those who did not have a permanent LLP license.

Comment 45: Clarification of Council intent is necessary to determine whether the Council meant to apply the January 1, 2002, cut-off date to the provision that would allow a person who applies to receive QS with an LLP license endorsed for a fishery to choose to receive the QS based either on the landings made by the vessel that was used to qualify for that LLP license or on the landings made by another vessel. Thus, there appears to be considerable uncertainty concerning how these exceptions to the general rule are intended to operate.

Response: NMFS disagrees that clarification of Council intent is necessary. Amendment 18 explicitly applies the January 1, 2002, date to this provision. Therefore, no uncertainty exists concerning implementation of these exceptions to the basis for QS distribution.

Comment 46: The proposed rule is arbitrary and capricious, does not constitute reasoned decision-making, and is not consistent with standards for agency action set forth in the APA and judicial decisions applying those standards. There is simply no rational connection between the cut-off date and the invalidation/purchase criterion underlying the exemption, and no explanation was given for denying an allocation of QS to persons whose interim LLP licenses were invalidated by NMFS, and who thus did not purchase a permanent LLP license until after January 1, 2002. The Council selected the January 1, 2002, cut-off date in substantial part to accommodate the circumstances of a particular individual, and did not consider the situation of other interim LLP license holders. The Council entirely failed to consider that claims for LLP licenses were still pending before NMFS as of January 1, 2002, and that interim LLP licenses of some participants would not be invalidated until after that date. Further, the cut-off date was selected retroactively, and did not give interim LLP license holders any notice that their ability to continue participating in the fishery would hinge on purchasing a permanent LLP license by a date certain.

Response: This comment has been addressed in a previous response to comment 44.

Comment 47: The January 1, 2002, cut-off date is inconsistent with the National Standards for implementing the Magnuson-Stevens Act, in particular, National Standard 4. The cut-off date unfairly and inequitably denies an allocation of CVO QS to applicants for whom the invalidation/purchase trigger of the exemption did not occur until after January 1, 2002. It penalizes an LLP license holder who exercised its rights under the LLP to appeal an initial administrative determination (IAD) by NMFS, but whose appeal was not resolved by NMFS until after January 1, 2002. A person who did not appeal an adverse IAD, or whose appeal was resolved by NMFS prior to January 1, 2002, may receive an allocation of CVO QS under the exemption, but a person whose appeal was not resolved until after that date may not. There is no rational basis for this distinction.

Response: This comment has been addressed in response to comment 44. Additionally, the January 1, 2002 cut-off date is part of Amendment 18. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program as specified in Amendment 18.

Comment 48: Principles of equal protection and due process, as contained in the Fifth Amendment to the U.S. Constitution, are offended by a regulatory system that makes a distinction between similarly situated persons on the basis of a arbitrary cut-off date. Persons whose interim LLP licenses were invalidated after January 1, 2002, and who then purchased permanent licenses to insure that their vessels would remain authorized to participate in the fishery, are in the same position as persons for whom the invalidation/purchase trigger of the exemption occurred prior to that date. The timing of invalidation of an LLP license was governed by regulations implementing the LLP and largely under the control of NMFS. It simply is not fair to deny an allocation of CVO QS to a person based in the fortuitous timing of NMFS' decision to invalidate an LLP license. A participant in the fishery should not be penalized or denied an allocation of QS because it exercised its rights under the LLP regulations to pursue a claim for an endorsement but NMFS did not resolve that claim until after January 1, 2002.

Response: This comment has been addressed in response to comment 44.

Comment 49: The proposed rule at § 680.40 contemplates an interim LLP license as a condition for a license history exemption contemplated by the Council. By requiring such a license and prohibiting the severability of catch history from an LLP license for initial allocation of QS, the proposed rule excludes a vessel for which there was no such license, but which otherwise would qualify for the exemption. The owners of two of the vessels in question were advised to obtain a complete LLP package or they would be denied a permanent LLP license. They did so, without first being so denied, and thus, were not issued an interim LLP License. The Council did not require an interim LLP License as a qualification for the history exemption, and it was not the intent of the Council to exclude the vessels in question. The final regulations should allow the history exemption for the very limited number of vessels in question. The commenter estimates no more than four LLP licenses will utilize this exemption.

Response: This comment has been addressed in response to comments 42 and 43.

Comment 50: The exception at § 680.40(b)(4)(vii) of the proposed rule permitting issuance of QS to persons who made landings under an interim LLP license by acquired a fully transferable LLP license to preserve their fishing eligibility prior to January 1, 2002, should be narrowly construed to permit the intended beneficiaries of that exception to take advantage of it, but not allow unintended beneficiaries to likewise benefit from the exemption. The commenter is opposed to any broader interpretation of this exemption than is necessary to give effect to the

Council's intent and therefore encourages NMFS to strictly construe the proposed exemption in accordance with the Council's motion.

Response: NMFS has revised § 680.40(b)(4)(vii) in the final rule to limit the applicability of the provision while meeting the intent of Amendment 18. This includes not expanding the dates by which the transfer needed to occur, nor the limitation that only one catch history may be used for purposes of receiving QS.

Crew Sector

Comment 51: The provision at § 680.40(b)(2)(i)(B)(*2*) suggests that regional designations apply to CVC QS ''prior to July 1, 2008.'' The provision should read, ''on and after July 1, 2008.''

Response: NMFS agrees and changed the language at § 680.40(b)(2)(i)(B)(*2*) to read, ''on and after July 1, 2008.''

Comment 52: The provisions in the proposed rule at § 680.40(h)(1) through (7) appear to make no IFQ allocations for CVC QS holders prior to July 1, 2008. The CVC IFQ should not be subject to region or processor landing restrictions during this time period. The provision should make clear that CVC QS holders receive an allocation prior to July 1, 2008.

Response: NMFS agrees and has modified the provisions at § 680.40(h)(1) through (7) in the final rule to clarify how CVC IFQ allocations occur.

Comment 53: The table at § 680.41(c)(1)(i) in the proposed rule is incorrect concerning CVC or CPC in lines (E) and (F). In line (E), the initial recipient of QS is not relevant (no provision authorizing recipients of an initial allocation to receive shares is included for the acquisition of CVC and CPC shares). The only standard for eligibility to receive CVC or CPC shares is that the person acquiring the shares must be an individual that is a U.S. citizen and an ''active participant''. Similarly, in line (F), a cooperative cannot receive shares since it doesn't meet those criteria. The line concerning cooperative acquisition could be deleted. Alternatively, a cooperative could be permitted to receive shares through an individual that meets the requirements, if the agency would like to assume the added administrative burden of tracking those transactions and performance of owner on board requirements. Limit eligibility to receive CVC and CPC shares to individuals who are U.S. citizens and ''active participants.''

Response: NMFS agrees and has restructured the table at § 680.41(c)(1)(v) so that it is clear that a person who wishes to receive CVC or CPC QS or IFQ by transfer must be a U.S. citizen, have met sea time requirements, and be a recent participant in a crab fishery in the 365 days prior to applying for the transfer. The regulations at § 680.41(c)(1)(vi) have been modified so that CVC and CPC IFQ cannot be transferred to a cooperative because the regulations at § 680.42 have been modified so that owner onboard provisions would apply even if the CVC of CPC IFQ is being used in a crab harvesting cooperative. It should be noted that CVC and CPC IFQ may be used in a cooperative by a person who receives CVC or CPC IFQ by transfer and then converts that IFQ for use in the cooperative, provided that the owner on board provisions for use in a crab harvesting cooperative are met.

Comment 54: The table at § 680.42(b)(2)(i) specifies the use caps for CVC and CPC shares. Under the Council motion, these caps are to be equivalent to the CVO and CPO vessel use caps. As written, they are equivalent to the individual CVO and CPO use caps (in most cases one-half of the correct cap). Revise individual use caps for CVC and CPC shares to equal the vessel use caps.

Response: NMFS agrees, Section 1.8.1.9 of Amendment 18 notes that ''C share ownership caps for each species are the same as the vessel use cap for each species.'' The table at § 680.42(b)(2)(i) in the final rule has been modified to correctly reflect Amendment 18.

Comment 55: An eligible captain, who intended to continue fishing but happened to die between seasons of causes unrelated to fishing, should qualify to receive CVC QS. The proposed rule is unclear whether this is the case. Is it the intent of Amendment 18 and the regulations to determine what kind of death will qualify?

Response: This comment is applicable to regulations at § 680.40(b)(3)(C)(2) in the final rule. Amendment 18 notes that ''[f]or captains who died from fishing related incidents, recency requirements shall be waived and the allocation shall be made to the estate of that captain.'' Amendment 18 clearly establishes that the limits under which the recency requirements to receive CVC or CPC QS can be waived. NMFS has interpreted a ''fishing related incident'' as one in which the person died while serving as a member of a harvesting crew in any U.S. commercial fishery. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program provisions as specified in Amendment 18. Any change to this provision requires an amendment to the Program and should be addressed with the Council. The rule has not been modified.

Comment 56: The proposed rule contains many references to CVC (Catcher Vessel Crew) QS and CVS (Catcher Vessel Skipper) QS. Table 2, Eligibility to Receive Catcher Vessel Crew (CVC) Quota Share (QS) and Qualifying Year Periods, in the preamble to the proposed rule, lists 3 eligibility criteria, the second of which limits QS only to skippers. Since only 1 person on each vessel obtained an interim use permit in a given fishery, that person must be defined as the skipper. If the Council's intent was to award CVC QS to crew members, then it should add a phrase in eligibility requirement (2) that says, ''* * * being the individual named on a State of Alaska Interim Use Permit [OR BEING AN INDIVIDUAL WHO DECLARED TAXABLE INCOME FOR FISHING VESSEL PROCEEDS BASED ON IRS FORM 1099 FOR CRAB AND] and who made at least one delivery. If the Council's intent was not to award any CVC QS to crew members, then it should clarify its intent by requesting the removal of all references to CVC QS from § 680, leaving only CVS (Catcher Vessel Skipper) QS.

Response: The terms ''C shares,'' ''Captain's shares,'' and ''Skipper shares'' are used interchangeably in Amendment 18 to refer to QS and IFQ that would be allocated to non-LLP license holders—these terms are called CVC and CPC QS and IFQ by NMFS in the final rule. The preamble to the proposed rule (69 FR 63201) notes that ''NMFS has determined that documentation necessary to allocate Crew QS, called C shares by the Council, would require that these shares be issued to individuals who hold a State of Alaska Interim Use Permit. Most likely, this individual would be the captain; however, the State does not require that the holder of the Interim Use Permit be the vessel captain.'' The phrase ''crew'' does not imply that persons other than those who made legal landings with an Interim Use Permit would qualify to receive CVC or CPC QS, and this is the skipper, or captain of the vessel in most cases. The rule has not been modified.

Comment 57: Highline vessel owners expressed concern that awarding enough CVC QS to crew members to be consistent with crew share history could become too much overhead to vessel operators in the future. This is one likely reason that the Council specified that 3 percent of the QS be issued to skippers, rather than their historic share of about 15 percent. In order to accommodate CVC QS for crew as well

as skippers, without a large negative impact on skippers, it would be fairer to allocate an additional maximum 3 percent for crew member quotas (CVC QS) qualified by evidence from IRS form 1099. This is because the average crew share is about ⅓ of the average captain share, but there about 3 times as many crew as captains. The ratio of CVS QS to actual Skipper share for harvest years could be multiplied by the actual crew share to determine CVC QS.

Response: Amendment 18 expressly limits the amount of QS that can be issued as CVC and CPC QS to 3 percent of the initial QS pool in a crab QS fishery. Issuing more than this amount would directly contradict Amendment 18. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program provisions as specified in Amendment 18. Therefore, NMFS does not possess the discretion to alter the amount of QS that can be issued as CVC and CPC QS as it exists in statute. Any change to this provision requires an amendment to the Program and should be addressed with the Council. The rule has not been modified.

Comment 58: Awarding crew QS only to interim use permit card holders is not fair to crew and captains who may have fished as many or more years but had only forms 1099 for evidence. It is also contrary to the stated intention that these shares are intended to provide long term benefits to captains and crew. Forms 1099 are verifiable evidence. To be consistent with the above intention, IRS Forms 1099 should be admitted as an alternative eligibility qualifier at § 680.40(b)(3)(iii). The following wording should be added: alternatively, crew may establish eligibility by submitting copies of IRS forms 1099 and/or crew settlement sheets for any 5 qualifying seasons. This is simple, fair, and consistent with the intention quoted above. It provides protection for crewmembers who may rely more heavily on crab in the recent years than in the earlier years. One good reason for the above intention is dependence on crab for livelihood of current crew.

Response: This comment has been addressed in response to comment 56. The 1099 IRS form does not indicate that a person made legal landings in a crab QS fishery, only that a person earned income in a fishery. Such a form is not sufficient for determining whether legal landings have been made in the fishery.

Comment 59: Collateral damage of the crab rationalization will hurt most for crewmembers who do not receive CVC QS, who also do not find a new job soon. It would be irresponsible for our industry to shift all of the cost of retraining, placement, and needs-based care onto the Department of Labor and the Department of Health and Social Services at the expense of the general taxpayer. Perhaps a portion of the Cost Recovery tax can be allocated towards reimbursing these agencies for costs of helping unemployed crewmembers.

Crewmembers have neither unemployment insurance nor a severance package. The federal government structured this crab plan in a manner that terminates about 1,000 crabbers or 80 percent of the industry's work force. They probably earned a modal value of $20,000–$30,000 per year crabbing. Most are desirable employees and will find work, but some may remain unemployed or underemployed for a long time. The taxpayers should not be saddled with having to bear the costs of maintaining the thousand crabbers about to be thrown out of work with neither severance pay nor unemployment. This burden on the taxpayers has not been evaluated, nor has the burden on the crew itself. It is as if a giant tax, amounting to a modal value of around $20–30,000 per year is taken out of the crewman's pocket and dropped into the pocket of the vessel owner. There should be a Federal acknowledgment of responsibility for those hurt most by the plan at the end of the section on Cost Recovery and Fee Collection.

Response: The EIS/RIR/IRFA prepared to analyze the effect of Amendment 18 did examine the potential effects of this program on crew. This rule may result in fewer crew being employed as QS holders consolidate their fishing operations for improved economic efficiency—one of the primary goals of the Crab Rationalization Program. The Cost Recovery and Fee Collection portion of this Program is intended to offset the administrative costs and provide funds for loans to entry-level fishermen, including crewmembers who may not have received CVC or CPC QS.

Comment 60: If the crab resource is to be fairly divided among the qualifying participants in the fishery, crew must be included. For the Council to neglect crew is irresponsible. For as long as crews have been crab fishing, a share of the crab resource has been allocated to each crewman. Crew's and owners' catch history are inextricably intertwined. Each vessel's crew and owners have signed a crew share agreement at the start of each fishery that defines the crew's share of the resource. The crew invested sweat equity in the operation by providing at least 10 days to 2 weeks of skilled services maintaining and improving vessels and gear before and after each fishery. As self-employed individuals, the crew paid their own taxes, expecting no fringe benefits normally associated with labor, such as owner contributions to health care plans, pensions, or workman's compensation. The crew suffered the physical brutality of the fishery and put their lives and health at risk whether or not the owner was on board. Without good crews and skippers, it was not possible to achieve a good catch history. Many vessel owners did not spend any time on the Bering Sea during the qualifying years. The crew was there, exposed to the elements. Vessel owners choosing to retire would benefit from a lower tax bill in the future, and the satisfaction of knowing that their net crew allocation provides a fair distribution.

Response: The effects of this Program on crew members were considered during its development by the Council. Please see response to comment 59. The distribution of QS among the various participants in the crab fisheries was discussed and debated extensively during the Program's development. The rule has not been modified.

Comment 61: While recognizing broad safety, conservation, and economic benefits of the rationalization program that is to be implemented by the present rulemaking, the commenter is concerned that many skippers and crew members in the BSAI crab fisheries will be confronted with severe financial dislocation. Adverse consequences will arise from fleet consolidation and coordination through IFQ transfers and fishing cooperatives, from overwhelming vessel owner control of IFQs, and from IPQs. Inevitably, there will be lost employment among skippers and crew members, as vessels are retired or otherwise idled by cooperative agreements. Furthermore, while those skippers and crew who remain in the fisheries will see increased harvests, they will also see the resulting benefits flow overwhelmingly to vessel owners and processors, not to mention those communities that will enjoy development quotas and other, similar advantages.

Response: This response was addressed in the response to comment 59.

Comment 62: There are measures that may be taken by rulemaking, consistent with the Program, the Magnuson-Stevens Act, other applicable law, that would provide some degree of protection and mitigation for skippers and crew members, so that they do not ultimately suffer the worst case. IPQs have a demonstrable potential for

adversely affecting skippers and crews (not to mention, independent vessel owners), and that this challenge should be addressed, as effectively as the law allows, in the present rulemaking. In short, the rulemaking should prevent processors from using the market power deriving from IPQs to achieve excessive leverage in price negotiations that affect not only vessel owners, but also skippers and crew members. Processors must not be provided an opportunity, by virtue of IPQs, to engage in the kinds of market-distorting practices proscribed by the antitrust laws. There are several, specific areas of concern in the proposed rule, with respect to the participation of processors: (1) Participation of processor-''affiliated'' entities in cooperatives, (2) holding of Class B IFQ by processor-affiliated entities, and (3) participation of processors or their affiliated entities in binding arbitration.

Response: The ability of IPQ holders and their affiliates to participate in crab harvesting cooperatives, hold Class B IFQ, and use the Arbitration System, has been addressed in previous response to comments under those subjects, particularly the response to comments 25 and 164. The final rule, Amendment 18, and the Magnuson-Stevens Act all prevent IPQ holders from using the market power deriving from IPQs to achieve excessive leverage in price negotiations and to engage in the kinds of market-distorting practices proscribed by the antitrust laws. Additionally, the economic data collection program was developed to allow such analysis in the future.

Comment 63: Because of the adverse consequences to skippers and crew members, and because the rationalization program offers little of positive economic value to skippers and crew members, relative to vessel owners, processors, and communities, the proposed rule should, as a matter of principle, ensure that such value be maximized to the extent permitted by the Magnuson-Stevens Act and the Council-approved Program.

Response: This Program was intended to provide additional economic benefits and efficiencies to a variety of participants. Achieving economic efficiency is one of several goals that this Program is mandated to meet under the Magnuson-Stevens Act.

Comment 64: The Program has ignored the 1,500 to 2,000 crew members directly involved in the crab fisheries and has failed to include them in the decision-making. Many crew have been involved in crab fishing industry for their entire adult life. The crewmembers are directly responsible for the catch records on every one of the vessels. The Program will create a devastating effect on the livelihood of 50–60 percent of the fleet's crew. Under the Program, every boat will drop a crewmember. Owners with multiple boats will put the IFQ on select boats while their other boats pursue other options. Boats will be bought and sold for no other reason than to obtain their IFQ. What happens to the crewmembers of those vessels? Is it not the responsibility of government in a democratic society to make available programs so that the people they are putting out of work have the opportunity to seek gainful employment in other occupations? Economic stability/benefit is a good thing for everyone, however NMFS simply has not considered everyone involved. NMFS' analysis regarding the effects of the Program on crew members is extremely poor.

NMFS has taken away our life, our livelihood, everything we depend on to live. We may not deserve much but we do deserve to be treated fairly by the Federal Government. Owners and processors get a percentage of IFQ for nothing, give us a percentage for nothing. Maybe buy us out so we can be retrained and enter another occupation.

Response: In developing Amendment 18, the Council analyzed the potential effects of this Program on crew members and provided some allocation of QS to crew who have participated in the fishery. The distribution of the benefits from the program include a variety of industry participants. This Program was developed over a six year period by the Council which included input from crew and other industry participants. The effects of this Program on crew are discussed extensively in the EIS/RIR/IRFA supporting this action.

Comment 65: It is important that the CVC and CPC QS ownership caps in the regulations be listed at the correct levels from Amendment 18, which are equal to the use caps for the vessels in all fisheries. For example, in the case of snow crab and Bristol Bay red king crab, vessel use caps are 2 percent and CVC and CPC QS ownership caps are also 2 percent.

Response: NMFS agrees. This comment has been addressed in response to comment 54.

Comment 66: The provision in the proposed rule at § 680.42(b)(1)(iii) creates ambiguity concerning non-individuals holding CVC IFQ and QS. CVC IFQ and QS may be held only by individuals. Limit CVC and CPC share holdings to individuals.

Response: NMFS agrees, the language in the final rule at § 680.42(b)(1)(iii) has been clarified to note that CVC and CPC IFQ and QS may be held only by individuals who are qualified to do so. This change better reflects the provisions established in Amendment 18.

Processing Sector

Comment 67: The proposed rule does not correctly implement the Council's intent for this fishery concerning the community of Adak. The clear intent of the Council was that 50 percent of the WAI golden king crab QS was to be processed in the WAI region. The problem has to do with some confusion in the Council's motion because harvesting history for WAI golden king crab does not match the processing history and does not match the recent golden king crab processing activities in Adak. The proposed rule does not meet the Council intent to process 50 percent of the IPQ in the WAI region. The fact that Adak is excluded from the ROFR provision suggests the Council felt ROFR was unnecessary because they were guaranteed 50 percent of the WAI golden king crab could be processed without IPQ. Another inconsistency is that Adak would be precluded from acquiring 50 percent of the IPQ by the 30 percent ownership cap. If inadequate IPQ is available for lease or purchase, the requirement to process 50 percent of the WAI golden king crab in the western region can only be achieved by allowing the crab to be processed without IPQ.

Response: Persons who apply for PQS and receive PQS in excess of the use caps will be grandfathered in at that amount as long as that amount is not based on transfers of processing history after June 10, 2002. The rule has not been modified. Neither Amendment 18 nor the rule require that only one PQS or IPQ holder hold 50 percent of the PQS or IPQ in the Western Aleutian golden king crab fishery. The rule establishes that 50 percent of the total PQS and IPQ issued in this fishery must be processed West of a line at 174° W. longitude, as established in Amendment 18. The remaining PQS or IPQ does not have a regional designation and may be used West of 174° W. longitude as well. Nothing in this rule restricts the use of undesignated PQS or IPQ in Adak. In addition, at § 680.40, the final rule requires that 50 percent of the CVO and CVC QS in the Western Aleutian golden king crab fishery be designated for delivery West of a line at 174° W. longitude. This provision would not be implemented for CVC QS until July 1, 2008, as established under Amendment 18.

Comment 68: The provision in the proposed rule at § 680.40(e)(1)(i) and

(e)(1)(ii)(D) refers to the Total Processing Denominator (TPD) for each year. When taken together with the reference to the ''average percentage of the TPD for a person'' at (e)(1)(ii)(D), the provisions suggest that the ''average annual percentage'' approach to determining allocations will be used for processors, which is not correct. Clarify method of allocation of processor individual allocations is total individual qualified history divided by all qualified history.

Response: NMFS agrees and has clarified the provisions at § 680.40(e)(1)(i) and (e)(1)(ii)(D) in the final rule to note that a person's initial allocation of PQS is equivalent to that person's total qualifying legal processing history divided by all qualified history in that crab QS fishery.

Comment 69: The provision at § 680.42(c)(4) prevents the issuance of IPQ in excess of the ''IPQ cap'' in the Bristol Bay red king crab fishery and the Bering Sea snow crab fishery. It is very confusing to have this provision in the section on ''use limitations'' since it is not a use limit, but an allocation limit. The provision should likely be moved to § 680.40(h) and/or (i), which concern the allocation of Class A IFQ and IPQ.

Response: NMFS agrees and has moved the provision from § 680.42(c)(4) to § 680.40(h)(10) and § 680.40(j)(3), IPQ issuance limits, to avoid confusion with the use caps at § 680.42.

Comment 70: The legislation authorizing the program provided at section 313(j) of the Magnuson-Stevens Act provides that IPQ should not create a right, title, or interest in any crab, until that crab is purchased from a fisherman. No similar language appears in the regulation. Include the language from the legislation in the regulation at § 680.40(l).

Response: NMFS agrees. Section 680.40(l) notes that the QS and PQS permits issued under this Program do not constitute absolute rights to the resource. These limitations extend to the IFQ and IPQ resulting from the QS or PQS. NMFS modified the final rule at § 680.40(1) to more accurately reflect the legislative language at § 313(j)(7) of the Magnuson-Stevens Act.

Comment 71: Section 313(j)(2) of the Magnuson-Stevens Act states that if the Secretary determines a processor has leveraged its IPQ to acquire Class B IFQ, the processor's IPQ shall be forfeited. If a specific regulatory re-statement of the ability of the Secretary to forfeit IPQ held by a processor that have acquired Class B IFQ is not included in the proposed rule, it should be included in the final rule.

Response: The regulatory text in the final rule at § 680.7(f) states that it is a prohibition to use IPQ to acquire an interest in Class B IFQ. The specific requirement to forfeit those shares would be determined after investigation by NOAA Enforcement. Nothing in these regulations restricts the ability of NOAA Enforcement to require divestiture of PQS or IPQ if a person leveraged IPQ to acquire ownership interest in Class B IFQ.

Comment 72: Section 680.42(b)(2) creates an ambiguity concerning individuals holding PQS and IPQ being exempt from the cap. Only corporations and other non-individuals that directly hold PQS and IPQ are exempt from this cap. In addition, the exemption should be limited under the cap described at (b)(4), not generally. Section 680.42(b)(2) should read, ''Except for corporations and other non-individuals as provided at (b)(4) and CDQ groups as provided for at (b)(3).''

Response: NMFS agrees. These comments now refer to the final rule at § 680.42(a)(2). Amendment 18 notes that ''[a]ll individuals and subsidiaries will be subject to the general caps on QS holdings.'' NMFS modified the final rule at § 680.42(a)(2) so that it is clear that except for corporations and other non-individuals and CDQ groups, the general cap that applies to QS and IFQ use would apply. This means that individuals that are holders of IPQ, or an affiliate, but not a direct corporate entity holding PQS would be subject to the QS and IFQ use caps at § 680.42(a)(2)(i).

Comment 73: (C48–80) For PQS holders, the AFA-style 10 percent limited threshold rule is used for determining compliance with the vertical integration cap on IFQ holdings. Under this approach all QS and IFQ holdings of the holder of the PQS and all of its affiliates are counted toward the cap. The application of this rule is not clear from the proposed rule at § 680.42(b)(4). A second issue arises in this provision of the regulation because this is an additional cap to the cap at § 680.42(b)(2)(i). This cap supersedes the cap at § 680.42(b)(2)(i) only for a corporation or other non-individual directly holding the PQS. In other words, all individuals will still be subject to the individual caps at § 680.42 (b)(2)(i). Clarify the method of calculating holdings and the application of the cap and the limited exemption.

Response: NMFS agrees and has modified the final rule at § 680.42(a)(4) accordingly. Amendment 18 notes that ''[v]ertical integration ownership caps on processors shall be implemented using both the individual and collective 10 percent minimum ownership standards for inclusion in calculating the general cap'' which is ''similar to the AFA common ownership standard used to implement ownership caps.'' The intent behind these phrases are clarified in the EIS/RIR/IRFA. This approach would function so that a non-individual person that holds PQS would be limited to a QS and IFQ cap that would be calculated based on the sum of all QS or IFQ held by that PQS holder and all QS or IFQ held by any entity that is affiliated with that PQS holder. This method would comply with the Council's intent in this provision that a corporate entity would have an exemption but that entities linked to that PQS holder through common ownership would be considered as holding QS or IFQ for purposes of applying this higher cap. The commenter is correct in that the use caps at § 680.42(a)(1)(i) would apply to all individuals, or other entities that do not hold PQS. Section 680.42(a)(4) has been modified.

It should be noted that this ''AFA 10 percent threshold'' method of computation is used only for purposes of computing the amount of QS and IFQ holdings that apply to QS and IFQ use caps for non-individuals that hold PQS. In the case of individuals who hold PQS, other persons that hold QS or IFQ but not PQS, or CDQ groups, QS and IFQ use caps are computed using an ''individual and collective'' rule. Under this standard, the amount of QS or IFQ that is computed as applying to a person is equal to the sum of the QS or IFQ held by the person and an amount equal to the percentage of holdings by that person in any entity in which that person has an interest. As an example, if an individual held QS and a 20 percent interest in another entity that held QS, the ''individual and collective'' rule would sum the holdings by that individual and 20 percent of the QS holdings by the other entity for purposes of computing how much QS that individual could hold. The same method would be used for IFQ holdings and IFQ use cap calculation. This ''individual and collective'' standard is similar to the one applied in the halibut and sablefish IFQ program for computing QS use caps under that program. The ''individual and collective'' rule does not require that a minimum of 10 percent ownership be triggered to count any collective holdings by a person.

Comment 74: Caps on PQS and IPQ should use the AFA-style 10 percent limited threshold rule, not the individual and collective rule. Under this approach all PQS and IPQ holdings of the holder of the PQS and all of its affiliates are counted toward the cap.

The application of this rule is not clear from the proposed rule at § 680.42(c)(1). Clarify the method of calculating holdings.

Response: NMFS agrees. The comment now refers to the final rule at § 680.42(b)(3). Amendment 18 notes that ''PQS ownership caps should be applied using the individual and collective rule using 10 percent minimum ownership standards for inclusion in calculating the cap.'' The application of this standard is similar to that which is being used in the application of the rule for calculating the amount of QS or IFQ that can be used by a non-individual that holds PQS. This approach would function so that a non-individual person that holds PQS would be limited to a PQS and IPQ cap that would be calculated based on the sum of all PQS or IPQ held by that PQS holder and all PQS or IPQ held by any entity that is affiliated with that PQS holder. This method would comply with the Council's intent that PQS or IPQ holder through common ownership would be considered as holding PQS or IPQ for purposes of applying the PQS use cap to that person at § 680.42(b)(3).

Comment 75: Processing quota share, at § 680.40(e) of the proposed rule, is also calculated as a simple average, when Council intent was a weighted average. Total Processing Denominator (denominator is defined as ''pounds * * * in each qualifying year'') appears to be an annual number. Both the pounds for each person and pounds for the TPD should be summed over the history years, and then divided to obtain the percentage.

Response: The response to this comment has been addressed in response to comment 68.

Comment 76: Cooling-off period waiver in the proposed rule, at § 680.42(c)(5), should be brought into compliance with Amendment 18. The ECC may not waive the cooling-off period, even for a temporary move. The ECC may waive the ROFR after the two-year period expires, as specified in the Council motion on civil contract terms for ROFR. Amendment 18 allows a community group or CDQ group to waive any right of first refusal.

Response: The cooling off period established in Amendment 18 is reflected in the final rule at § 680.42(b)(4). The ''cooling off'' period that is established is based on the language used in Amendment 18. A community as defined for the ''cooling off'' period cannot waive the cooling off period, and nothing in these regulations would permit them to do so. An IPQ holder may use IPQ outside of a community during the ''cooling off'' period only under the limited exemptions provided by Amendment 18 and in § 680.42(b)(4) for a small amount of IPQ and to address unforseen circumstances.

Comment 77: Council intent was that any PQS earned based on processing history in the West region would be designated as west region PQS. However, the regulations at § 680.40(e)(2) state that a person will receive only west PQS if, at the time of the application, that person owns a crab processing facility that is located in the West region.

Response: Amendment 18 notes that the allocation of West regionally designated PQS in the WAG crab QS fishery would be made to ''to participants with processing facilities in the West.'' This statement is distinct from the criteria used in designating the allocation of PQS in the other fisheries. The allocation criteria here are explicit in that the allocation of West region QS is based on the ownership of a processing facility in the West region, and NMFS has determined this to mean ownership of a processing facility in the West region at the time of application. The rule has not been modified.

Comment 78: Public Law 108–199 Section 801(j)(6) states that the Secretary may revoke any IPQ held by any person found to have violated a provision of the antitrust laws of the United States. If a specific regulatory re-statement of the ability of the Secretary to revoke IPQ held by a person found to have violated antitrust law is not included in the proposed rule, it should be included in the final rule.

Response: NMFS does have the ability to revoke any IPQ held by a person that has violated an antitrust law of the United States as granted by this provision. This statutory authority was not part of the proposed rule but is an authority that exists under section 313(j) of the Magnuson-Stevens Act. An explicit regulatory statement was not placed in the proposed rule because it was not deemed necessary to reiterate the authority that NMFS has to revoke IPQ under these conditions. The rule has not been modified, but NMFS has the statutory authority to revoke IPQ for antitrust violations if necessary after review under the Magnuson-Stevens Act.

Comment 79: The Council motion recommends that NOAA Fisheries award PQS to processors that purchased crab during the relevant processing history years based on the entity that signed the fish ticket and did not base the award of PQS on the location where the crab was physically processed. The Council recognized and acknowledged the use of custom processing and the regulation correctly reflects that Council intent in its definition of the initial award of PQS. The regulations do not specify how custom processing affects processor use caps; IPQ transfers; and community protection provisions. We believe that in order to achieve the efficiencies envisioned, custom processing will be used extensively in the future. Therefore we believe the final rule should treat custom processing as follows: Custom Processing and IPQ leasing should each be counted against the use cap of the processor doing the physical processing. For example, PQS holder X holds IPQ and purchases crab, which is processed by PQS holder Y. PQS holder X is subject to the use cap because it holds the IPQ. Processor Y's use cap calculation should include both its own IPQ and the amount that it is physically processing for PQS holder X.

Response: Amendment 18 notes that ''limits on ownership and use would count any crab custom processed by a plant toward the cap of the plant owner. The application of the cap to custom processing is intended to prevent consolidation which could occur if custom processing is not considered.'' The proposed rule does not require that the processing which is occurring at a facility be counted against the owner of the facility if the owner also holds IPQ. Under Amendment 18, any IPQ that is ''custom processed'' at a facility would be counted against both the IPQ holder (the custom processor) and the IPQ holder that owns the facility. This accounting is potentially problematic in that there may be cases in which a processing facility is owned by multiple IPQ holders, or is not owned by an IPQ holder at all. In cases of multiple IPQ holders owning a processing facility, it is not clear whether the amount of IPQ crab custom processed at a facility would be counted against all IPQ holders on a pro rata basis, or in proportion to their ownership in the processing facility. It would also create a situation where IPQ use would be ''double counted'', resulting in less IPQ being available to Class A IFQ holders that is needed.

To implement this provision of Amendment 18, NMFS modified the final rule at § 680.7(a)(7) to note that no IPQ holder may use more IPQ crab than the maximum amount of IPQ that may be held by that person including all crab that are received by any RCR at any shoreside crab processor or stationary crab processor in which that IPQ holder has a 10 percent or greater direct or indirect ownership interest. Therefore, a person that holds IPQ is limited to an

IPQ use cap based on: The sum of all IPQ held by that IPQ holder and all IPQ held by any entity in which that PQS holder has a 10 percent or greater direct or indirect ownership interest; and any IPQ crab that is received at a shoreside crab processor or stationary floating crab processor owned by that IPQ holder.

Ownership of a processing facility is defined as having a 10 percent or greater direct or indirect interest in the processing facility. This modification better comports with the intent of Amendment 18. NMFS will not directly collect ownership information on processing facilities, however, any IPQ holder that owns a processing facility is responsible for maintaining records adequate to ensure that the IPQ use caps are not exceeded through custom processing arrangements established by IPQ holders that also own processing facilities. NMFS will be able to account for processing facility ownership using the EDR required under this Program, should a specific facility or IPQ holder need to be investigated.

In addition, NMFS has added a prohibition to the final rule at § 680.7(a)(8) so that in those cases where a processing facility is not owned by an IPQ holder, no RCR or group of RCRs may receive more than 30 percent of the IPQ in any crab QS fishery at any shoreside crab processor or stationary crab processor. This limitation meets the requirements of Amendment 18 to limit the amount of processing that could be done at any one facility and limits the ability for IPQ holders to simply divest themselves of ownership in a processing facility as a means of avoiding the limitations on IPQ use through custom processing arrangements.

Comment 80: Lease of IPQ or physical processing outside the community should each count for purposes of community protections and should require agency transfer approval.

Response: Use of IPQ outside of an ECC would be considered as subjecting those IPQ shares and the underlying PQS to the cooling off and ROFR provisions as revised in this final rule. Any transfer of IPQ for use outside of that ECC subject to the cooling off provision or ROFR would need to be approved by NMFS under the current regulations. The rule has not been modified.

Comment 81: Processor interests should be made entirely transparent to authorized fisheries managers and enforcement officials, as well as to the antitrust authorities, and all available tools for preventing and punishing anti-competitive processor behavior should be employed aggressively. The important safeguards contemplated by the Magnuson-Stevens Act and the antitrust laws, and reflected in the proposed rule, should be preserved.

Response: This Program requires extensive reporting of data by both harvesters and processors in order to ensure that existing antitrust laws are not violated and that the goals of this Program are met. These data can be used to investigate activities of concern.

Comment 82: The allocations of PQS are not equitable because processors with history processing crab in Alaska that do not meet the eligibility qualifications at § 680.40(d)(3) would not receive PQS. Specifically, if a processor lost its facility due to fire, and did not make $1,000,000 worth of improvements to that facility, it would not qualify for the hardship exemption for eligibility at § 680.40(d)(3)(ii)(B). These regulations eliminate competition and prevent boats from delivering to a native-Alaskan owned processor with a long history of processing crab in the BSAI area.

Response: NMFS encourages all processors to complete an application for QS or PQS. The eligibility requirements in the regulations are provisions of Amendment 18. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program provisions as specified in Amendment 18.

Comment 83: The unique concentration of PQS holders in the golden king crab fishery presents a problem in terms of economic efficiencies the Program envisioned for processing in small fisheries. Two processors will receive greater than three-quarters of the initial PQS pool in the EAI golden king crab fishery, creating a problem with the 30 percent use cap. This is similar to the snow crab fishery where a few processors will hold north region PQS. In that case, the Council allowed an IPQ use cap up to 60 percent of the IPQ issued with a north region designation. The commenter requests an amendment that allows for an IPQ use cap of 60 percent of the IPQ issued in the EAI golden king crab fishery. This would allow processors to achieve efficiencies envisioned by the Program.

Response: Persons who apply for PQS and receive PQS in excess of the use caps will be grandfathered in at that amount as long as that amount is not based on transfers of PQS catch history after June 10, 2002. The rule has not been modified.

Crab Harvesting Cooperatives

Comment 84: The requirement at § 680.21 of the proposed rule, that prohibits participation in crab fishery cooperatives by a QS holder who also holds PQS or IPQ, is affiliated with holders of PQS or IPQ, processes Class B IFQ, or is affiliated with a person that processes Class B IFQ, is overly restrictive and does not meet the intent of the overall Crab Rationalization program. Section 680.21 assumes that ''harvest cooperatives'' under the Council motion are intended to be FCMA cooperatives. This interpretation appears to have led NMFS to conclude that any processor affiliated QS holder could not join a cooperative. The Council motion intended cooperatives for the limited purpose of coordinating harvest activity to allow all holders of harvest shares to achieve efficiencies and should not require FCMA qualification. We also note that the December 3, 2004, memorandum of NOAA General Counsel on Harvesting Cooperatives under the Crab Rationalization Program clarifies that the cooperative system intended by the Council can be implemented consistent with antitrust law, providing NMFS with the latitude to address this critical flaw.

It is by no means clear that the Council, or the Congress, intended that cooperatives for BSAI crab harvesting should be only those as provided for in the FCMA for joint marketing purposes, as prescribed in the proposed rule at § 680.21. The language of the Council motion distinguishes and requires FCMA cooperatives in the arbitration program, the only portion of the motion in which a cooperative would engage in negotiation. In the arbitration section of the motion, FCMA cooperatives are distinguished as the only cooperatives that may negotiate on behalf of their members. In addition, the motion specifically identifies the role of its harvest cooperatives. The Council motion establishes a ''harvesting cooperative'' that is intended to coordinate harvests of its members' IFQ to achieve efficiencies in the fisheries. The terms that govern these harvesting cooperatives are delineated in the Council motion. The motion and clarification describe a system of coordination of harvests that would be used to pursue fleet consolidation. Similarly, the clarification describes systems of leasing and use of allocations. No mention of marketing or negotiation activities is made in either the motion or clarifications.

The Council envisioned all crab harvesting vessels having the opportunity to form harvesting cooperatives to achieve the benefits of fleet consolidation through the operation of leasing and transferring

crab harvesting quota share among the cooperative members. In fact, the Council motion encourages the formation of harvesting cooperatives by including incentives such as exemption from individual use caps for cooperative members and by allowing only cooperative members the ability to lease quotas five years following implementation of the crab rationalization regulations. The only distinction is that affiliated vessels cannot participate in price formation. It is critical to note that non-FCMA operational cooperatives, comprised of non-processor affiliated vessels, processor-affiliated vessels and processors, were envisioned by the Council to maximize operational efficiencies and net national benefits, and to broadly distribute those rationalization benefits across harvesters, processors and fishery-dependent Alaska coastal communities.

Participants in both federal and state crab rationalization working groups have always proceeded with an underlying assumption that all harvesters—both affiliated and non-affiliated—would be allowed to join harvesting cooperatives to achieve efficiencies and lessen the enforcement burden. Also, as the Council reiterated at its December 2004 meeting, it intended for all crab harvesting vessels to have the option to join crab harvesting cooperatives.

Given the limited scope of harvest cooperative actions and the distinction of FCMA cooperatives in the arbitration provisions of the motion, harvest cooperatives should not be required to be FCMA cooperatives and NMFS should remove requirement that harvest cooperatives be FCMA cooperatives.

The proposed rule has taken a conservative, zero-risk approach to antitrust that is inconsistent with Council intent. In so doing, the proposed rule, at § 680.21, defines the entire universe of cooperatives as only program-compliant FCMA (bargaining) cooperatives that need limited antitrust exemption. The preamble explains the proposed rule's cooperative membership restriction is due to Congress' inclusion in its codification of the Council plan amendments, that nothing in their approval shall be construed to create an implied or explicit exemption from the antitrust laws and regulations. The proposed rule interpreted that statutory language to mean that the only cooperatives available to the crab harvesting vessels are those allowed under the FCMA.

The justification in the proposed rule, at § 680.21, for FCMA status is flawed. The proposed rule claims crab harvesting cooperatives are FCMA cooperatives because they combine and collectively manage their crab IFQ. This claim in untrue. All crab harvesters receive QS prior to forming a cooperative. The QS for each participant in a harvesting cooperative has been decided and NOAA will issue the QS. The cooperative members will not do the segmentation of the crab resource. They need no FCMA limited antitrust exemption to collectively catch because such activity is not engaged in market segmentation. They only need FCMA protection when engaged in collective bargaining or binding arbitration. Additionally, NMFS' position in the proposed rule ignores the fact that antitrust law already applies to all industry participants, that this fact was reiterated in Senator Stevens' statutory language, and that the simplest way to avoid any additional concerns would simply be to create a rule prohibiting any affiliated vessel from participating in price negotiations. The current regulation disregards the critical distinction in the Council's motion between FCMA cooperatives and non-FCMA harvesting cooperatives, treating all cooperatives as FCMA cooperatives and thereby limiting the ability of processors and their affiliates to realize the benefits of coordination of harvest activity that could be achieved through the harvest cooperative structure the Council has developed. The final regulations should be amended to allow the fullest participation possible by processor affiliated vessels in crab harvesting cooperatives so that each crab QS holder is able to meet the goals of crab rationalization.

The penalties imposed on the processor-affiliated vessels prohibited from cooperative participation under the proposed regulation are severe. Requiring crab harvesting cooperatives to be FCMA cooperatives causes the following problems: (1) Fishermen that cannot join a cooperative because of their affiliated partners are severely disadvantaged from their fellow fishers; (2) without the ability to form cooperatives, many of the benefits of the entire rationalization program will be lost to many vessels which find themselves, in one way or another affiliated with a processor; and (3) vessels that are affiliated with processors would be unfairly penalized by not being allowed to ''stack'' their quota on vessels, be restricted to vessel use caps, and face more restrictive transfer provisions. Such vessels will not be able to achieve the operational efficiencies intended by cooperatives such as lower operational costs (dramatic savings on fuel, harvesting equipment, insurance), higher product recovery rates, higher quality and more diverse finished products, reduced bycatch of non-target species, and reduced environmental impact. Additionally, processors and processor-affiliated vessels would not be allowed to receive Class B IFQ. Other lost rationalization benefits include: improved management capability for harvests resulting in overage/underage; improved management capability for dealing with sideboard limitations; reduced administrative and enforcement costs; and improved safety (fewer and safer vessels fishing). The Council did not intend these benefit deprivations that derive from the errant definition of ''cooperatives'' used in the proposed rule.

We believe requiring all cooperatives to be FCMA cooperatives is neither warranted nor encouraged by antitrust law. We believe harvesting cooperatives can include vessels affiliated with holders of PQS. The antitrust laws are intended to prohibit anti-competitive behavior among competitors. Such conduct typically includes agreements among competitors to (a) increase prices or (b) reduce output in order to increase prices. At the same time, the antitrust laws encourage business to achieve efficiencies by lowering costs. Crab harvesting cooperatives and the harvesting allocation agreement among vessels, (including vessels affiliated with PQS holders) are not anti-competitive. They do not reduce output and are incentivized to maximize their production. A harvesting cooperative will simply divide the harvest of its government allocated QS in a manner to maximize efficiency. The efficiencies are reflected in lower operational costs (dramatic savings on fuel, harvesting equipment, insurance), higher product recovery rates, higher quality and more diverse finished products, improved safety, reduced bycatch of non-target species, and reduced environmental impact.

Given that the antitrust laws do not summarily condemn, and, indeed, encourage, cooperatives, associations, and other joint ventures that, as here, do not involve price fixing or other plainly anti-competitive practices, adopting a proposed rule that imposes a per se ban on such cooperatives in the BSAI is without justification. That is especially so in this instance because the underlying rationale for such a ban is the mistaken notion that such cooperatives in fact violate—or at least pose a significant risk of violating—the antitrust laws. For this reason alone, the proposed rule should not prohibit crab

processor-affiliated participation in crab harvesting cooperatives, as defined by the rule.

Participation of processor-affiliated entities in cooperatives should be permitted only where there is no price negotiation, that is, only in cooperatives that are established solely for operational fishing purposes. Processor affiliated vessels that form ''non-FCMA'' cooperatives should be prohibited from participating or voting in the price formation process under the Binding Arbitration system. In other words, participation in cooperatives authorized by the FCMA must be restricted to entities that are not affiliated with processors. By this means, the safety, conservation, and economic efficiency objectives of the rationalization program can be realized through operational cooperatives, without compromising competition that is the purpose of the antitrust laws to protect, or reducing the market leverage accorded harvesters not controlled by processors through FCMA cooperatives.

Section 680.21(b)(3) of the proposed rule that requires crab harvesting cooperatives to be established under the FCMA was based on antitrust concerns. However, a cooperative formed for the purposes of making harvesting more efficient would by analyzed under the ''rule of reason'' antitrust doctrine. Under this doctrine, a cooperative would be legal unless the pro-competitive benefits of the venture and its practices are outweighed by the anti-competitive effects that the arrangement cause.

Harvesting cooperatives that include vessels affiliated with processors greatly increase the efficiency of harvesting crab and pose no threat to competition. Simply put, excluding processor affiliated vessels from the ability to join cooperatives would deny a substantial percentage of the fleet many of the benefits contemplated by rationalization. As long as processor affiliated vessels are not involved in the negotiation of prices with the processor to whom they are affiliated, there is no anti-competitive impact from these cooperatives.

Non-FCMA operational cooperatives need no limited antitrust exemption because they involve neither market segmentation nor price formation and they pose no significant anti-competitiveness risks. Segmentation in the form of crab IFQ and IPQ occurred by statute, unlike the Pacific whiting cooperatives or AFA cooperatives, in which segmentation (issuance of IFQ) was conditional on cooperative formation and collective catching behavior. Therefore, we urge that the regulations be modified to allow processor affiliated vessels to be members of crab harvesting cooperatives.

In light of the explicit Congressional intent that crab harvesting cooperatives not be given a special antitrust exemption, non-FCMA cooperatives must be strictly scrutinized to ensure compliance with applicable antitrust laws. As is the case for AFA catcher-vessel cooperatives, crab harvesting cooperatives whose membership includes one or more affiliated harvesters should be required to seek and obtain a favorable business review by the Department of Justice, Antitrust Division. However, because (unlike under the AFA) there is no argument that crab harvesting cooperatives have special status under antitrust laws, non-FCMA harvesting cooperatives should also be subject to initial and on-going scrutiny that is more stringent than that applied to AFA cooperatives.

The regulations should allow other forms of cooperatives, subject to review by the Department of Justice. In the first year of the crab harvesting cooperatives' existence, NMFS should condition the allocation of IFQ to a non-FCMA cooperative on that cooperatives' submission of a business review request to the Justice Department, and should require a copy of the business review request be submitted to NMFS with the cooperative's IFQ application. In subsequent years, the cooperative should be required to provide evidence of a favorable business review and should also provide both the Department of Justice and NMFS with prompt notice of any changes in its membership, governance, or activity. Finally, since non-FCMA cooperatives are not entitled to any antitrust exemption, the final rule should contain an explicit acknowledgment that NMFS's allocation of IFQ to a cooperative whose membership includes one or more affiliated harvesters in no way constitutes a determination that the cooperative was formed or is operating in compliance with applicable antitrust law. NMFS's allocation activity would not therefore provide a cooperative with an affirmative defense against antitrust liability, and the cooperative and its members would bear full responsibility for any violation of antitrust law.

The two types of cooperatives intended by the Council should be defined in the regulations at § 680.2: (1) For program-compliant FCMA cooperatives, a definition of voluntary cooperatives consisting only of harvesters with no affiliation to processors that are organized for the purpose of bargaining and negotiating price, per the Council intent, and (2) for program-compliant non-FCMA cooperatives, a definition of voluntary cooperatives consisting of harvesters that are not affiliated with processors, processor-affiliated harvesters and one or more processors. The purpose of the second type of cooperative is to capture operational efficiencies in harvesting and processing, and to broaden the rationalization benefits to both sectors, per the Council intent. Inclusion of program-compliant non-FCMA cooperatives will require modifying some text throughout the regulations, especially at § 680.21, in order to correctly explain the intended program operation and benefits.

Response: NMFS has removed the requirement that crab harvesting cooperatives under § 680.21 be FCMA cooperatives and has modified the structure of the crab harvesting cooperative regulations to allow the formation of crab harvesting cooperatives by affiliated entities for the sole purpose of harvesting their crab IFQ. NMFS also has added regulatory definitions of crab harvesting cooperatives and FCMA cooperatives to § 680.2 of the final rule. The final rule, at § 680.21, continues to require FCMA cooperatives for the price arbitration system.

The rationale for the proposed requirement that crab harvesting cooperatives under § 680.21 be FCMA cooperatives is provided in the preamble to the proposed rule (69 FR 63226–63227). Subsequent to publication of the proposed rule, NMFS determined that affiliated harvesters could form an association to pool their crab QS and harvest the QS from one vessel with the likelihood that such activity would not violate the antitrust laws. Under the ''Antitrust Guidelines for Collaboration Among Competitors,'' issued by the Department of Justice (DOJ) and the Federal Trade Commission (FTC), affiliated and non-affiliated harvesters could pool their crab QS and harvest it from one vessel with the likelihood that such activity would not be an antitrust violation as long as the activity of the cooperative promotes efficiency, does not have an anti-competitive effect, and is otherwise found to comply with the guidelines.

NMFS has decided that allowing holders of QS/IFQ that also holds PQS/IPQ or are affiliated with holders of PQS/IPQ to join crab harvesting cooperatives complies with Amendment 18 and Council intent in designing the Program. With this change, more participants will be able to participate in crab harvesting cooperatives for the

purpose of harvesting their IFQ and benefit from efficiencies gained through cooperatives.

NMFS agrees with the commenters that crab harvesting cooperatives that are not formed in accordance with the FCMA will not benefit from the antitrust immunity FCMA cooperative formation provides. Some activities by members of non-FCMA crab harvesting cooperatives could, under some circumstances, violate the antitrust laws. NMFS recognizes that withdrawing the requirement that crab harvesting cooperatives be formed under the FCMA will increase the risk of possible antitrust violations for the participants in the crab rationalization program who are not members of an FCMA cooperative. Therefore, NMFS strongly encourages members of non-FCMA crab harvesting cooperatives to consult counsel before commencing any activity if the members are uncertain about the legality under the antitrust laws of the crab harvesting cooperative's proposed conduct. NMFS has included a sentence in the final rule that includes this recommendation at § 680.21, as well as a statement that issuance by NMFS of a crab harvesting cooperative IFQ permit to a crab harvesting cooperative is not a determination that the crab harvesting cooperative is formed or is operating in compliance with antitrust law at § 680.21(b)(3).

Although NMFS has included this precautionary advice in the preamble and the final rule, NMFS declines to include regulatory requirements conditioning the allocation of IFQ to a non-FCMA cooperative on the submission of a business review letter request to DOJ in the final rule as the commenters suggest. NMFS has determined that such regulations would impose unnecessary administrative burdens on the public, NMFS, and the DOJ.

Comment 85: The provision at § 680.21(b)(3) prohibits PQS and IPQ holders and their affiliates to join crab harvesting cooperatives. This limits the ability of vertically integrated harvesters to achieve harvest coordination efficiencies.

Response: NMFS agrees, and for the reasons described in the response to comment 84, has removed this prohibition in the final rule.

Comment 86: The prohibition at § 680.21(f)(4) on crab harvesting cooperative members holding or transferring PQS and IPQ is likely to limit the achievement of efficiencies in the fisheries for a substantial number of vertically integrated share holders. This provision is unnecessary, if crab harvesting cooperatives are not required to be FCMA cooperatives. Remove the prohibition on crab harvesting cooperative members holding or acquiring IPQ and PQS.

Response: NMFS agrees, and for the reasons described in the response to comment 84, has removed this prohibition from the final rule.

Comment 87: In the proposed rule, at § 680.21(f)(4), all non-affiliated cooperatives must be FCMA cooperatives and members may not hold or acquire IPQ. The reason for this is that the harvester Arbitration Organization and a collective bargaining cooperative is an FCMA cooperative and may be exposed to antitrust violation if this provision is removed.

Response: NMFS agrees that members of FCMA cooperatives may not hold or acquire PQS or IPQ and that only FCMA cooperatives can participate in collective negotiation. However, NMFS has removed the requirement that crab harvesting cooperatives under § 680.21 must be formed in accordance with the FCMA. See response to comment 84.

Comment 88: FCMA cooperatives are allowed under cooperative law to vertically integrate by collectively owning a processor(s). Yet, the proposed rule in § 680.21(g)(1) disallows this activity. Furthermore, the Council clearly intended for harvesters to individually or collectively direct-market Class B IFQ, if they so desired. Doing so under the proposed rule, however, would render the harvesters processor-affiliated and deny them all program benefits, including collective price bargaining. This oversight needs to be corrected.

Response: Under the final rule, crab harvesting cooperatives can direct-market crab caught with Class B IFQ. NMFS removed the limitation on processing Class B IFQ at § 680.21(b)(3) in the final rule with the removal of the requirement that all crab harvesting cooperatives be formed under the FCMA. See response to comment 84. PQS and IPQ are not required for the processing of crab caught with Class B IFQ. However, the final rule still contains the restriction on crab harvesting cooperatives owning PQS, IPQ, and QS. This prohibition is necessary to maintain the regulatory distinctions between IFQ held by entities that are not crab harvesting cooperative and IFQ held by crab harvesting cooperatives, and to simplify the administration of the Program. If the regulations allowed crab harvesting cooperatives to hold QS, PQS or IPQ, then the crab harvesting cooperatives would function like all other business entities under the Program. Therefore, crab harvesting cooperatives would no longer function as a crab harvesting cooperative, and not be exempt from the vessel use caps, which is contrary to the intent of the Council motion. Additionally, the Council did not establish QS, PQS, or IPQ ownership caps for crab harvesting cooperatives.

NMFS declines to respond to the comment concerning the legality of vertical integration by FCMA cooperatives as that subject is outside of NMFS' area of expertise.

Comment 89: The agency discussion in the preamble to the proposed rule (on page 63226 and 63227) sets the appropriate precautionary standard relative to antitrust constraints on cooperative membership relative to binding arbitration and limiting participation in FCMA cooperatives.

However, allowing the formation of a separate type of non-FCMA cooperative for the sole purpose of coordinating harvest arrangements and taking advantage of the exemption from leasing restrictions should be provided to processor-affiliated QS holders. This revision should require anyone forming or participating in such a cooperative to submit a request to the DOJ Anti-trust division for a Business Review Letter. Any change in membership of such a cooperative should require submitting a request for a new Business Review Letter.

If the agency allows for these non-FCMA cooperative for affiliate QS holders, the definition section should be updated to create clear definitions of FCMA cooperatives and non-FCMA cooperatives. The section on Binding Arbitration should be updated so that all the current generic references to ''cooperative'' are replaced with the term ''FCMA cooperatives.'' The revisions of the proposed regulations should make it absolutely clear that non-FCMA cooperatives would not be provided any of the shelter from antitrust constraints embodied in the FCMA.

Additionally, non-FCMA cooperatives should not receive any Class B IFQ allocations.

Response: For the reasons discussed in response to comment 84, NMFS agrees that QS holders affiliated with processors should be permitted to join non-FCMA cooperatives and has changed the regulations accordingly. Additionally, NMFS has added definitions at § 680.2 for crab harvesting cooperatives and FCMA cooperatives. NMFS also agrees that the Arbitration System regulations at § 680.20 need to make it clear that, for the Arbitration System, cooperatives that wish to negotiate collectively must be formed

under the FCMA, and NMFS has changed the regulations to reflect this.

NMFS has included a sentence in the final rule at § 680.21 that members of crab harvesting cooperatives that are not FCMA cooperatives should consult counsel before commencing any activity if the members are uncertain about the legality under the antitrust laws of the crab harvesting cooperative's proposed conduct. NMFS also included a statement, in the final rule at § 680.21(b)(3), that issuance by NMFS of a crab harvesting cooperative IFQ permit to a crab harvesting cooperative is not a determination that the crab harvesting cooperative is formed or is operating in compliance with antitrust law. Although NMFS has included these statements in the final rule, NMFS declines to include regulations requiring members of crab harvesting cooperatives to request a business review letter from DOJ. NMFS has determined that such regulations would impose unnecessary administrative burdens on the public, NMFS, and DOJ.

Crab harvesting cooperatives with affiliated members will receive Class A and Class B IFQ that is converted for use in the crab harvesting cooperative according to the provisions set forth at § 680.40(h)(3). These provisions would apply to the IFQ that would be issued to the members of the crab harvesting cooperative if they were receiving the IFQ directly. As an example, if a crab harvesting cooperative had 5 members, all of whom were affiliated, or held IPQ, and 50 percent of their IFQ would be issued as Class A IFQ only, the amount of Class A IFQ that would be issued for use by the crab harvesting cooperative would be in the same proportion—50 percent of the IFQ issued to the cooperative would be issued as Class A IFQ only. The remaining IFQ issued to the cooperative would be issued as both Class A and Class B IFQ.

Comment 90: The proposed rule at § 680.21(g) allows a crab harvesting cooperative to freely engage in intercooperative transfers without regard to individual use caps. The motion intended intercooperative transfers to be conducted through members to allow the application of use caps. Once IFQ are inside a crab harvesting cooperative, any individual or vessel caps do not apply to the movement of those IFQ within the cooperative. In the absence of a requirement that intercooperative transfers be accounted for by individuals in a cooperative for purposes of applying use caps, the program is without any effective use caps. The final rule should require cooperatives to conduct intercooperative transfers through members, as described in the Council motion. The provisions at § 680.41(h) should require designation of the member(s) of the cooperatives that are engaged in the transaction for purposes of applying use caps to the shares a person may bring to a cooperative. In the absence of this limitation, persons could join a cooperative and acquire shares in excess of the cap, making individual use caps ineffective.

Response: NMFS agrees that individual use caps should apply to intercooperative transfers, as required by Amendment 18. In the final rule, intercooperative transfers were moved from § 680.41(h) to § 680.21(f). The final rule at § 680.21(f) requires, on the application for intercooperative transfer, designation of the members of the crab harvesting cooperatives that are engaged in the transaction for purposes of applying the use caps of the members to the cooperative IFQ that is being transferred between the crab harvesting cooperatives.

Comment 91: The application of a ownership cap to intercooperative transfers at § 680.21(f) actually has the potential to disadvantage cooperative members and minimizes the potential efficiencies, in comparison to individual IFQ harvesters. The Council motion does not appear to effectively limit the IFQ that cooperative members could lease, in addition to the individual membership ownership caps. A lease is the use of an annual allocation that is generated in association with QS. In this circumstance it is not clear that it necessarily involves the possession of the QS which would trigger its application. Five unique QS holders, each fishing their own vessel, have the opportunity to collectively harvest twice the ownership/use cap as a cooperative association of the same number of individuals. This issue is important and deserves to be addressed in light of the objective to promote cooperative membership, minimize management complexity, and promote efficiencies in the long term.

Response: Amendment 18 does limit the amount of IFQ that crab harvesting cooperative members can lease through the application of the use caps to intercooperative transfers of IFQ. Use caps apply to both the QS and the IFQ a person holds. Amendment 18 clearly states that transfers (*i.e.* leases) of IFQ between crab harvesting cooperatives will be undertaken by the members individually, subject to use caps. Requiring an intercooperative transfer to occur through members is necessary for the application of the use caps. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program provisions as specified in Amendment 18. Note that although Amendment 18 uses the term 'ownership caps', in the final rule NMFS uses the term 'use caps' because persons do not own QS or IFQ.

Comment 92: The term ''crab harvesting cooperative,'' which is used frequently throughout the rule, is not defined at either § 679.2 or § 680.2. The final rule should include definitions for ''FCMA crab harvesting cooperatives'' (made up of those who are eligible to receive ''Arbitration IFQ'') and ''non-FMCA crab harvesting cooperatives'' which would be limited in scope. Section 680.21(c)(2) should also be revised in a manner that is consistent with this approach.

Response: At § 680.2, NMFS has added a definition for crab harvesting cooperative, for the purposes of 50 CFR part 680, to mean a group of crab QS holders who have chosen to form a crab harvesting cooperative, under the requirements of § 680.21, in order to combine and collectively harvest their crab IFQ through a crab harvesting cooperative IFQ permit issued by NMFS. NMFS has also added a definition for FCMA cooperative, for the purposes of 50 CFR 680, to mean a cooperative formed in accordance with the Fishermen's Collective Marketing Act of 1934 (15 U.S.C. 521). Additionally, at § 680.20, NMFS has clarified that only FCMA cooperatives can participate in the Arbitration System. See NMFS' response to comment 84 as to why NMFS removed the proposed requirement that crab harvesting cooperatives be FCMA cooperatives.

Comment 93: Because of the potential for antitrust violations, two types of crab cooperatives should be allowed to be formed: (1) Unaffilitated cooperatives (FCMA type) that can hold, fish and trade Class A and Class B IFQ and CVC and CPC IFQ and enter into binding arbitration based on their best financial interest and efficiency; and (2) A non-FCMA ''operational cooperative'' for purposes of economic efficiency of processor affiliates, that allows processor affiliates to form cooperatives for purposes of Class A IFQ fishing but prohibits participation in arbitration and the fishing of Class B IFQ and CVC and CPC IFQ due to antitrust violation potential.

Response: The final rule distinguishes between FCMA cooperatives for the Arbitration System at § 680.20 and crab harvesting cooperatives at § 680.21. However, NMFS disagrees that crab harvesting cooperatives with affiliated members should be prohibited from

fishing Class B IFQ and CVC and CPC IFQ. Under the final rule, NMFS will issue Class B IFQ based on the amount of Class B IFQ that would be issued to each member individually, as discussed under comment 89.

Comment 94: The proposed rule at § 680.21 prohibits CDQ groups that share ownership of crab vessels with processors from being able to achieve the efficiencies of participating in crab harvesting cooperatives. Also, the proposed rule at § 680.40 prohibits CDQ groups that are affiliated with processors from receiving Class B IFQ. These prohibitions will severely affect CDQ groups who have made investments in crab harvesting vessels jointly with holders of PQS. These regulations will hamper the ability of CDQ groups to further integrate into the processing of king and Tanner crab and to consider processing crab for markets not yet utilized. CDQ groups could not be expected to purchase QS under these regulations that deny them the ability to join a crab harvesting cooperative and the ability to receive unrestricted Class B IFQ.

Response: NMFS agrees and has changed the regulations at § 680.21 to allow CDQ groups that are affiliated with processors to join crab harvesting cooperatives. See response to comment 84. Additionally, NMFS has changed the regulations in the final rule at § 680.40(h) to allocate Class B IFQ to persons that hold PQS/IPQ or are affiliated with PQS/IPQ holders. See response to comment 25.

Comment 95: Non-FCMA cooperatives are disallowed under § 680.21. If the final rule were to allow processor-affiliated vessels to join a non-FCMA cooperative that could participate in Program benefits, the four unique entity rule would be problematic. A single processor that owns multiple vessels could not form a cooperative because it could not pass the four-independent entity rule stipulated by the Council and by the proposed rule. Note however, the proposed rule applies to FCMA and are silent on Non-FCMA. If the four-entity rule applied to Non-FCMA cooperatives and if Non-FCMA cooperatives were allowed, then processors could cooperate and aggregate processor-vessels across multiple processors. Operational efficiencies intended by the Council require coordinated decision making among harvesters and processors with mutual interest. These efficiencies may be achieved only if Non-FCMA cooperatives are allowed.

Response: See Response to comment 84. NMFS has revised the regulations regarding FCMA cooperative formation and provided additional advice for reducing potential antitrust risk. Non-FCMA crab harvesting cooperatives are permitted under this final rule.

NMFS proposed that any QS holder could be considered a ''unique entity'' for the purposes of crab harvesting cooperative formation. However, whether the QS holder is a ''unique entity'' for purposes of meeting the minimum requirement of four unique entities for crab harvesting cooperative membership depends on whether the QS holder is ''affiliated'' with another entity seeking membership in the same crab harvesting cooperative. NMFS has revised the definition of ''affiliation'' at § 680.2 to better accommodate the needs of the affected public. However, Amendment 18 does not distinguish between FCMA and non-FCMA cooperatives regarding affiliation and the four unique entity rule. Therefore, the definition of affiliation and the four unique entity rule apply equally to FCMA and non-FCMA cooperatives under this final rule.

Comment 96: The proposed regulations at § 680.21(d)(4) provide that IFQ resulting from CVC and CPC QS would be converted to standard IFQ, if the holder joins a crab harvesting cooperative, effectively removing any owner on board requirements for CVC or CPC QS. The motion intended the C share pool to benefit persons actively on board vessels in the fisheries. The final rule should not convert CVC and CPC IFQ to CVO and CPO IFQ when held by a crab harvesting cooperative and should require that the owner of the CVC or CPC IFQ be on board when the crab harvesting cooperative is fishing its CVC or CPC IFQ. Additionally, the regulations should clarify that CVC IFQ issued to a crab harvesting cooperative are not subject to the Class A/Class B IFQ split during the first three years of the program.

Response: Amendment 18 states that holders of CVC or CPC QS or qualified lease recipients are required to be on board the vessel used to harvest CVC or CPC IFQ and that CVC and CPC QS holders are eligible to join crab harvesting cooperatives. Amendment 18 does not provide any exemption to the owner on board requirements for CVC or CPC QS holders if the QS holder joins a crab harvesting cooperative. In developing the proposed rule, NMFS, for reasons provided in the preamble of the proposed rule (69 FR 63200, 63228, October 29, 2004), emphasized the Council's intent for crab harvesting cooperatives to maximize efficiencies and benefits through consolidation and collective management of the members' QS holdings by proposing to convert CVC and CPC QS to CVO and CPO IFQ when held by a crab harvesting cooperative. However, comments received from the Council as well as comments received from the general public indicate that NMFS inappropriately allowed the rationale for maximizing crab harvesting cooperative efficiencies to override the legislated owner on board requirements for holders of CVC and CPC QS or qualified lease recipients. NMFS recognizes that the owner on board requirement is fundamental to supporting active participation in the crab fisheries and was intended to extend to CVC and CPC QS holders if the QS holder joins a cooperative. Therefore, NMFS has removed the requirement that all CVC and CPC QS held by the members of a crab harvesting cooperative be converted to CVO and CPO IFQ. Additionally, the final rule at § 680.42(c)(5) clearly provides that all CVC or CPC QS holders must be on board the vessel at all times when harvesting his or her CVC or CPC IFQ.

NMFS agrees that CVC QS is not subject to the Class A/Class B IFQ split during the first three years of the program. The final regulations clearly indicate at § 680.40(b)(1)(ii) and (h)(6)(ii) that CVC QS and the resulting IFQ will not be subject to the Class A/Class B IFQ split until July 1, 2008. Therefore, any CVC QS committed to a cooperative will not be subject to the Class A/Class B IFQ split until July 1, 2008.

Comment 97: The Program pushes all individual harvesters to join cooperatives by providing advantages to cooperative members over individual harvesters, such as in arbitration, price formation, overages, and QS transfer. Harvesters will be forced to join a cooperative in 5 years. While cooperatives will be easier for NMFS to manage, this is not sufficient reason to dictate the structure of how an individual harvester does business. Financial advantages will encourage most harvesters to join crab harvesting cooperatives. It should be a harvester's decision, based on what is best for the harvester.

Response: Amendment 18 specifically states that, for IFQ holders that are not crab harvesting cooperative members, leasing would be allowed for the first 5 years of the Program. NMFS does not possess any discretion to vary the implementation of the 5-year leasing provision at this time. Any change to the 5-year leasing provision requires an amendment to the Program and should be addressed through the Council process.

NMFS agrees that management of a few, well-organized cooperatives will be easier than management of multiple individual harvesters. Although the Council and NMFS designed the Program to encourage crab harvesting cooperative membership, membership in a crab harvesting cooperative is entirely voluntary and remains the decision of the individual harvester. Each harvester has the choice whether to join a crab harvesting cooperative based solely on their individual financial and operational needs.

Comment 98: It is important that a skipper or crew member's Class B IFQ do not automatically become crab harvesting cooperative shares by virtue of his or her vessel's participation in that crab harvesting cooperative. The decision whether to transfer his or her Class B IFQ to an eligible fisherman on a vessel in a different crab harvesting cooperative or on a vessel not participating in a crab harvesting cooperative must remain open to the skipper or crew member.

Response: NMFS agrees. However, during the first three years of the Program, CVC QS will not be subject to the Class A/Class B IFQ split (see response to comment 96). During the first three years of the Program, CVC QS holders will not be able to withhold their Class B IFQ from conversion to Cooperative IFQ when they join a cooperative because no Class B IFQ will exist for CVC QS holders. Therefore, if a CVC QS holder wishes to join a cooperative in any crab fishery during the first three years of the Program, he or she must commit all of his or her IFQ for that crab fishery to that cooperative.

Nonetheless, NMFS believes that allowing CVC QS holders to withhold their Class B IFQ from submission to a crab harvesting cooperative will allow for greater flexibility in fishing those shares and provides the greatest advantage to skippers and crew. Under this rule, the regulations have been clarified at § 680.21(a)(1)(iii)(B) to permit CVC QS holders to withhold their Class B IFQ from submission to a crab harvesting cooperative for use as individual IFQ when joining a crab harvesting cooperative after the third year of the Program.

Comment 99: The application of a 10 percent criterion to crab harvesting cooperative membership is unreasonably restrictive, and as a result, the proposed rule runs counter to the key policy objectives of the rationalization program: improved conservation and safety, and increased economic efficiency. The Council could not have intended this result, and there is a strong argument to be made that the antitrust laws do not require such restrictive criteria, and in fact, that the 10 percent criterion, as applied in the manner provided in the proposed rule, would inhibit, not protect, competition.

This overly restrictive criterion for affiliation unduly limits the formation of crab harvesting cooperatives in the following ways: The effect of the 10 percent criterion will be to prohibit harvesters from participation in crab harvesting cooperatives, if they enter into agreements to invest in PQS; Holders of Class B IFQ who engage in custom processing of that IFQ with their own company, or are affiliated with an entity doing custom processing, including live crab sales, would be prohibited from participation in crab harvesting cooperatives; Holders of harvester QS who invest in any amount of PQS will be restricted to the issuance of only Class A IFQ, and forego market leverage opportunities of Class B IFQ; Under the 10 percent criterion, processors will realistically only be able to transfer or sell PQS to other processors. This will encourage consolidation of PQS among the existing processors and eliminate opportunities for harvester investment in PQS.

The Proposed Rule should allow for affiliated QS holders to participate in non-FCMA ''operational cooperatives'' for purposes of economic efficiency, but affiliated QS holders should be prohibited from participation in price formation negotiations.

Response: Amendment 18, clearly establishes that four unique entities may join to form a crab harvesting cooperative with the requirement that ''entities must be less than 10 percent common ownership without common control.'' The decision to measure affiliation as a linkage between two or more entities with a 10 percent or greater common ownership interest is discussed in NMFS's response to comment 25. As discussed in the response to comment 84, NMFS has modified the final regulations to allow persons affiliated with PQS and IPQ holders to join crab harvesting cooperatives, provided that they are ''unique entities'' according to the standard set forth in Amendment 18 and under this rule.

The unique entity rule applies to the formation of crab harvesting cooperatives. For purposes of collective negotiation under the Arbitration System, only cooperatives formed under the FCMA may collectively negotiate. The Arbitration System does not permit ''affiliated'' IFQ holders to participate collectively in an FCMA cooperative for purposes of collective negotiation. Therefore, a crab harvesting cooperative of IFQ holders without ''affiliations'' to PQS/IPQ holders that forms under the requirements of the FCMA could collectively negotiate, but a crab harvesting cooperative with affiliated IFQ holders could not collectively negotiate for purposes of the Binding Arbitration procedure under the Arbitration System.

Comment 100: Waiving the owner on board provision for C shares within a crab harvesting cooperative as outlined in the proposed rule at § 680.21(d)(4) greatly facilitates the use of those shares in a crab harvesting cooperative as long as the definition of ''active participant'' is attached to all CVC and CPC QS initially issued and subsequently transferred. ''Active participant'' means recent participation in a rationalized crab fishery in the 365 days prior to the use of the CVC or CPC IFQ. Class C shares should be kept ''on the vessel'' so that they not get locked up ''on shore,'' which would happen if the owner on board requirement were dropped in a crab harvesting cooperative without requiring the C share holder to be an active participant in the fisheries. Dropping the owner on board requirement for C shares when in a crab harvesting cooperative greatly improves flexibility for the C share holder, especially in the case of small distant fisheries like St. Matthew blue king crab where, in the case of a small TAC, only a few boats may participate and it may be impossible to accommodate all the C share IFQ holders. Dropping the owner on board requirement in a crab harvesting cooperative will also reduce the burden put on the agency for tracking and managing CVC and CPC IFQ as a separate and distinct type of IFQ in the crab harvesting cooperative. If the active participant requirement were made the sole requirement for holders of CVC or CPC QS in a crab harvesting cooperative, then the CVC or CPC QS holder would only have to provide proof at the time of application for that season's IFQ that they had made a landing in a rationalized crab fishery in the past 365 days, reducing the workload on NMFS management and enforcement during the fishery itself.

Response: See response to comment 96. Amendment 18 does not include any exemptions from the owner on board requirement. NMFS agrees with the Council that CVC and CPC QS used in a crab harvesting cooperative is subject to owner on board requirements to be consistent with Amendment 18. NMFS also recognizes that the Council considered CVC and CPC QS owner on board requirements fundamental to supporting active participation in the crab fisheries. The final rule clearly

provides, at § 680.42(c)(5), that all CVC or CPC QS holders must be on board the vessel at all times when harvesting his or her CVC or CPC IFQ.

Nonetheless, NMFS does not agree that the proposed ''active participant'' designation alone would sufficiently prevent CVC and CPC QS from being fished in a crab harvesting cooperative by absentee owners. Active participation in the BSAI crab fisheries is demonstrated by a landing in a crab fishery in the last 365 days. Documentation of ''active participation'' includes an ADF&G fish ticket, an affidavit from the vessel owner, or other verifiable documentation. This would allow for an individual to be on board the vessel for a single landing in any given year and remain an absentee owner for the remainder of the year.

Comment 101: Because permitting affiliated crab harvesting cooperatives to hold Class B IFQ issued on the basis of membership in the cooperative by non-affiliated harvesters could result in IPQ holder control over Class B IFQ, non-FCMA crab harvesting cooperatives with affiliated members should not be permitted to hold Class B IFQ. Even if a non-FCMA crab harvesting cooperative limits its activity to harvesting allocation, that harvesting allocation function could permit a non-affiliated harvester to assign his or her Class B IFQ to an affiliated harvester, in direct contravention of the Council motion and the fundamental purpose of the Class A/Class B IFQ distinction.

Response: Amendment 18 does not preclude the ability of persons affiliated with PQS or IPQ holders from holding Class B IFQ. Prohibiting the issuance of Class B IFQ to a crab harvesting cooperative if it has members who are affiliated with an IPQ or PQS holder is not appropriate given the lack of restriction on affiliated entities that do not join crab harvesting cooperatives. Class B IFQ is not issued to individual members in a cooperative, but rather is issued to the crab harvesting cooperative as a single entity, and the specific use of Class B IFQ by members of a crab harvesting cooperative is determined by internal contractual agreements among members. If a crab harvesting cooperative operates in a manner that results in a violation of antitrust laws, DOJ has the ability to investigate any claims.

The goal of the Class B IFQ allocation is to provide additional negotiating leverage for harvesters when it comes to price negotiation with IPQ holders for their Class A IFQ. Joining a crab harvesting cooperative is a voluntary arrangement and parties to that arrangement should be aware of the affiliations of the other members of the cooperative. If a person does not want to join a crab harvesting cooperative with affiliated IFQ holders out of concerns about potential use of Class B IFQ by the crab harvesting cooperative, that person does not have to join the crab harvesting cooperative, or could establish private contractual arrangements with other crab harvesting cooperative members concerning the use of the person's Class B IFQ. Allowing affiliated IFQ holders to join crab harvesting cooperatives is not in direct contravention to Amendment 18.

Comment 102: Why are CPs exempt from the processor restrictions on cooperative formation and able to fully benefit from rationalization? The answer seems to be that the proposed rule only considered antitrust risk at the point of ex-vessel pricing. Catcher processors are processors and in the AI golden king crab market, they have sufficiently large market share in which collusive marketing behavior could adversely affect the consumer. However, CPs also buy crab from catcher vessels. So, the fact that CPs can join FCMA cooperatives is a double standard. Shoreside processors must pass the standard of zero risk of potential collusion in the ex-vessel market or the first-wholesale market, while at-sea, vertically integrated CPs must pass a lesser standard of no likely price collusion at first-wholesale. Catcher processors need two limited antitrust exemptions: (1) Downstream wholesale pricing, especially in WAI golden crab, where CPs process a majority of the harvest and could adversely impact consumers, and (2) ex-vessel price formation with ''over-the-side'' purchases. The regulations should be consistent in their treatment of all processors, unless Amendment 18 explicitly differentiates between on-shore processors and CPs.

Response: The decision to exclude PQS and IPQ holders from crab harvesting cooperatives but permit CPs to join crab harvesting cooperatives stemmed from the proposed requirement that crab harvesting cooperatives be FCMA cooperatives. As stated in the preamble to the proposed rule, NMFS proposed to prohibit PQS and IPQ holders (or those affiliated with persons that hold PSQ or IPQ) from membership in crab harvesting cooperatives because, at the time of the issuance of the proposed rule, NMFS determined that, while there was some legal uncertainty, there was a significant risk that a crab harvesting cooperative with such members would fail to meet the requirements for FCMA cooperatives and thereby lose the antitrust immunity provided by the FCMA. The proposed rule did not prohibit CPs from membership in FCMA crab harvesting cooperatives because the risk of inconsistency with the FCMA was less certain. NMFS has revised the regulations regarding crab harvesting cooperative formation by removing the FCMA requirement for crab harvesting cooperatives and permitting affiliated harvesters to join crab harvesting cooperatives, and has provided additional advice for reducing potential antitrust risk (*see* response to comment 84). These changes should eliminate any perceived disparity between the requirements imposed on CPs in relation to those imposed on shoreside processors regarding antitrust risk and participation in crab harvesting cooperatives.

NMFS does not have the statutory authority to impose the limited antitrust exemptions contained in the comment. Furthermore, section 313(j)(6) of the Magnuson-Stevens Act states that nothing in the Magnuson-Stevens Act constitutes either an express or implied waiver of the antitrust laws of the United States.

Comment 103: The proposed rule at § 680.21(b)(4) and (5) provides for ''all or nothing'' membership by a harvester in a single cooperative, thus prohibiting membership in multiple cooperatives in different fisheries. Restricting membership to only one cooperative will limit the ability of participants to achieve efficiencies. Additionally, benefits from leasing across cooperatives are not likely to be as large as membership in multiple cooperatives. This provision should be replaced with a provision that allows one cooperative per fishery or one cooperative per fishery and region to allow harvesters to more efficiently and safely harvest their IFQ.

Response: After extensive public comment and further consideration, NMFS has determined that QS holders may participate in more than one crab harvesting cooperative. NMFS initially determined that because the Program would allow unrestricted leasing between crab harvesting cooperatives, each cooperative would be free to focus on harvesting IFQ for the fisheries of its choice and through leasing would achieve the same benefits as allowing QS holders to join multiple cooperatives. NMFS now understands that QS holders would not be able to achieve the same level of efficiency by leasing as they would through joining multiple crab harvesting cooperatives. Additionally, NMFS initially determined that allowing QS holders to join multiple cooperatives would result

in an administratively unmanageable system. NMFS has since developed a method for simplifying the administration of multiple crab harvesting cooperatives.

NMFS also was concerned that if membership were allowed in more than one crab harvesting cooperative it would be easy for QS holders to allocate a nominal amount of IFQ to a crab harvesting cooperative and effectively result in single member crab harvesting cooperatives that undermine the Council's intent for a minimum membership of four entities. In the final rule, NMFS is requiring a QS holder to commit all of his or her QS holdings for a particular fishery for conversion to cooperative IFQ upon joining a cooperative in that fishery. NMFS has concluded that this requirement will deter the nominal donation of IFQ and subsequent formation of single member crab harvesting cooperatives.

Furthermore, NMFS was concerned that bycatch may increase if single-species crab harvesting cooperatives were formed because the crab harvesting cooperative would have to discard all legal crab species for which the cooperative did not possess IFQ. NMFS remains concerned about potential bycatch, but has concluded that diverse QS ownership by members in crab harvesting cooperatives and the ability to lease between crab harvesting cooperatives will help reduce potential bycatch concerns. Finally, NMFS was concerned that crab harvesting cooperative management would be diluted by members who have joined multiple cooperatives resulting in reduced effectiveness managing the harvesting of the cooperative's IFQ. By limiting crab harvesting cooperative membership by fishery, NMFS has concluded that it has sufficiently reduced the potential for membership dilution and has been convinced by public comment that multiple cooperatives can be effectively managed by their members.

Therefore, NMFS has been persuaded by public comment that the reasons articulated in the proposed rule preamble as to why QS holders may only join one crab harvesting cooperative are no longer valid. NMFS has revised the final rule at § 680.21(a)(1)(iii) to permit crab harvesting cooperative membership by a QS holder to one crab harvesting cooperative per fishery. A minimum standard of one crab harvesting cooperative per fishery is necessary to balance NMFS'' desire to reduce administrative burden while continuing to allow participants to realize the efficiency benefits of cooperatives. However, NMFS continues to require that all of a QS holder's IFQ for any fishery must be committed to the crab harvesting cooperative they wish to join. For instance, if a QS holder holds 10 units of IFQ in the Bristol Bay Red (BBR) king crab fishery and 20 units of IFQ in the Western Aleutian golden (WAG) king crab fishery and wishes to join a crab harvesting cooperative in the WAG fishery, he or she must commit all 20 units of WAG IFQ to the WAG crab harvesting cooperative he or she chooses to join. The QS holder may choose to fish his or her BBR IFQ independently or may commit all 10 units of BBR IFQ to a cooperative in the BBR fishery. Therefore, NMFS revised the final rule at § 680.21(a)(1)(iii)(B) to permit QS holders to join one crab harvesting cooperative per fishery, but it requires QS holders to commit all their IFQ to the crab harvesting cooperative in the fishery that they wish to join.

NMFS rejected further restrictions on crab harvesting cooperative membership by region because complicated crab harvesting cooperative relationships based on regional differences may unnecessarily hinder the efficiencies that NMFS is attempting to achieve with multiple crab harvesting cooperatives. Individual crab harvesting cooperatives must ensure compliance with the appropriate regional delivery requirements of crab harvesting cooperative IFQ.

Comment 104: The regulations should allow QS holders to be members, simultaneously, of different cooperatives in different fisheries or in the same fisheries in order to maximize economic efficiency and achieve other benefits.

Response: See response to comment 103. NMFS has determined that one cooperative per fishery will achieve a balance between minimizing administrative burden while continuing to allow participants to realize the efficiency benefits of crab harvesting cooperatives. NMFS also has determined that one crab harvesting cooperative per fishery is consistent with statutory and Council intent. However, NMFS has determined that membership in multiple crab harvesting cooperatives within a single fishery would result in an administrative burden that outweighs any additional corresponding efficiency benefits to the industry. NMFS has revised the regulations in the final rule to limit QS holders to membership in one crab harvesting cooperative per fishery.

Comment 105: The proposed rule at § 680.21(e)(3) provides that all members of a cooperative are liable for violations of any individual member. What kinds of violations are swept up in this? The Council's intent was to hold all members of the cooperative accountable for violations like exceeding caps, bycatch, etc., not, for example, a personal violation, like a crewmember retaining undersized crab for personal consumption. Nor did the Council intend that one individual's failure to comply with the economic and social data requirements be applied to all members. This accountability needs to be clarified and brought into compliance with Council intent.

Response: NMFS has determined that the provision for crab harvesting cooperative joint and several liability as presented in the proposed rule is consistent with the Magnuson-Stevens Act and Council intent. NMFS was directed by statute that monitoring and enforcement of harvest allocations will be at the crab harvesting cooperative level and that crab harvesting cooperative members will be jointly and severally liable for the actions of the crab harvesting cooperative. This means that any violation by any member of a crab harvesting cooperative will be subject to joint and several liability. Joint and several liability means each liable party is individually responsible for the entire obligation, although the parties may decide among themselves how to apportion a particular penalty.

For instance, if NMFS finds an individual cooperative harvester retaining undersized crab, depending on the facts of the case, the harvester and the crab harvesting cooperative may both be the subjects of an enforcement action.

However, payment of fees and submission of an EDR are application requirements that must be completed before a PQS or QS holder may receive IPQ or IFQ. Any QS holder must first receive his or her IFQ before he or she can dedicate that IFQ to a crab harvesting cooperative. A complete application includes the submission of an EDR and payment of any fees. Applications for IFQ must also be timely to be considered by NMFS. If an individual does not receive his or her IFQ because they failed to submit a complete and timely application, no IFQ will exist for that person to convert into crab harvesting cooperative IFQ. Submission of a complete and timely application is not a matter of joint and several liability, but is a matter of individual responsibility and permit administration.

Comment 106: The proposed rule, at § 680.21(b)(2), does not apply a standard for a crab harvesting cooperative to reject any QS holder. Because a QS holder loses the benefits of QS

consolidation, leasing after five years, and elimination of the vessel cap, a change needs to be made to the regulations so that private persons may not deny a government benefit to a QS holder. One possibility would be a default cooperative, that any QS holder could join.

Response: Amendment 18 clearly directs that membership in crab harvesting cooperatives is voluntary. The term ''voluntary'' is generally defined as unconstrained by interference or not impelled by outside influence. Consistent with this definition, NMFS did not impose any regulations for membership requirements regarding crab harvesting cooperatives. NMFS took a minimalist approach and determined that no QS holder is required to join a crab harvesting cooperative to receive or harvest IFQ and no crab harvesting cooperative is required to accept a member as a QS holder that the crab harvesting cooperative does not wish to admit. Therefore, the regulations do not address any requirements for acceptance or denial regarding crab harvesting cooperative membership.

If a crab harvesting cooperative denies membership to a person, it is not a denial of a government benefit, but is simply a denial of membership to that person by that crab harvesting cooperative. The government benefit of participation in a crab harvesting cooperative continues to be available to any person regardless of whether the person joins or is rejected from a crab harvesting cooperative. NMFS anticipates that many crab harvesting cooperatives will exist for each fishery. A person rejected by one crab harvesting cooperative could continue to solicit other crab harvesting cooperatives for admission. Given the voluntary nature of crab harvesting cooperatives and the large number of crab harvesting cooperatives that NMFS anticipates will exist for each fishery under the Program, NMFS has determined that the creation of a NMFS sanctioned ''default crab harvesting cooperative'' is unnecessary.

Comment 107: The regulations require a minimum of four unique QS-holding entities for the formation of a crab harvesting cooperative, but do not clearly state that C share holders are considered ''unique entities'' for the purposes of crab harvesting cooperative formation. Each QS holding individual should be considered a unique entity, whether or not that individual holds some interest in a commonly held corporation. The final rule should clarify that C share holders are considered ''unique entities'' for the purposes of crab harvesting cooperative formation.

Response: NMFS proposed that any QS holder, including CVC and CPC QS holders, could be considered ''unique entities'' for the purposes of crab harvesting cooperative formation and has continued this provision in the final rule. However, whether a CVC or CPC QS holder is a ''unique entity'' for purposes of meeting the minimum requirement of four unique entities for crab harvesting cooperative membership depends on whether the CVC or CPC QS holder is ''affiliated'' with another entity seeking membership in the same crab harvesting cooperative. If a CVC or CPC QS holder is ''affiliated'' with another entity seeking membership in the same crab harvesting cooperative, then NMFS will consider the CVC or CPC QS holder and the affiliated entity as representing only one unique entity. Conversely, if a CVC or CPC QS holder is not ''affiliated'' with any other entity seeking membership in the same crab harvesting cooperative, then NMFS will consider the CVC or CPC QS holder as one unique entity. NMFS has revised the definition of ''affiliation'' in section 680.2 to clarify that any individual QS holder, including CVC and CPC QS holders, qualify as unique entities for the purposes of crab harvesting cooperative formation provided they are not considered ''affiliated.''

Community Protection Measures

Comment 108: NMFS is giving away the fisheries resources forever to corporate interests outside of the Aleutians, including Japanese corporate interests with lobbying ties to Washington, DC. This amounts to economic genocide and strips local residents of economic opportunity that would provide them with the ability to continue to live in the region.

Response: Allocating QS to fishery participants is a provision of Amendment 18. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program provisions as specified in Amendment 18. Additionally, the Program contains provisions to allocate the crab resources to Alaskan communities, including communities in the Aleutian Islands. The CDQ allocation increased from 7.5 percent to 10 percent of the TAC, and the CDQ crab species are increased to include Eastern Aleutian Islands golden king crab and Western Aleutian Islands red king crab. Adak will be allocated 10 percent of the Western Aleutian Islands golden king crab fishery, and 50 percent of this fishery must be processed in Adak. These provisions provide local residents with economic opportunities in the BSAI crab fishing industry to support their ability to live in the region.

Comment 109: The Council motion outlines the terms that should govern the management of the Adak allocation of WAI brown king crab. No provision is made in the regulations for management of that allocation.

Response: NMFS regulations define the Adak community entity at § 680.2 and provide for the allocation of 10 percent of the TAC of Western Aleutian Islands golden king crab to the Adak community entity at § 680.40(a).

With respect to management or oversight of the use of this allocation by the Adak community entity, Amendment 18 states, in part, a ''set of use procedures, investment policies and procedures, auditing procedures, and a *city or state oversight mechanism* [emphasis added] will be developed. Funds collected under the allocation will be placed in a separate trust until the above procedures and a plan for utilizing the funds for fisheries related purposes are fully developed. Funds will be held in trust for a maximum of 2 years, after which the Council will reassess the allocation for further action * * *. Use CDQ type management and oversight to provide assurance that the Council's goals are met. Continued receipt of the allocation will be contingent upon an implementation review conducted by the *State of Alaska* [emphasis added] to ensure that the benefits derived from the allocation accrue to the community and achieve the goals of the fisheries development plan.''

NMFS interpretation of Amendment 18 is that the State of Alaska is primarily responsible for oversight of the use of the allocation for fisheries related purposes. Therefore, oversight of the use of the allocation by the Adak community entity for ''fisheries related purposes'' is deferred to the State of Alaska under the FMP. The FMP contains the Council's motion about oversight of the Adak allocation to provide specific direction to the State. NMFS will have no direct role in management or oversight of the use of the allocation and NMFS will not direct the State through Federal regulations about how to conduct its oversight responsibilities. The State will implement State regulations that are consistent with the FMP. Any persons believing that the State is acting inconsistently with the FMP may follow the appeal procedures in the FMP or raise the issue with the Council and request regulatory action to further clarify or define the State's oversight role.

In addition, the FMP directs the State to conduct an implementation review for the Council to ensure that the benefits derived from the allocation accrue to the community and achieve the goals of the fisheries development plan. The Council's motion did not specify when this implementation review should be conducted. Therefore, it will be up to the Council and the State to determine an appropriate time for this review to be presented to the Council.

Comment 110: The proposed rule § 680.40(m) and § 680.41(c) and (d) incorrectly revised the rules of the right of first refusal. The motion clearly identifies the terms of the right of first refusal.

Response: NMFS agrees and the final rule has been revised from the proposed rule to remove § 680.40(m) and to reference the civil contract terms for the establishment of ROFR as set forth at section 313(j) of the Magnuson-Stevens Act. A list of contract terms is available from the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov.* This approach ensures consistency with Amendment 18 and is appropriate because NMFS would not monitor or enforce these contract terms. Regulations at § 689.41(c) and (d) have been revised to more closely reflect Council intent regarding the discretion of an ECC to designate an ECC entity and enter into civil contracts for ROFR.

Comment 111: The rationale for having both ECCOs and ECC entities is not clear. The ECCO seems to be the entity that holds shares for a community, while the ECC entity has the right of first refusal. The Council motion contemplates a single entity to serve both of these purposes. In addition, it is unclear that one entity would have the ability to exercise a ROFR, but not be able to take possession of shares on the exercise of that right. In addition, given the administrative burden of the program, it is unclear why the agency would like to oversee additional entities/organizations. The final rule should establish a single entity to hold the right of first refusal and any community shares.

Response: NMFS disagrees that Amendment 18 states that a single entity would serve both the ECCO function for purchase and holding of QS and the ECC entity function of representing a non-CDQ ECC in the exercise of ROFR. Amendment 18 states: ''Ownership and management of harvest and processing shares by community entities in non-CDQ communities [ECCOs] will be subject to rules established by the halibut and sablefish community purchase program.'' This ''program'' refers to the regulations established under Amendment 66 to the FMP for Groundfish of the GOA for the restrictions associated with the designation of an ECCO, including the requirement that these organizations be non-profit. No such restrictions were set forth in Amendment 18 for an ECC entity. While an ECCO could also serve as an ECC entity, an entity designated by an ECC to represent it in the exercise of ROFR may not meet the conditions and criteria for an ECCO. Thus, an ECC that wishes to purchase QS and designate an ECCO for that purpose could also designate the ECCO as its ECC entity for purposes of ROFR, but is not required to do so.

Comment 112: The requirement of a ROFR contract at the time of application at § 680.40(f)(3) and (7) is inconsistent with the Council motion. PQS applicants need to enter the contract only if the ECC entity is designated by a time certain. Instead, applicants for PQS should provide notice to an eligible community that they intend to apply for PQS that could be subject to a ROFR. If the community notifies the agency and the PQS applicant that it has formed an entity (and provides contact information for the entity) the PQS allocation would be made only on completion of the contract establishing the terms of ROFR. If the contract is not executed, the parties could seek remedies in civil court to the extent necessary.

Response: NMFS agrees and has changed the final rule to reflect that the designation of an ECC entity is a choice and not a requirement. Only if such a designation is made within 30 days prior to the ending date of the initial application period for crab PQS (§ 680.41(l)) would an ECC have opportunity to exercise ROFR in the future.

Comment 113: The contract terms for ROFR at § 680.40(m) are not those in the Council motion. A cleaner approach would be to just copy the Council motion, rather than reinterpret it.

Response: NMFS agrees and has removed § 680.40(m) from the final rule and cross referenced section 313(j) of the Magnuson-Stevens Act concerning civil contract terms for ROFR as statute provisions under § 680.40(f)(3). See also response to comment 110.

Comment 114: For purposes of implementing the ROFR at § 680.40(m), ''movement of shares from a first or second class city, if one exists, and borough, if a first or second class city does not exist,'' constitutes ''movement of shares from the community''. Note that this differs from the cooling off period. Clarify provisions that apply to movement of PQS/IPQ from the community.

Response: See response to comment 110. The final rule also has been revised to clarify that the definition of ''community'' for purposes of movement of PQS/IFQ during the cooling off period has been added to the final rule at § 680.42(b)(4) to differentiate these restrictions from the movement of PQS/IFQ for purposes of ROFR after the cooling off period (see response to comment 136 for additional information on the application of community for the cooling off period.)

Comment 115: The provision at § 680.40(m)(2) states that ''any sale must be provided on the same terms'' to the EEC entity. This wording is not a complete description of the right of first refusal, since the ability to exercise the right applies for a limited period and is exercised by performing the terms, not receiving an offer. Use the language from the motion.

Response: NMFS agrees. See response to comment 110.

Comment 116: Since ROFR applies to IPQ, the provision at § 680.40(m)(6) should be broadened to include waivers with respect to IPQ. Since ROFR applies to IPQ, the provision at § 680.40(m)(7) should be broadened to include ROFR with respect to IPQ, under the terms of the motion.

Response: NMFS agrees. See response to comment 110.

Comment 117: It is unclear at § 680.41(c)(3)(i) and (ii) whether the ECCO can hold and transfer PQS. The ECCO should be able to hold and transfer both QS and PQS. Clarify that ECCOs can hold PQS.

Response: NMFS agrees that an ECCO can hold and transfer both QS and PQS. Any person, including an ECCO, may apply to receive and hold PQS or IPQ by transfer. The final rule at § 680.41(c)(1)(i) makes this clear. Restrictions exist, however, on who can purchase QS and special provisions for transfer to and holding of QS by an ECCO must therefore be set forth in regulations.

Comment 118: The provision at § 680.41(c)(3)(i) and (ii) states that each ECC *must* designate an ECCO. The rationale for this absolute requirement is unclear. Communities have the option of designating an ECC entity, but would waive the ROFR and not be permitted to use the community purchase privilege, if they chose not to. ''Must'' should be changed to ''may''.

Response: The commenter is confusing ECCO provisions for the purchase of QS with ECC entity provisions for purposes of exercising ROFR. NMFS agrees that a non CDQ

ECC is not required to designate either an ECCO for purposes of purchasing and holding PSQ, IPQ or QS or an ECC entity to exercise ROFR. The final rule at § 680.41(l)(2)(ii) provides a 30-day time limit within which an ECC must designate an ECC entity if it wishes to do so. If an ECC entity is not designated, then opportunity for ROFR by the ECC is permanently waived.

Comment 119: The provision at § 680.41(d)(2)(i)(C) requires a statement from an authorized representative of a community that the ROFR has been offered on sale of shares outside a community. Several aspects should be clarified here. First, a signature from an authorized representative is too strict of a requirement. A provision that requires a PQS/IPQ holder that is subject to ROFR to provide notice to ECC entity (and the agency) of the sale is all that should be included here. Otherwise, reluctance to sign the authorization could lead to a delay in the transaction despite proper notice of the sale.

Second, the notice is only required if the sale meets the requirements for the ROFR (*i.e.*, some transfers do not trigger the ROFR). Intra-company transfers, transfers for use in the community, and some transfers of IPQ are not subject to the ROFR. This is not clear from the way the provision is drafted.

Third, somewhere in the regulation the process of completing a sale on which the ROFR is exercised should be stated. Under the Council motion, the EEC entity should notify the PQS/IPQ holder (and agency) of its intent to exercise ROFR (and evidence of its earnest money payment). Then regulations should require confirmation of performance for the agency to finish the transaction. The rule should be changed to only require notice of the transaction to the holder of the ROFR if the proposed transfer is subject to the ROFR. Regulations should be revised to better define the process for exercising ROFR.

Response: NMFS agrees and has changed the final rule at § 680.41(h)(2)(i)(C) to clarify that a holder of PQS/IPQ who wishes to transfer any PQS or IPQ subject to ROFR for use outside an ECC that has designated an entity to represent it in exercise of ROFR, must include an affidavit in the application for transfer stating that notice of the desired transfer has been provided to the ECC entity under civil contract terms enacted under section 313(j) of the Magnuson Stevens Act. The final rule at § 680.41(i)(8) and (9) also has been revised to clarify the process for approval of a transfer application subject to ROFR. In summary, the Regional Administrator will not act upon the application for a period of 10 days. At the end of that time period, the application will be approved pending meeting the general criteria for transfer of PQS or IPQ under § 680.41(i), unless a court order is issued to NMFS to prohibit transfer based on a breech of civil contract terms referenced under § 680.41(f)(3). A 10-day stand down period by NMFS before approval of a transfer should allow sufficient time for an aggrieved signatory to a civil contract for ROFR to obtain a court order to stop a transfer of PQS/IPQ subject to ROFR so that contract terms may be fulfilled through civil court proceedings.

In the case of an application for transfer of PQS within an ECC that has designated an entity to represent it in exercise of ROFR, the Regional Administrator will not approve the application unless either the ECC entity provides an affidavit to the Regional Administrator that the ECC wishes to permanently waive ROFR for the PQS or the proposed recipient of the PQS provides an affidavit affirming the completion of a contract for ROFR that includes the terms enacted under section 313(j) of the Magnuson Stevens Act.

Comment 120: The community of Adak does not receive the ROFR. It should be expressly excluded from ROFR at § 680.41(j)(1)(ii).

Response: NMFS agrees that the community of Adak is not eligible for exercise of ROFR and noted that elsewhere in the regulations. The suggested regulatory clarification has been made to the final rule.

Comment 121: The community does not need to designate an ECC entity. If they do not the ROFR is waived. Change ''must'' to ''may'' at § 680.41(j)(2)(ii).

Response: NMFS agrees that under Amendment 18, an ECC is not required to designate an entity to represent it in the exercise of ROFR and has changed the final rule at § 680.41(l)(2) to clarify that such a designation is discretionary. Any such designation must be made at least 30 days prior to the ending date for the initial application period for crab PQS. If an eligible ECC does not designate an entity within that time period, opportunity to exercise ROFR for transfer of PQS or IPQ will be permanently waived. NMFS notes that an ECC that is also a CDQ community is not required to designate an ECC entity because Amendment 18 specifically states that the CDQ group to which that ECC is a member also will be the ECC entity in the exercise of any ROFR. See also response to comment 111.

Comment 122: Requiring the ECC entity to be a signatory to the transfer at § 680.41(j)(3) is inappropriate and should be removed. A ROFR only requires notice and the opportunity to exercise the right. It may be useful to have PQS holders submit an annual report identifying the amount of IPQ that it used in a community during the year and if used outside a community, who used the IPQ (which would be used to determine whether the ROFR would apply to a future transaction). Require that the transferor provide evidence of notice to the ECC entity.

Response: NMFS agrees that an ECC entity does not need to be a signatory to the transfer of PSQ or IPQ and has changed the final rule accordingly; see response to comment 119. To the extent that information on the use of IPQ within and outside an ECC can be publically released under federal and state data confidentiality standards, NMFS will plan to do so on an annual basis. This commitment does not require a regulatory provision.

Comment 123: The proposed provision at § 680.41(j)(4) seems to confuse the process of passing on the ROFR to a successor. If the transfer is within the ECC, the recipient of the PQS would need to sign a contract granting the ROFR to the ECC organization (not ''exercising the right'') and agree to terms concerning the use of the shares in the community in future years. In addition, the ECC entity need not have signed the contract on application. The submission of the contract signed by the recipient of the shares will allow the agency to deliver the contract to the ECC entity for signature. If the ECC entity does not sign the contract the ROFR would be waived. Revise process for intra-community transfers consistent with the Council motion.

Response: The final rule at § 680.41(i) clarifies the process for transfer of PSQ within an ECC. See response to comment 119. The final rule at § 680.40(f)(3) also was revised to clarify the role of a civil contract for ROFR in the PQS application process. NMFS will not be involved in the completion of these civil contracts. Instead, an application for crab QS or PQS from a person based on legal processing that occurred in an ECC, other than Adak, must also include an affidavit signed by the applicant stating that notice has been provided to the ECC of the applicant's intent to apply for PQS 60 days prior to the end of the application period. If the ECC designates an entity to represent it in the exercise of ROFR in the designated time period, then the application also must include an affidavit of completion of a contract for

ROFR that includes the terms enacted under section 313(j) of the Magnuson Stevens Act. The affidavit must be signed by the applicant for initial allocation of PQS and the ECC entity designated under § 680.41(l)(2). Also see responses to comments 121 and 112.

Comment 124: The provisions at § 680.41(j)(5) defining the ROFR in the North Gulf need to limit the ROFR to the same terms generally as the general ROFR. This means that the ROFR applies only to the first transfer from the community of origin. These terms are not clear in the current regulation. Revise regulation consistent with the Council motion.

Response: The final rule at § 680.40(f)(3)(ii) has been revised to clarify that the civil contracts between the ECC (only the ECC comprised of the City of Kodiak and Kodiak Island Borough is eligible) and applicants for PQS based on legal processing that occurred in the GOA north of a line at 56°20′ N. lat. must adhere to the same terms for civil contracts established under section 313(j) of the Magnuson Stevens Act as the general ROFR contract agreements. Also see response to comment 110.

Comment 125: The cooling off provision allows IPQ to be used inside the borough, if one exists, and inside the first or second class city, if a borough does not exist. The provision at § 680.42(c)(5) appears to limit use of shares outside of the first or second class city in all cases. Revise provision to define boundaries based on Council criteria.

Response: NMFS agrees and has clarified the different definition of ''community'' to which the ''cooling off'' period applies at § 680.42(b)(4) that applies specifically to PQS/IPQ transfers during the cooling off period. See also response to comment 114.

Comment 126: An initial recipient of PQS (*i.e.*, a shore-based processor) must submit a signed community ROFR with his/her application. The proposed rule at § 680.40(f)(3) and (m), does not address what happens if a community fails to establish an entity to negotiate the community ROFR, or otherwise fails to consummate a ROFR deal with the processor during the application period. There is no remedy for the PQS holder, which runs the risk of losing IPQ for the crab year. The Council anticipated this situation and incorporated language in Amendment 18 that states an ECC (both CDQ and non-CDQ) must establish the entity to negotiate the ROFR prior to the application period; otherwise that community loses its ROFR rights. If an ECC does not establish an appropriate entity within 60 days of the initial application period, that community loses its ROFR rights.

Response: NMFS agrees and has changed the final rule accordingly. See response to comments 121 and 111.

Comment 127: The proposed rule's ''affiliation'' standard adversely impacts CDQ groups and eliminates Council-intended community protection. Most, if not all CDQ groups invested in crab harvesting assets, either as partners or sole owners, following passage of the June 10, 2002, Council motion. They did so cognizant of the fact that the motion assigns CDQ groups the community ROFR rights for PQS earned in their communities, as a form of community protection. But the proposed rule's narrow definition of ''affiliation'' undermines the community protection from ROFR rights. ROFR rights are rendered meaningless if a CDQ group exercises its ROFR rights and purchases processing assets to keep them in the community. The CDQ crab harvesting investments become ''processor-affiliated.'' Those CDQ vessels and all that may be indirectly affiliated with them lose their Class B IFQ. They may not join cooperatives under § 680.21. They lose all rationalization benefits, like the vessel cap exemption, leasing rights after 2010, and the right to lease IFQ from a cooperative. The Council never intended this benefit deprivation.

The Council anticipated these sorts of problems and established a context-specific definition of ''affiliation.'' With regard to Class B IFQ, the definition focused on control of landings, not the 10 percent rule that is uniformly applied in the proposed rule. The proposed rule should be modified to reflect Council intent. An affidavit approach re-establishes a functional ROFR process; in the absence of it, ROFR is a meaningless right that offers no community protection.

Response: In response to other comments, NMFS has revised the final rule to allow processor affiliated vessels to join crab harvesting cooperatives and therefore to gain the benefits from participating in crab harvesting cooperatives. See response to comment 84. Further, the definition of ''affiliation'' under § 680.2 has been modified to allow crab harvesting cooperatives or other processor affiliated entities to receive Class A/Class B IFQ in amounts proportional to the amount of IPQ held by the person with whom the QS holder is affiliated. See response to comment 25 for a more specific discussion of this change.

Comment 128: The Council recognized CDQ organizations as the ECCO for CDQ communities, because CDQ organizations are already established to buy, sell and lease QS and other assets in a manner consistent with the NPFMC's intent for this program. Therefore, the rationale for requiring at § 680.41 that a CDQ group apply on behalf of the ECC and also establish a separate ECCO is inefficient and perhaps even inconsistent with Council intent. CDQ groups are already authorized to hold shares for their community(s) and the NPFMC has also given the CDQ groups the right of first refusal. This suggests that the Council motion contemplates a single entity to serve both of these purposes.

Response: NMFS agrees that Amendment 18 contemplates that the CDQ group to which an ECC is a member would serve both as the ECCO for purposes of purchasing and holding PQS or QS and as the ECCO for purposes of ROFR. Given the nondiscretionary nature of this designation, CDQ communities do not need to identify either the ECCO or ECC entity because that ECCO or entity already is specified under the Council's motion and in regulations.

Comment 129: The requirement that a PQS applicant must submit a signed ROFR prior to PQS issuance at § 680.40 (f)(3) and (f)(7) is not practical in cases where the ECC has not established an ECC entity within the appropriate time frame; or where the ECC entity has over-stepped the Council's ROFR terms. The Council specified ROFR contract terms that should be incorporated into the proposed rule. These terms are specific, yet at the same time they do not pose any enforcement liability on the NMFS.

Response. The final rule at § 680.41(l) establishes time limitations for the designation of an ECC entity to represent a non CDQ ECC in the exercise of ROFR. Signed ROFR contracts will not be required to be submitted, only an affidavit that such a contract has been completed consistent with the terms set forth under the Council's motion. These terms have been removed from regulations at § 680.40(m) because they are already set forth specifically in statute and to avoid any inconsistency between regulations and statutory language. Additionally, these contract terms will not be monitored or enforced by NMFS. NMFS is requiring PQS holders to submit an affidavit attesting that the contract has been completed. Also see response to comment 112.

Comment 130: As an ECC, ROFR rights are very important to our community. But the proposed rule at § 680.41(d)(2)(i)(C) does not implement these rights in a manner that is both clear and consistent with the Council motion. We offer these suggestions:

The ROFR provision in the proposed rule requires a statement from an authorized representative of a community that the ROFR has been offered on sale of shares outside a community. This could be a problem. A provision that requires a PQS/IPQ holder that is subject to ROFR to provide notice to ECC entity (and the agency) of the sale is important and necessary; but the signature-requirement is not. An ECCO's reluctance to sign the authorization could lead to a delay in the transaction despite proper notice of the sale.

Also, the notice is only required if the sale meets the requirements for the ROFR (*i.e.*, some transfers do not trigger the ROFR). Intra-company transfers, transfers for use in the community, and some transfers of IPQ are not subject to the ROFR. The proposed rule needs to be more specific in this regard.

Response: NMFS agrees that the ROFR provisions of the proposed rule should be changed to more accurately reflect the intent of the Council and statute provisions of section 313(j) of the Magnuson Stevens Act. The final rule at § 680.41(h)(2)(i)(C) and (i)(8) reflects the recommended changes.

Comment 131: The ROFR requirement was approved by the Council to protect a crab community from losing its processing industry. The proposed regulation establishes a timetable that requires a ROFR contract be submitted prior to the award of PQS. This does not meet the intent of the Council and does not aid in the protection of the community. There may be occasions when the proper community entity simply cannot act in a timely fashion and the processor awaiting PQS is penalized by not receiving PQS due to circumstances completely beyond his control. We believe the regulation should be revised to require that the ROFR be fully executed prior to a holder of PQS completing a permanent sale of his PQS.

The proposed regulation also conflicts with Council intent in that it would require the community group or CDQ group to affirmatively reject the option to purchase. The Council motion required the exact opposite—the Council plan required a community group or CDQ group to affirmatively accept the option. The Council interpretation is critical because it requires the community to take action and will protect from community inaction for any reason. The ROFR requirement in the proposed regulation with regard to leasing is inconsistent with Council intent. The proposed regulation states that the ROFR is required if PQS is leased in excess of one year. The Council test stated that the ROFR arises if the 80 percent of the PQS is leased in any three of five years. The regulation should be revised to reflect that original intent of the Council.

Response: The terms of a civil contract for ROFR have been removed from regulations at § 680.40(m), including the terms associated with leasing of PQS referred to in the comment, because these terms are enacted by statute. This approach also avoids any regulatory conflict with Amendment 18 concerning these terms and conditions. See also response to comment 113.

NMFS has changed the final rule at § 680.40(f)(3) and (f)(7) to require only that an affidavit be signed by the PQS applicant that a civil contract for ROFR has been completed. NMFS will not issue an IAD on unverified claims or issue PQS until such an affidavit is received. The final rule also has been changed so that an ECC entity would not be required to affirmatively reject an option to exercise ROFR. See response to comment 119.

Comment 132: Add the following definition for a non-profit to § 680.2 to clarify the phrase non-profit organization used in the regulations: Non-profit organization means: (1) An Alaskan municipal corporation in a non-CDQ ECC; or (2) a corporation organized under the Alaska Nonprofit Corporation Act. A municipal corporation is not a profit entity. This definition is consistent with the intent of requiring a non-profit organization to serve as the representative of an ECC and provide a community with the option of designating a municipal corporation as the non-profit organization EEC entity for the ECC.

In smaller communities, establishing a limited purpose non-profit entity for the EEC entity will be inefficient. For example, an additional volunteer board would need to be recruited, separate insurance, legal and accounting services would be required, and the rules for participation in the ECC entity and election and meeting procedures would need to be determined. Allowing a municipal corporation would avoid these inefficiencies because all of the organizational infrastructure is already in place within a municipal corporation. Moreover, publically elected officials, who operate in what they feel is in the best interest of the public, would be the final decision makers.

Response: Amendment 18 for community purchase and management of PQS and QS states: ''* * * Ownership and management of harvest and processing shares by community entities in non-CDQ communities will be subject to rules established by the halibut and sablefish community purchase program.'' This program was implemented under the final rule implementing Amendment 66 to the FMP for Groundfish of the GOA (69 FR 23861, April 30, 2004). The proposed and final rules implementing Amendment 18 for community purchase and management of crab QS and PQS are consistent with Amendment 66 provisions. Thus, NMFS believes that the commenter's suggestion is inconsistent with Amendment 18 and would require a subsequent FMP amendment to the Program in the future.

Comment 133: Section 680.40(f) makes it seem that the ROFR can be used on QS purchase and it should be clarified that ROFR can only be used on PQS and IPQ.

Response: NMFS agrees and has changed the final rule accordingly.

Comment 134: Clarify at § 680.41(j)(4) that ROFR does not apply for transfers of IPQ inside an ECC.

Response: The proposed and final regulatory text only refers to applicability of ROFR to transfer of PQS within a community to maintain the opportunity for ROFR contract provisions between an ECC entity and all PQS holders in the community. NMFS agrees that ROFR does not apply to the transfer of IPQ within a community because this activity only is an annual transfer that maintains processing history within the community. NMFS does not believe that regulatory changes are necessary to clarify this point.

Comment 135: The proposed rule at § 680.40(a)(1) stipulates that ''with the exception of the WAI golden king crab fishery, the Regional Administrator shall annually apportion 10 percent of the TAC specified by the State of Alaska for each of the fisheries described in Table 1 to this part to the Western Alaska CDQ Program.'' CDQ groups strongly support this above provision as a community protection measure under the Crab Rationalization program. The increase in CDQ allocations of Crab species from 7.5 percent to 10 percent is consistent with National Standard 8 of the Magnuson-Stevens Act. National Standard 8 includes the requirement that conservation and management measures, consistent with the conservation requirements of the Magnuson-Stevens Act, take into consideration the importance of fishery resources to fishing communities. This standard establishes the goals of providing for the sustained participation of those communities and of minimizing

adverse economic impacts to the extent practicable.

Response: The increase in the allocation of crab TACs to the CDQ Program and the addition of two new CDQ allocations for Eastern Aleutian Islands golden king crab and Adak red king crab are required by section 313(j) of the Magnuson-Stevens Act.

Comment 136: ROFR has distinct characteristics that differ between the ''Cooling Off'' period and after the cooling off period. This is not clear in the proposed rule. If the IPQ holder and the physical processor are in the same community, agency transfer approval should not be required and the activity should not count for purposes of community protections. We believe that the Council intended that use caps and community protections should not be circumvented by the use of custom processing arrangements. We also believe that the Council did not intend to require a formal agency transfer approval for custom processing arrangements in a single community.

Response: NMFS agrees. Amendment 18 clarifies that the ''cooling off provision'' would limit the transfer of PQS or IPQ outside of a community for the first two years of the Program. However, Amendment 18 defines a community for purposes of the ''cooling off'' provision as ''the boundaries of the Borough, or if no Borough exists, the first class or second class city as defined by applicable state statute.'' NMFS incorrectly applied the same geographic boundaries to both the ROFR provisions and the ''cooling off'' provisions at § 680.42(b)(4). The commenter's concern is addressed by modifying § 680.42(b)(4)(iv) to clarify the geographic boundaries to which the ''cooling off ''provisions apply.

Arbitration System

Comment 137: The provisions in the proposed rule at § 680.20(h)(2)(ii)(B), (h)(3)(iii)(C), (h)(3)(iv)(D), and (h)(3)(v) permit IPQ holders to initiate arbitration. Only IFQ holders are permitted to initiate arbitration under the Council's arbitration program. The final rule should limit arbitration initiation to IFQ holders.

Response: NMFS agrees, Amendment 18 and 19 state that the Binding Arbitration procedures can be initiated by the Arbitration IFQ holder only. The reference to the IPQ holder initiating binding arbitration has been removed from § 680.20(h)(2)(ii)(B), (h)(3)(iii)(C), (h)(3)(iv)(D), and (h)(3)(v).

Comment 138: CVC QS holders should not be required to be in Arbitration Organizations in the first three years of the program, as required in the proposed rule at § 680.20(a)(1). In Amendment 18, arbitration is optional for these share holders until July 1, 2008. They could elect to join the arbitration process by joining an Arbitration Organization, but should not be required to join. The final rule should make membership in Arbitration Organizations optional for CVC QS holders prior to July 1, 2008. Additionally, the reference to paragraph (b)(1) at § 680.20(d)(1) of the proposed rule should be clear that CVC QS holders may (not must) join Arbitration Organizations prior to July 1, 2008.

Response: NMFS agrees, CVC QS and IFQ holders may participate in the Arbitration System, but are not required to do so prior to July 1, 2008. This interpretation is consistent with Amendments 18 and 19. NMFS has corrected the final rule at § 680.20(a)(1) and § 680.20(d)(1) to note that participation in the Arbitration System by CVC QS holders is not required prior to July 1, 2008.

Comment 139: The proposed rule at § 680.20(a)(2) should not limit negotiations to the preseason period. Although the process for arbitration states that negotiations should be conducted in the preseason, the purpose of that language is to define the matching of shares for purposes of the arbitration procedure. The regulation suggests that IFQ and IPQ cannot be used if parties do not reach a preseason negotiation. Nothing is lost in the arbitration process from allowing voluntary negotiations between holders of uncommitted shares to occur after the season is begun.

Response: Amendments 18 and 19 state that ''at any time prior to the season opening date, any IFQ holders may negotiate with any IPQ holder on price and delivery terms for that season (price/price formula; time of delivery; place of delivery; etc.).'' Although this statement could suggest that the open negotiation process was anticipated to be limited to the preseason period, the use of the word ''may'' as opposed to ''must'' would allow the process to extend beyond the preseason period. This statement is made under the general heading of ''Last Best Offer Binding Arbitration.'' It is presumed that the limitation on the use of open negotiations would apply to persons who are using the negotiation methods that are established under the Arbitration System (*i.e.*, share matching and binding arbitration), but not necessarily to those IFQ and IPQ holders who are ineligible to use the Arbitration System or to those Arbitration IFQ holders that have not yet committed shares to a specific IPQ holder. Under this revision, an Arbitration IFQ holder that has committed shares to a specific IFQ holder would not be permitted to reenter open negotiations as is expressed under Amendments 18 and 19. However, if an Arbitration IFQ holder has not yet committed shares, open negotiation would be available to that person after the season has begun.

NMFS is revising this portion of the regulations at § 680.20(a)(3) to clarify that if Arbitration IFQ holders choose to use the Arbitration System, they may enter into open negotiation prior to, and during the crab fishing season. Once the season begins, those persons who have committed shares to an IPQ holder would be subject to the limitations established under Amendments 18 and 19. Persons who are affiliated with PQS or IPQ holders would continue to be eligible to use open negotiation after the fishing season has begun.

Comment 140: The word ''uncommitted'' has been omitted in front of IPQ in a few places in the proposed rule at § 680.20(a)(3). Only uncommitted shareholders can negotiate deliveries with holders of uncommitted IFQ.

Response: NMFS agrees that Amendments 18 and 19 are intended to limit the ability to negotiate to uncommitted IPQ holders. NMFS has changed the final rule at § 680.20(a)(2) to clarify this point.

Comment 141: The provision at § 680.20(d)(1)(iv) of the proposed rule permits a person to be a member of only one Arbitration Organization. If a person is only permitted to be a member of a single organization, holders of both IFQ and IPQ cannot meet the requirements of the regulation to be members of separate organizations for IFQ and IPQ. The final rule should be revised to allow membership in one IFQ Arbitration Organization and one IPQ Arbitration Organization.

Response: NMFS agrees that the regulations in the proposed rule do not accommodate the situation of a person who holds both PQS/IPQ and QS/IFQ. The regulations at § 680.20(d)(1)(iv) have been modified to allow a person who holds PQS/IPQ to join only one PQS/IPQ Arbitration Organization, a person who holds Affiliated QS/IFQ to join only one Affiliated QS/IFQ Arbitration Organization, and a person who holds Arbitration QS/IFQ to join only one Arbitration QS/IFQ Organization. This section has been renumbered based on responses to comments, and the text to which the commenter refers is now found at § 680.20(d)(1)(iii) not at § 680.20(d)(1)(iv).

Comment 142: The provision at § 680.20(e)(2)(ii) of the proposed rule requires the use of the ''Share Matching Approach,'' the ''Lengthy Season Approach,'' and ''Binding Arbitration.'' None of these should be required of all participants since arbitration is intended to be voluntary. The regulation requires Arbitration Organization membership and contracts that define the terms that govern arbitration participation. This provision is over broad. The final rule should be revised to state that participants shall engage in arbitration subject to the rules and to the extent specified in the contracts.

Response: The regulations are intended to require that if a member of an Arbitration Organization intends to use the Arbitration System, that member would be required to use the negotiation approaches of open negotiation, Lengthy Season, and Share Matching outlined at § 680.20(h). NMFS agrees that the wording in this regulation may not reflect the intent that members of an Arbitration Organization that choose to use the Arbitration System, may use any of the negotiation approaches that are described at § 680.20(h). Regulations governing the use of the negotiation approaches are already defined at § 680.20(h) and additional contractual requirements on the members of Arbitration Organizations are not required. The regulation at § 680.20(e)(2)(ii) has been removed to reduce confusion and more accurately reflect the Statute.

Comment 143: The provision at § 680.20(e)(2)(v) of the proposed rule is over broad and should be deleted. All information generated pursuant to § 620.20 would require each Arbitration Organization to obtain documents that it and its members have no access to.

Response: The provisions governing the use of information in the Arbitration System is intended to facilitate the ability of uncommitted IPQ holders to communicate to uncommitted IFQ holders the amount of IPQ that may be available. The role of the Arbitration Organizations in this process is to help ensure that information is communicated to their members in a manner that minimizes the potential risks of violating antitrust statutes. The goal of the information exchange is not to place undue burdens on the participants. NMFS agrees and has modified the regulations so that the delivery of information from uncommitted IPQ holders to the uncommitted Arbitration IFQ holders could be accomplished by requiring Arbitration Organizations to hire administrative personnel or contract with a third party data collection agency, that does not have a linkage with either the IPQ holders or IFQ holders, for the delivery of that information to Arbitration QS/IFQ Arbitration Organizations. Arbitration Organizations therefore will not be required to obtain documents that their members cannot see in a manner that requires their members to see them. The regulations in this section have been modified to improve the ability of uncommitted IPQ holders to communicate the amount of shares available through the Arbitration Organizations or through a third-party data collection agent. NMFS has renumbered the regulations based on changes from other comments, and has modified and redesignated the text to which the commenter refers to at § 680.20(e)(2)(iv).

Comment 144: The provisions at § 680.20(e)(2)(v)(B)(*1*) and (*2*) of the proposed rule require the Arbitration Organizations to deliver notices to uncommitted Arbitration IFQ holders. IPQ Arbitration Organizations, however, have no way of knowing who holds uncommitted IFQ. The provisions should be revised so that persons required to deliver notices (1) have access to the names of those required to receive the notice; (2) have access to the information required to be delivered; and (3) are required to maintain confidentiality.

Response: This concern has been addressed by modifying the information distribution system as per the previous comment response in comment 143. However, IPQ holders will not be allowed access to information about who holds uncommitted IFQ. All information exchanges will be subject to existing antitrust laws.

Comment 145: As drafted, the arbitration requires the Arbitration Organizations to deliver several different notices and pieces of information to members that meet certain criteria. The regulation also places strict limitation on the persons who may receive this information (*i.e.*, only holders of uncommitted IFQ are permitted to receive the terms of the arbitration finding or the identities of the holders of uncommitted IPQ that are parties to an arbitration proceeding). The provisions create a paradox under which the persons (or organizations) required to deliver the notices are unlikely to be able to deliver the notices, because no person would be in a position to receive the information that needs to be disseminated or know the identities of the persons that need to receive the information. The regulations could overcome this problem by providing Arbitration Organizations with the ability to hire a third party for the delivery of notices. That third party should be required to be independent of any associations with any IFQ holders or IPQ holders (except for the management of Arbitration Organization notices) and be bound to hold all information received confidential.

Response: This concern has been addressed by modifying the information distribution system. See response to comment 143.

Comment 146: The timeline at § 680.20(f)(4) may not be appropriate for the first year delivery of the arbitration formula. The final rule should allow the same time as permitted at § 680.20(e)(6) for the Market Report.

Response: NMFS agrees. The timeline that has been developed may not adequately address the timing of the fishery in the first year of the program. The best available estimate is that QS/PQS and IFQ/IPQ will not be issued until August 1. In order to make the arbitration system available to the participants in the first year of the program, the timeline for joining an Arbitration Organization, selecting the market analyst, formula arbitrator, and formula arbitrator has been modified so that it will occur after the expected date of QS issuance. NMFS has modified the timelines for the Arbitration System in 2005 at § 680.20(c)(3), (d)(3)(i), (e)(6) and (f)(4) and (g)(4)(viii) as follows:

(1) The deadline for QS and PQS holders to join an Arbitration Organization is August 15, 2005;

(2) The deadline for Arbitration Organizations with members who are QS or PQS holders to submit a complete Annual Arbitration Organization Report is August 20, 2005;

(3) The deadline for the selection of the Market Analyst, Formula Arbitrator, and Contract Arbitrators is September 1, 2005; and

(4) The deadline for the completion of the Market Report and Non-Binding Price Formula is September 30, 2005 or 25 days prior to the date of the start of the crab season for that crab QS fishery.

NMFS understands that this new timeline may be problematic for participants in the golden king crab fisheries which typically begin in mid-August. Given these deadlines, the Arbitration System may not be available to participants in this fishery prior to the start of the season given current season opening schedules.

Consistent with Council intent, IFQ/IPQ will not be issued for this or any other crab QS fishery under § 680.20(e)(7) until the market analyst, formula arbitrator and contract arbitrator have been selected. The extent to which these activities can be

completed by mid August will be dependent upon voluntary cooperation among fishery participants prior to issuance of IFQ/IPQ. The time lines in the final rule are deadlines, but the required activities could occur earlier, thus perhaps allowing for issuance of IFQ/IPQ for the golden king crab fishery by mid August. However, if fishery participants cannot conclude these activities by mid August, their IFQ/IPQ will not be issued prior to the August 15 start date, but CPO IFQ will be available for harvest.

Any concern about different start dates for the CV and CP fisheries may be attenuated by a delayed start date in the golden king crab fishery for the first year of the program. A change in the start date of the fishery is deferred to the authority of the State of Alaska Board of Fisheries, and is not addressed in these regulations.

Comment 147: Section 680.20(h)(3) describes the arbitration procedure. The regulation should also provide that a single binding arbitration proceeding (excluding quality disputes, performance disputes, and the lengthy season approach) is permitted for each IPQ holder per fishery per year. The final rule should include a provision that limits each IPQ holder to a single binding arbitration proceeding per fishery per year.

Response: Amendments 18 and 19 do not provide a specific provision to this effect. However, given the fact that binding arbitration proceedings are limited to arbitration during a five day period that occurs from 15 days prior to the season until 10 days prior to the start of the crab fishing season, the practical effect may be that there is a single arbitration per IPQ holder per crab QS fishery during this five day period. However, this would not preclude additional arbitration proceedings that could arise from a lengthy season approach, quality dispute, or performance dispute. Section 680.20(h)(3) has been modified to note that there can only be one arbitration proceeding for an IPQ holder during this 5-day period.

Comment 148: Section 680.20(h)(3)(ii) generally sets out the process by which arbitration is initiated. Although the commitment of shares is defined in the definitions section of the proposed rule (§ 680.2, Committed IFQ and Committed IPQ), the regulation could be clarified, if the process for negotiated commitments were included here. The final rule should include description of commitment definition at § 80.20(h)(3)(ii).

Response: As the commenter notes, this process is clarified in the definitions section. The regulatory text provides that open negotiation is possible until an Arbitration IFQ holder has committed IFQ to an IPQ holder. Once that commitment has occurred, the IFQ holder is subject to the provisions established under the Lengthy Season approach, Share Matching and Binding Arbitration. The regulations at § 680.20(h)(3)(ii) have been modified to more clearly state that once IFQ are committed, open negotiation is no longer possible.

Comment 149: The provisions at § 680.20(h)(3)(iii) concerning the ''Lengthy Season Approach'' should specify that the adoption of this negotiation/arbitration approach is available only to persons that have committed shares. The final rule should require share commitments for participants to use the lengthy season approach.

Response: NMFS agrees and has modified § 680.20(h)(3)(iii)(A) to note that the Lengthy Season approach requires a commitment of shares by the IFQ and IPQ holder.

Comment 150: The inclusion of the provisions at § 680.20(h)(3)(iii) concerning the ''Lengthy Season approach'' at this point in the regulations adds confusion to the arbitration process. This paragraph primarily concerns the commitment of shares and the process that share holders undertake preceding, and possibly leading up to, Binding Arbitration. The lengthy season approach is an alternative to that standard procedure. The provisions concerning the lengthy season approach should be included in the contract for the Contract Arbitrators, but as a separate provision outside the process description here.

Response: The Lengthy season approach is described as an alternative mechanism to allow for committed Arbitration IFQ holders and committed IPQ holders to negotiate specific contract terms later in the season, or enter into binding arbitration if those processes are unsuccessful. The regulations at § 680.20(h)(3)(iii) have been modified to more clearly state that the Lengthy Season approach is an alternative approach to the standard binding arbitration procedure.

Comment 151: The process for arbitration of the lengthy season approach is not well defined in the Council motion. The regulation at § 680.20(h)(3)(iii) should not attempt to specifically define that process. The regulation should state that industry should define the procedure for arbitration of the lengthy season approach, including the timing of the proceeding and the ability of any IFQ holders to join the proceeding or opt-in to the outcome of the proceeding.

Response: The requirements of when binding arbitration may occur under a Lengthy Season approach provide considerable flexibility to the participants. The regulation has not been modified.

Comment 152: The provision at § 680.20(h)(3)(iv)(B) of the proposed rule requires an arbitration IFQ holder to commit at least 50 percent of the IFQ held to an IPQ holder to make a unilateral commitment. The provision should provide for the commitment of the lesser of 50 percent of the IFQ held and an amount of IFQ that results in the commitment of all the processor's IPQ. In the absence of this provision, a harvester may be unable to commit any IFQ to a processor under the provision because the processor does not hold sufficient IPQ to take most of the harvester's IFQ. In addition, the regulation should consider a lower level than 50 percent for a cooperative to make a unilateral commitment, since a cooperative represents several share holders. A more appropriate threshold might be 50 percent of the average share holding in the cooperative. Revise the provision concerning the minimum commitment. For a cooperative unilateral commitment, a more appropriate threshold might be 50 percent of the average CVO share holding in the cooperative.

Response: Amendments 18 and 19 state that the IFQ offered must be a ''substantial amount'' of the IFQ holders uncontracted (uncommitted IFQ). The 50 percent commitment of shares was based on the assumption that it would represent a substantial amount of shares that a single IFQ holder could commit. NMFS has revised the final rule at § 680.20(h)(3)(iv)(B) to allow for an offer of uncommitted Arbitration IFQ equal to the total amount of uncommitted IPQ available, if that amount is less than 50 percent of the Arbitration IFQ holders uncommitted Arbitration IFQ. Because a cooperative is an association of multiple persons, it is reasonable to reduce the amount of IFQ that a cooperative must commit. Rather than linking this to a percentage of the average IFQ converted by members in the cooperative, a more administratively simple approach would be to require that cooperatives commit at least 25 percent of the IFQ held by the cooperative to an IPQ holder. Because cooperatives are likely to hold larger amounts of IFQ than a single IFQ holder, a 25 percent standard would be a substantial amount of the total holdings of the cooperative, and likely, would be at least equivalent to an

amount equal to 50 percent of any single IFQ holder. This 25 percent threshold for FCMA cooperatives has been added to the final rule at § 680.20(h)(3)(iv)(B).

Comment 153: The time period to initiate arbitration at § 680.20(h)(3)(iv) must be limited on both sides, since only one arbitration proceeding is allowed for each processor. The share matching limit of 25 days before the start of the season is intended to also operate as a limit on the ability to initiate arbitration. In the absence of a limit, a harvester could initiate an arbitration proceeding several months prior to the season, which is unreasonable for all parties including other harvesters that may wish to deliver to that processor. The final rule should limit IFQ holders from initiating binding arbitration more than 25 days prior to the season opening.

Response: Amendment 18 states a Binding Arbitration proceeding must begin ''no later than'' 15 days before the season opening date. The regulations at § 680.20(h)(3) are consistent with Amendment 18 and provide that a Binding Arbitration proceeding may begin at any point prior to 15 days before the start of the crab fishing season, except in the case of Share Matching. NMFS agrees it is reasonable to also include a date before which a harvester could not initiate a Binding Arbitration proceeding to limit a harvester's initiating a Binding Arbitration several months prior to the season. NMFS has modified the final rule at § 680.20(h)(3)(v) to include a requirement that the Arbitration IFQ holder must initiate the Binding Arbitration procedure between 25 days and 15 days prior to the date of the first crab fishing season and a requirement that decisions would need to be issued not later than 10 days prior to the start of the crab fishing season. These requirements would effectively provide a 5-day period during which all arbitration proceedings must be decided.

Comment 154: The provision at § 680.20(h)(3)(v) needs to limit arbitration to holders of shares that are committed to one another. Revise provision so that an IFQ holder may initiate arbitration with an IPQ holder to which the IFQ holder has committed shares.

Response: NMFS agrees and has modified the final rule at § 680.20(h)(3)(v) to more clearly state that arbitration is limited to IFQ and IPQ holders to whom shares have been committed.

Comment 155: The provisions § 680.20(h)(3)(v)(A), (B), (C), and (D), which reference the use of Open Negotiations, the Lengthy Season Approach, Share Matching, and Performance Disputes, do not work here because of the timing of these actions and the timing for initiating arbitration. For example, performance disputes will not arise until during the season, while the arbitration referred to here is limited to preseason. These references should be removed, as the preceding language defining the terms of arbitration are clear. The procedures for the lengthy season approach and performance disputes should be defined in the contract, but not specifically defined in the regulation. Remove the references at § 680.20(h)(3)(v)(A), (B), (C), and (D) to the open negotiations, lengthy season approach, share matching, and performance disputes.

Response: NMFS agrees and has changed the final rule at § 680.20(h)(3)(v) to clarify the issue raised in this comment. Section 680.20(h)(3) applies to the timeframe for initiating Binding Arbitration prior to the season, if an open negotiation process is unsuccessful. It does not apply to the lengthy season approach, performance disputes, or quality disputes.

Comment 156: There needs to be a limit at § 680.20(h)(3)(vi) of the proposed rule on the time during which a person can join an arbitration proceeding in order to prevent parties joining during the proceeding to disrupt the proceeding. Require the contract with the Contract Arbitrator to specify the terms and timing of joining the proceedings.

Response: Amendments 18 and 19 do not specify a time frame by which arbitration proceedings must be initiated. The proposed rule did not specify a particular time during which binding arbitration must be joined, but did note that binding arbitration could be concluded in a fashion so that post-arbitration opt-in could occur. This effectively created the need for an end of arbitration at some point before the end of the season. The contracts that establish the binding arbitration system could include terms that specify a time period during which binding arbitration may be joined. The final rule at § 680.20(h)(3)(vi) has been modified to clarify that the contract with the Contract Arbitrator may specify the terms and timing of joining the proceedings.

Comment 157: The ability to join in a binding arbitration under § 680.20(h)(3)(vi) of the proposed rule should be contingent on the IPQ holder having uncommitted shares and the harvester making a commitment of IFQ. Limit joining by requiring a commitment under § 680.20(h)(3)(iv).

Response: The proposed regulations do not explicitly state that this is the case. The final regulations at § 680.20(h)(3)(vi) have been modified to provide that joining an arbitration requires that uncommitted IPQ be available.

Comment 158: The rationale for requiring separation of the schedule meeting and the meeting defining terms of last best offers, at § 680.20(h)(3)(vii) and (viii) of the proposed rule, is not clear. It may be that antitrust concerns dictate that IFQ holders that are not part of an FCMA cooperative should not participate in a joint meeting. If that is the case, a provision should be added to that effect.

Response: The commenter is correct in that the intent of this provision is to ensure that IFQ holders who are not members of an FCMA should not participate in a joint meeting regarding Last Best Offers. Such joint meetings could increase participant's risk of antitrust violations. The regulations have not been modified, but this response provides the rationale for the structure of the regulations.

Comment 159: The provisions at § 680.20(h)(3)(viii), (ix), and (x) should make it clear that the arbitration will apply to all committed IFQ of the IFQ holder and the corresponding committed IPQ of the IPQ holder. The arbitration outcome should decide the delivery terms of all shares that the parties have committed to one another. Revise to make arbitration apply to and fully binding on all deliveries of committed shares of the parties.

Response: The regulations have been modified to more explicitly state that the arbitration decision will apply to all committed IFQ of the IFQ holder and the corresponding committed IPQ of the IPQ holder. This modification is made in the final rule at § 680.20(h)(3)(x).

Comment 160: Under the provision at § 680.20(h)(5), information flow in binding arbitration is limited to the information submitted by parties and market report and formula. The broad availability of data to IFQ holders under notice requirements and FCMA cooperatives could be argued to create an imbalance in the proceedings.

Response: The flow of information in this program is intended to provide both parties to an arbitration adequate access to information. Information being provided to the Arbitration IFQ holders is intended to facilitate their ability to make a last best offer to that IPQ holder within the time frame required and under the limitations that all IFQ holders would be required to make their

last best offer to the IPQ holder at the same time. The exchange of information does not imbalance the information available to either party to make an adequate last best offer. The regulation has not been modified.

Comment 161: The provision at § 680.20(h)(8) makes reference to (h)(6)(v), which does not exist.

Response: The citation at § 680.20(h)(8) is incorrect and should be a reference to (h)(6). This is corrected in the final rule.

Comment 162: At § 680.20(h)(11)(ii) in the proposed rule, using the same procedure for performance disputes as for other arbitration is not possible because of the timing of arbitration and the timing of performance disputes. The specific process should be defined by industry in the contract with the contract arbitrator. The contract with the Contract Arbitrator should define the process for resolution of performance disputes through arbitration.

Response: The regulation at § 680.20(h)(10)(ii) has been clarified that applicable procedures in the binding arbitration process would apply to a performance dispute arbitration. The regulation clarifies that the contract with the contract arbitrator would specify the time frame for the process. Due to renumbering of this section, the pertinent regulation is now found at § 680.20(h)(10)(ii).

Comment 163: At § 680.20(h)(11)(iii) in the proposed rule, it is unclear how arbitration can be ''unsuccessful''. The reference to ''unsuccessful'' arbitration should be removed or explained.

Response: NMFS agrees and has removed the reference to unsuccessful arbitration at § 680.20(h)(10)(iii). It does not affect the ability of parties to pursue contract remedies if the contract is not met.

Comment 164: Fleetwide arbitration was considered and rejected by the Council in favor of a last-best-offer system built on distinct, independent arbitrations. Yet, the proposed rule § 680.20(h)(3)(i)(D) allows a binding arbitration system that mirrors fleetwide arbitration by violating Council intent concerning the sharing of confidential data. The proposed rule permits a framework in which confidential cost data may be gathered by one harvester Arbitration Organization and shared across all harvester Arbitration Organizations and thus, all harvesters. A single, omnibus FCMA cooperative is allowed to form multiple Arbitration Organizations (AOs), each under the leadership of member(s)—or representative(s)—in-common with the FCMA cooperative. Data pertinent to a bilateral price dispute could be shared back to the FCMA cooperative. The entire membership of the FCMA cooperative would be allowed to see the cost data from all processors. Furthermore, the Contract Arbitrator ''*must receive and consider all data submitted by the parties*'' (*see* § 680.20(h)(4)(iii)), including data that are not germane to the bilateral dispute. Each AO may invoke Binding Arbitration to collect processor cost data rather than resolve price disputes.

There are compelling economic incentives for harvesters to structure such a fleetwide system of mandatory Binding Arbitration in order to capture cost of production data from all processors. This possibility poses a serious antitrust/anti-competitiveness risk. It also clearly violates Council intent that Binding Arbitration is the last resort to resolve failed price disputes.

Sharing of Binding Arbitration data in violation of Council intent is manifest in the proposed rule. For example the Contract Arbitrator is also allowed to share information with parties other than those engaged in the Binding Arbitration, violating the Council's confidentiality requirements. The proposed rule, at § 680.20(h)(6)(iii) requires the contract arbitrator to provide NMFS with confidential information. Yet, Amendment 18 unambiguously stipulates the contrary.

In sum, the proposed rule allows and promotes: (a) Fleetwide Binding Arbitration that was rejected by the Council, (b) sharing of proprietary and confidential data that poses serious antitrust and anti-competitiveness risks, and (c) dispute resolution between two parties based on information regarding disputes between other parties. To resolve this problem, no member common to an FCMA cooperative may be involved in more than two arbitrations (two because of the 50 percent matching rule). This requirement would mean the language at § 680.20(h)(3)(i)(D) must be eliminated or revised to prevent sharing and collecting cost data from multiple processors. More generally, information sharing should be restricted only to the specific parties of the Binding Arbitration, per the Council intent.

Response: The Arbitration System is designed to permit members of an FCMA cooperative to participate cooperatively. Amendments 18 and 19 provide ''[a]ny parties eligible for collective bargaining under the FCMA will be eligible to participate collectively as a member of that FCMA cooperative in binding arbitration.'' Amendments 18 and 19 also provide that ''[a]ll participants to an arbitration shall sign a confidentiality agreement stating that they will not disclose any information received from the arbitrator.'' The rule establishes that members of an FCMA cooperative that are engaged in an arbitration may arbitrate collectively as part of the FCMA cooperative (*see* § 680.20(h)(3)(i)). The Program does not amend the FCMA or existing antitrust laws of the United States. Under the FCMA, cooperative negotiation is permissible. The regulations also require that the contract among the Arbitration Organizations and the Contract Arbitrator require that members of different FCMA cooperatives shall not participate collectively (*see* § 680.20(h)(3)(i)(B)). Of course, if otherwise consistent with the FCMA, two cooperatives could combine to form one cooperative and thereby act collectively. The Arbitration Organizations are not directly parties to a negotiation and therefore would not receive information on particular arbitration proceedings during their negotiation. They would be permitted access to arbitration decisions and on the amount of uncommited IPQ available to facilitate the ability of uncommited IFQ holders to access data.

Cooperatives may negotiate with several IPQ holders, as may individual IFQ holders and a person may enter multiple arbitrations subject to the limitations of the Arbitration System. This type of negotiation is not prohibited under Amendment 18. NMFS disagrees that the rule permits a framework in which confidential cost data may be gathered by one harvester Arbitration Organization and shared across all harvester Arbitration Organizations and thus, all harvesters. Section 680.20(h)(5) establishes limits on the release of data obtained in an arbitration and limits the release of data. Specifically, § 680.20(h)(5)(iv) limits the release of data by persons in an arbitration proceeding to persons who were not party to that proceeding. The proposed rule has not been modified under this particular comment.

Comment 165: The entire Arbitration System in the proposed rule is set up as though it is mandatory, rather than the path of last resort to resolve ''failed price negotiations'', as specified in Amendment 18. As such, it is set up as an analog to harvester-only pricing because everyone is forced in. It is unclear what oversight NMFS will have in this process or why it will or should have any oversight of private arbitrations.

Response: The Arbitration System is established as a mechanism that is

available to IFQ and IPQ holders if open negotiation fails. The Arbitration System requires contractual arrangements among the various parties that may choose to use the Arbitration System. The requirement that QS holders to join an Arbitration Organization is intended to facilitate cost sharing for the program and provide all fishery participants with a market report and non-binding price formula prior to the start of the season. Once a binding arbitration proceeding is entered, the participants are bound to the contractual requirements for the system. These requirements would be enforced through civil contracts. NMFS would be able to receive information on specific arbitration proceedings for purposes of oversight should concerns arise about the potential antitrust implications of particular proceedings or the Arbitration System as a whole. The rule has not been modified.

Comment 166: The binding arbitration procedure described in the proposed rule allows for and provides an incentive for harvesters to join one omnibus FCMA that uses multiple Arbitration Organizations, that could invoke Binding Arbitration for the purpose of securing confidential cost information across all processors, and exert monopoly power, rather than to resolve failed price negotiations. Harvesters would extract maximum rents because they would be able to see all arbitration information across all processors, whereas processors would not be accorded the same privilege. This asymmetry is inconsistent with the zero-risk antitrust concerns expressed throughout the document. Most importantly, such behavior by harvesters would be an antitrust violation.

Response: The Arbitration System limits the release of information received during a particular arbitration proceeding to the parties to that arbitration proceeding (*see* § 680.20(h)(5)). The limit on the release of data ensures that only the parties to an arbitration, that is the Arbitration IFQ holders and IPQ holders that are in an arbitration proceeding, have access to data submitted to the Contract Arbitrator as part of that proceeding. Section 680.20(h)(5) has been modified to explicitly state that persons who are not parties to an arbitration shall not have access to information from that arbitration proceeding, other than the result of an arbitration decision which will be released. This provision is required so that uncommited IFQ holders would be able to participate in post-arbitration opt-in. Under this revision, an ''omnibus'' FCMA cooperative would not have access to an arbitration proceeding unless the omnibus cooperative was directly party to an arbitration proceeding.

If a single FCMA cooperative formed and all members of the cooperative participated in all arbitration proceedings with all IPQ holders, it could be possible for the members of that FCMA cooperative to have access to information from all IPQ holders. If this circumstance did arise, DOJ would have the ability to review the potential antitrust implications of this situation and pursue enforcement actions if necessary. Nothing in Amendment 18 prohibits a cooperative from forming and initiating multiple arbitration proceedings with different IPQ holders. As noted in comment 164, the Program is not intended to amend the FCMA, or other antitrust laws of the United States that permit cooperative negotiations. This is clearly stated in the authorizing language in section 313(j) of the Magnuson-Stevens Act. The rule is not being modified at this time to limit the ability of an FCMA cooperative to participate in multiple binding arbitration proceedings.

Comment 167: Mandatory membership in an Arbitration Organization seems OK if the purpose is solely to initiate timely collection of relevant data that would be needed in the event of an arbitration. It should not be the springboard to easy arbitration. Nothing beyond choosing a Contract Arbitrator should be mandatory, unless a party initiates binding arbitration.

Response: In order for the Arbitration System to function the Market Report and Non-Binding Price Formula must be generated prior to the start of the season. These documents are intended for use both during the open negotiation stage and during any binding arbitration proceedings. The rule has not been modified.

Comment 168: Amendments 18 and 19 give no authority to NMFS to collect confidential, proprietary information. And contrary to the justification given in the preamble, DOJ has no authority to oversee private negotiations. Their authority only arises in the event that one of the parties claims an antitrust violation. Amendments 18 and 19 clearly state that binding arbitration is between private parties and enforced through civil damages. Furthermore Amendment 18 states ''Oversight and administration of the binding arbitration should be conducted in a manner similar to the AFA cooperative administration and oversight.'' There is no similar DOJ oversight under AFA.

Response: The provision of information to NMFS, under § 680.20(h)(6), is not inconsistent with Amendments 18 and 19 and is consistent with the legislation that enacted the Program. Section 313(j)(6) of the Magnuson-Stevens Act provides that NMFS, in consultation with the DOJ and FTC shall develop a data collection program necessary ''to determine whether any illegal acts of anti-competition, anti-trust, or price collusion have occurred among persons receiving individual processing quota under the program.'' This provision has been interpreted to allow the agency to gather information that may be required to assist DOJ and the FTC in their review process. The final rule has not been modified.

Comment 169: The ''fleetwide'' arbitration system was considered and rejected by the Council in favor of the ''last best offer'' system, which is built on distinct, independent arbitrations. Each arbitration is between one IPQ Holder Arbitration Organization and one or more IFQ Holders in an Arbitration Organization, to determine the price and delivery terms for the specific IFQ Shares committed between those quota holders in the share-matching period. Amendment 18 requires information used and exchanged in an arbitration to be kept confidential to the parties and must not be shared outside the arbitration, even within a cooperative. The Council's confidentiality requirement and its rejection of fleetwide Binding Arbitration can be subverted by the data verification standards § 680.20(h)(6)(iii) and (iv) and by allowing multiple Arbitration Organizations to negotiate on behalf of an Omnibus FCMA bargaining cooperative § 680.20(h)(3)(i)(D).

The proposed rule, at § 680.20(h)(5), not only: (a) Allows a fleetwide arbitration by organizing a fleetwide FCMA cooperative that forms multiple Arbitration Organizations, but (b) allows those Arbitration Organizations to negotiate separately with all IPQ Holders. Such a possibility has antitrust implications by allowing the FCMA to collect cost data from all processors involved in binding arbitration. The proposed rule needs to be rewritten to prevent antitrust risk stemming from binding arbitration design/organization.

Response: This comment has been addressed in the responses to comments 164 and 166.

Comment 170: Why are open negotiations, in the proposed rule at § 680.20(h)(3)(ii), limited to the period prior to the season? Why can't negotiations on price and delivery terms occur anytime throughout the season? And why are they limited to

uncommitted IFQ/IPQ? Surely disputes could arise mid-season? Suppose wholesale prices rose dramatically mid-season. Surely all crew would want to re-negotiate contracts, unless the original contract stipulated an automatic adjustment mechanism.

Response: This comment has been addressed in response to comment 148. While it is possible that mid-season disputes could arise and parties would want to renegotiate terms, those terms could be addressed by stipulating that adjustment mechanisms, retroactive payments and the like could be part of the original contract. The rule has not been modified.

Comment 171: The proposed rule language at § 680.20(h)(3)(ii)(B) needs to be revised and clarified. It states ''party to the contract'' may initiate arbitration, yet, no ''contract'' is identified. The proposed rule at § 680.20(h)(1) refer to the bilateral (IFQ and IPQ holders) contract with the Arbitrator. Yet, only an IFQ Holder may initiate arbitration. Does this allow IPQ Holders to do so, and with which IFQ shares? Also, the language ''with all Arbitrators in that fishery'' is confusing. We presume this phrase means that the IFQ and IPQ Arbitration Organizations must choose one Arbitrator from the set of all Arbitrators. If this is the intent, it is unclear. Alternatively, this language could imply fleetwide arbitration, which violates Council intent.

Response: The regulation at § 680.20(h)(3)(ii)(B) has been modified to more clearly state that only the Arbitration IFQ holder may initiate arbitration. An IPQ holder cannot initiate an arbitration proceeding. The regulations at § 680.20(h)(3)(v) have been modified to more clearly state that an Arbitration IFQ holder can select ''a Contract Arbitrator.'' The intent is that only one Contract Arbitrator would participate in each arbitration proceeding.

Comment 172: Revisions are needed to § 680.20(h)(3)(iv)(B) of the proposed rule because the 50 percent share matching requirement was intended to limit frivolous and repeated arbitrations. Under the proposed rule, an omnibus FCMA cooperative can form, which may in turn form multiple Arbitration Organizations, each satisfying the 50 percent matching rule. Then, the omnibus FCMA would enter Binding Arbitration with EVERY processor. This structure would allow every harvester in the FCMA to see every processor's data, thus creating a serious antitrust risk. Furthermore, it creates an incentive to violate the Council intent that Binding Arbitration is the option of last resort to resolve failed price disputes.

Response: The response to this comment was addressed in comment 166.

Comment 173: The proposed rule at § 680.20(h)(3)(iv)(D) suggests there would be two Contract Arbitrators, one for the IFQ holders and one for the IPQ holders? If so, how is one picked to conduct mediation/binding arbitration, if the parties cannot agree? How are bilateral disputes between two contract arbitrators to be resolved? This language needs to stipulate a single Contract Arbitrator is mutually chosen to comply with Amendment 18.

Response: The choice of the Contract Arbitrator(s) is addressed under § 680.20(e)(4) and is conducted prior to the start of the season. The Contract Arbitrator(s) selected for a fishery must be chosen by mutual agreement of the PQS holders and QS holders in the fishery. NMFS has determined that 50 percent of the PQS holders and 50 percent of the QS holders must agree to select the Contract Arbitrator(s). This process is intended to ensure that a pool of mutually acceptable Contract Arbitrator(s) is available for selection if a binding arbitration proceeding begins. The regulations at § 680.20(h)(3)(v) do not state how the Contract Arbitrator for a specific binding arbitration proceeding is selected. The regulations at § 680.20(h)(3)(v) have been modified to establish that the Arbitration IFQ holder would select the Contract Arbitrator subject to terms established in the contract among the Arbitration Organizations and the Contract Arbitrator. Because the Arbitration IFQ holder initiates the binding arbitration process by notifying the IPQ holder and the Contract Arbitrator, the choice of the Contract Arbitrator most appropriately lies with the Arbitration IFQ holder. Otherwise, the initiation of an arbitration proceeding could be delayed.

Comment 174: The proposed rule at § 680.20(h)(3)(v) states that Arbitration initiation must occur more than 15 days pre-season and that either an IFQ Holder or an IPQ Holder may initiate arbitration. Does this occur only after ''share-matching'' has occurred under § 680.20(h)(3)(iv)? If not, how are the IFQ and IPQ shares identified?

Response: The regulations at § 680.20(h)(3)(v) have been modified to state that the Arbitration IFQ holder initiates the binding arbitration proceeding. The timing of a binding arbitration proceeding is after the share matching process. Under the regulations at § 680.20(h)(3)(iv), share matching may begin at any point after 25 days prior to the start of the crab fishing season. The revised regulations at § 680.20(e)(2)(v) establish an information release mechanism that requires uncommited IPQ holders to notify Arbitration IFQ holders of the availability of uncommited IPQ shares. This regulation has been modified to indicate that this notification must occur beginning not later than 25 days prior to the start of the crab fishing season so that the process is in place for share matching. The arbitration process described at § 680.20(h)(3)(v) establishes that the binding arbitration must begin not earlier than 15 days prior to the start of the season. The share matching process would begin first, if the Arbitration IFQ holder and IPQ holder agree on terms then binding arbitration is not necessary, if not then the process established under binding arbitration would begin. The rule stipulates that there would be one arbitration proceeding per crab QS fishery during this initial phase of the arbitration.

Comment 175: The proposed rule at § 680.20(h)(3)(vi) should be revised and clarified to conform to Council intent. It states that any IFQ holder may join an arbitration. How are IFQ holders notified? When may they join—only at the beginning? Does a joining IFQ holder receive any information on the failed price negotiations? From whom? Can a cooperative IFQ holder commit more QS to that arbitration once it has begun? An IFQ holder in failed price negotiations must be limited in an arbitration to the shares it submitted in the share-matching period. The purpose of the share-matching period was to link IFQ holders with IPQ holders so that further negotiations (after the open period) or mediation could take place after the number of IFQ and IPQ were committed. Arbitration would then occur for those shares if mediation failed. The purpose of the requirement at § 680.20(h)(3)(iv)(B) for an IFQ holder to submit at least 50 percent of its shares when doing share-matching was to prevent gaming the system. A cooperative IFQ holder must be limited in share-matching, mediation, and arbitration to the IFQ that it submits to share-matching.

The Council concept is that specific IFQ holders would commit shares to a specific IPQ holder and that those shares were committed to the entire process of share matching, mediation, and arbitration. None of the shares could be removed from that process and no additional shares could join that process. The share-matching period begins only twenty-five days prior to the season opening, and the last day for an arbitration decision is five days before the season. In a twenty-day period, there is no time for adding or subtracting shares from the process. No additional

shares should be added after the share-matching period.

Response: NMFS has modified the final rule at § 680.20(h)(3)(v) based on several other comments to clarify that there is one arbitration process per crab QS fishery prior to the start of the season for each IPQ holder, that an Arbitration IFQ holder with uncommited IFQ may join a Binding Arbitration proceeding, and that an Arbitration IFQ must commit shares in order to participate in the share matching process. The process for an Arbitration Organization or third party to notify the Arbitration IFQ holder of uncommitted IPQ shares that are available for matching is provided at § 680.20(e)(3)(v).

Based on a previous response to comment, NMFS has revised the final rule at § 680.20(h)(3)(x) to require that the arbitration decision is binding on all the committed shares that are applied in the biding arbitration proceeding. The regulations have been modified at § 680.20(h)(3)(vi) to note that once Arbitration IFQ or IPQ are committed to a binding arbitration proceeding they cannot be uncommited to that arbitration. The time frame established under the binding arbitration process limits the ability of Arbitration IFQ shares and IPQ shares to enter this initial arbitration proceeding. Once this binding arbitration proceeding has been completed, uncommited IFQ holders may choose to opt-in and commit their IFQ to the IPQ holder if uncommited IPQ is available under the provisions established at § 680.20(h)(9).

Comment 176: Data confidentiality at § 680.20(h)(3)(iv)(B) is problematic. There is an inconsistency between § 680.20(h)(4)(ii), which says ''The Contract Arbitrator's decision may rely on any relevant information available. * * *'', and § 680.20(h)(4)(iii), which says ''The Contract Arbitrator must receive and consider all data submitted by the parties.'' This broad provision allows submission and mandatory consideration of information about other arbitrations from participants in those other arbitrations. That must not be allowed. It is a clear violation of Council intent that arbitrations are bilateral. The fact that an Arbitration Organization can be engaged in more than one BA, or that one FCMA may be involved in as many binding arbitrations as there are processors in each fishery, implies that the Binding Arbitration might not be based solely on information germane to the bilateral dispute. Under this scenario, an IFQ holder could provide the results of a different arbitration or the information used in a different arbitration (an IFQ holder apparently may participate in more than one arbitration since it could commit 50 percent of its shares to two different processors). An IFQ holder could secure and provide to the Arbitrator any IPQ holder cost data discovered during a different arbitration. There is no justification a Contract Arbitrator is to receive and consider information about other arbitrations or participants in those other arbitrations.

Assurance that data/information used in an arbitration remains confidential to the Binding Arbitration parties is essential but not guaranteed by the proposed rule. Sharing any of that information/data outside the arbitration or within a cooperative must not be allowed. Prevention of this possibility requires that no party invoking Binding Arbitration may be party to more than two binding arbitrations, directly or indirectly (50 percent rule). The proposed rule improperly suggests the Contract Arbitrator may share information and data with other parties § 680.20(h)(4)(iii). This allowance needs to be removed.

Response: Amendments 18 and 19 authorize the Contract Arbitrator to consider information received from the parties to an arbitration proceeding. Amendments 18 and 19 state that ''The [Contract] Arbitrator will also receive and consider all data submitted by the IFQ holders and the IPQ holder.'' The Contract Arbitrator may consider other relevant data as well as data received directly from the parties to the arbitration proceeding as is noted in Amendment 18, the Contract Arbitrator ''may gather additional data on the market and on completed arbitrations.'' The provision in the rule is consistent with Amendments 18 and 19.

Amendments 18 and 19 do not contain specific provisions that limit the ability of FCMA cooperatives to collectively negotiate. In fact, Amendments 18 and 19 state that ''[a]ny parties eligible for collective bargaining under the Fishermen's Cooperative Marketing Act of 1934 (FCMA) will be eligible to participate collectively as a member of that FCMA cooperative in binding arbitration.'' This language indicates the Council intended to allow FCMA cooperative members to negotiate collectively. FCMA cooperatives may share information internally in order to collectively negotiate as an FCMA cooperative in a binding arbitration proceeding.

As noted in previous responses, § 680.20(e)(2)(iii) notes that each member of an Arbitration Organization is required to establish a contract with that Arbitration Organization that requires them to sign a confidentiality agreement with any party with whom they are arbitrating stating they will not disclose at any time to any person any information received from the Contract Arbitrator or another person during the course of a binding arbitration proceeding. This requirement limits the ability of a party to an arbitration to share information gathered during one arbitration proceeding and use it in subsequent arbitrations. This requirement does not restrict an FCMA cooperative or another individual that has uncommitted IFQ from entering into multiple binding arbitration proceedings with multiple IPQ holders. Amendments 18 and 19 do not appear to limit the ability for an IFQ holder to enter into multiple binding arbitration proceedings.

Comment 177: The agency has specifically invited comment on the feasibility of basing the structure of the Arbitration System upon intra-industry contracts. I have strong reservations about whether this system has enough governance structure that it will be capable of making the decisions on selecting Market Analysts, Formula Arbitrators and Contract Arbitrators in a timely fashion. There appear to be too many decision points that require collective decision making on a constrained timely, and no safety net in the event that the necessary governance does not develop spontaneously. Reading the proposed rule, I was left confused and skeptical about how it is all supposed to come together.

Response: The Arbitration System was designed to meet the guidance in Amendments 18 and 19 that would leave many of the specific decisions about the Arbitration System to be established by contractual arrangements. There is the possibility under this Arbitration System that certain elements could not be implemented if parties do not agree. Specifically, the selection of the Market Analyst, Formula Arbitrator, and Contract Arbitrators require an agreement of at least 50 percent of the PQS and 50 percent of the QS holders. If this agreement does not occur, than the Arbitration System could not be used by IFQ or IPQ holders. Because this Arbitration System is considered to be an essential component of the Program as a whole, the final rule at § 680.20(e)(7) stipulates that CVO IFQ, CVC IFQ after June 30, 2008, and IPQ will not be issued for a fishery until the Market Analyst, Formula Arbitrator, and Contract Arbitrators have been selected. This provision would encourage resolution of potential conflicts. The Market Analyst, Formula Arbitrator, and Contract Arbitrators are intended to be

impartial third parties that can analyze fishery conditions and mediate disputes, and mutual agreement of qualified personnel should be possible by cooperative agreements.

Comment 178: The provisions § 680.20(e)(2)(v)(B)(1) and (2) create a paradox under which the persons (or organizations) required to deliver the notices are unlikely to be able to deliver the notices, because no person would be in a position to receive the information that needs to be disseminated or know the identities of the persons that need to receive the information. The provisions should be revised so that persons required to deliver notices (1) have access to the names of those required to receive the notice, (2) have access to the information required to be delivered, and (3) are required to maintain confidentiality.

Response: This comments has been previously addressed in response to comment 145.

Comment 179: The ability to initiate arbitration should rest exclusively with harvester IFQ holders at §§ 680.20(h)(2)(ii)(B), 680.20(h)(3)(iii)(C), 680.20(h)(3)(iv)(D), and 680.20(h)(3)(v). Section 680.20(h)(3)(ii) limits negotiations to ''prior to the date of the first crab fishing season''. Negotiation should be permitted at any time, including after the season opens, as long as participants are not committed to another share holder.

Response: This comment has been previously addressed in response to comment 139.

Comment 180: There are two problems with § 680.20(h)(3)(iv)(B).

(1) This provision requires an arbitration IFQ holder to commit at least 50 percent of the IFQ held to an IPQ holder to make a unilateral commitment. The provision should provide for the commitment of the lesser of 50 percent of the IFQ held and an amount of IFQ that results in the commitment of all of the processor's IPQ. In the absence of this provision, a harvester may be unable to commit any IFQ to a processor under the provision because the processor does not hold sufficient IPQ to take most of the harvester's IFQ.

(2) The regulation should consider a lower level than 50 percent for a cooperative to make a unilateral commitment, since a cooperative represents several share holders. It is quite likely that a cooperative may hold more IFQ than a processor may hold un-committed IPQ. Further, in attempting to define ''substantial'' there is no grounds for creating a standard that results in a higher absolute quantity for cooperative participants than for individuals. A more appropriate threshold would be 50 percent of the average share holding in the cooperative or the average share holding in the fishery.

Response: This comment has been previously addressed in response to comment 152.

Comment 181: Section 680.20(h)(3)(i)(A) and (B) should refer to ''FCMA crab harvesting cooperatives''. As written it could be interpreted to narrow the otherwise legal ability of more than one FCMA cooperative to act collectively under the shelter of the FCMA. This ability should not be restricted. It should also be recognized that harvesters are eligible to join an ''FCMA marketing cooperative'' whether they are in or out of a ''FCMA crab harvesting cooperative'' and may chose to join an umbrella ''FCMA marketing cooperative'' which holds no IFQ. Such a marketing cooperative simply engages in collective bargaining to the degree allowed by the FCMA, and its ability to do so should not be restricted by these regulations.

Response: NMFS agrees in part. The regulations are not intended to limit the ability of individuals to join FCMA cooperatives to serve different functions. IFQ holders are limited to joining one crab harvesting cooperative for a given fishery, but this is not intended to limit participation in FCMA cooperatives. The limits on FCMA cooperatives participating collectively in a Binding Arbitration proceeding is intended to reduce potential antitrust risks for participants. These restrictions would not limit the ability of a person to participate in an FCMA cooperative for purposes of marketing and still participate in an FCMA cooperative for collective negotiation as long as those two FCMA cooperatives were not collectively negotiating in a Binding Arbitration proceeding. NMFS has modified the regulations at § 680.20(h)(3)(i)(A) and (B) to clarify this point.

Comment 182: The proposed regulation should be amended to provide for separate Arbitration Organizations to be formed by unaffiliated holders of QS; holders of PQS; and affiliated holders of QS. The administrative obligations and responsibilities should be detailed in one location and must be material terms in the binding arbitration agreements.

The terms should require the following;

(1) Select and contract with a market analyst, formula arbitrator, and contract arbitrators;

(2) Establish a fund to pay expenses of these persons which are common to all;

(3) Agreement that IPQ shares and IFQ shares committed during the share matching period or during the arbitration cannot be withdrawn; and

(4) Agreement that all information gathered for the arbitration is strictly confidential to the arbitration and participants may not share any information received from the contract arbitrator with anyone.

Response: The regulations do require the formation of separate Arbitration Organizations by unaffiliated holders of QS; holders of PQS; and affiliated holders of QS (*see* § 680.20(d)(1)). The administrative obligations of the Arbitration Organizations are described under § 680.20(d) and § 680.20(e). These provisions stipulate that contractual agreements must be established among the members of the Arbitration Organization.

Comment 183: Arbitration Organizations should be given the ability to hire a third party for the delivery of notices regarding uncommitted IPQ for Share-Matching, uncommitted IPQ available for arbitration, and notification to uncommitted IFQ holders of the results of arbitrations involving IPQ holders with remaining uncommitted shares.

Response: This comment has been addressed in the response to comment 139.

Comment 184: The proposed regulations provide that a contract arbitrator may receive information from any holder of QS, PQS, IFQ, or IPQ on current ex-vessel prices, market prices, for any products, innovations or other matters, but may not share that information with the participants. The contract arbitrator has access to the Market Report for the fishery, which is essential, and should have access to the non-binding price formula. The non-binding price formula is based on the historic data needed to understand the historic division of revenues between harvesters and processors. These two data sources are adequate supplements to the information provided by the arbitration participants. The contract arbitrator should not have access to information from any sources other than the Market Report, the Non-Binding Price Formula, and the information submitted by the parties. Arbitration decisions based on information unknown or unavailable to the parties will completely undercut trust in the arbitration system and may allow arbitrary information into the proceeding.

Response: The Contract Arbitrator does have access to the information described under this comment. The ability of the Contract Arbitrator to have access to other data is not limited by this rule, but the Contract Arbitrator is required to consider certain standards during the evaluation of the offers made by IFQ and IPQ holders. This approach is supported by Amendments 18 and 19 which state that the Contract Arbitrator ''will gather relevant independently and from the parties,'' and ''will receive and consider all data submitted by the IFQ holders and the IPQ holder.''

Comment 185: Section 680(e)(2)(iii) requires that each party to an arbitration sign a confidentiality agreement with the other party in the arbitration stating they will not disclose to any other person any information exchanged in the arbitration. If one party is a cooperative, the regulation should also require that the information not be disclosed to other members of the cooperative.

On May 18, 2004, Arnold & Porter provided an antitrust memorandum to NOAA recommending several significant changes in the arbitration program. On May 25, NOAA GC forwarded the memorandum and proposed changes to the Council motion for action in June 2004, which was taken. On pp. 26–30 of the Arnold & Porter memorandum, the authors cited strong concerns with information flow in arbitration. They recommended that the arbitrator be prohibited from sharing with the parties any information that he received from persons outside the arbitration. They also recommended a new requirement for a confidentiality agreement which they noted is standard in commercial arbitrations. The recommendations were based on a concern that sensitive pricing and cost information might be shared with or available to competitors.

In the NOAA GC recommended changes to the Council motion, the confidentiality agreement requirement was added. Part of the rationale states that there is a ''* * * risk of antitrust liability if cooperative or members of a cooperative share sensitive competitive information * * *''. Both the Arnold & Porter memorandum and the NOAA GC recommendations point to the possibility of the sharing of sensitive information as a significant antitrust concern. Since it is possible that cooperatives will be formed with large numbers of participants, a single cooperative may be involved in several arbitrations, either in a single year or in succeeding years.

The confidentiality agreement should require that a cooperative protect and partition confidential information within the cooperative so that only those members affected by a specific arbitration receive information from that arbitration. Although an FCMA cooperative is allowed under the antitrust laws to negotiate prices collectively, the FCMA does not condone all activity that might otherwise be in violation of the antitrust statutes. In the crab program's binding arbitration, an IPQ Holder is required by statute and regulation to participate in an arbitration at the sole discretion of an IFQ Holder. As a practical matter, the IPQ Holder must justify its price and delivery offer with cost data if it hopes to win an arbitration. Since the submission of such data is compelled by the program, in practice, every effort must be made to protect the confidentiality of that sensitive data and information.

Response: As the commenter notes, an FCMA cooperative is allowed under existing antitrust laws to negotiate collectively. The ability for an FCMA cooperative to negotiate collectively would be limited if information among members of a cooperative were further limited. The regulations have been modified based on previous comments to clarify that information gained from one arbitration proceeding may not be used in other arbitrations. These regulations are not intended to limit existing antitrust laws. As with all aspects of this program, NMFS, DOJ, and FTC retain the ability to review the conduct of parties and investigate any possible antitrust violations.

Comment 186: Some of the regulations in § 680.20 may be seen as limiting the ability of a non-IFQ holding FCMA Coop to act in behalf of other IFQ holding cooperatives and individual harvesters. Clarification should be given so the legal rights of fishermen provided under the FCMA are not truncated by the regulations of this section. The following text should be inserted: ''Types of cooperatives governed under this section: The regulations in this section pertaining to non-affiliated harvester cooperatives apply only to crab harvesting cooperatives that have formed for the purpose of applying for and of fishing under a crab cooperative IFQ fishing permit issued by NMFS''. Inclusion of this language is consistent with § 680.21 and would help to clarify activities permitted under the FCMA for collective bargaining cooperatives.

Response: The final rule at § 680.20(f), (g), and (h) has been modified throughout those paragraphs to note that the ability of IFQ holders to participate collectively is intended to be limited to those persons who are members of FCMA cooperatives, distinct from the non-FCMA cooperatives that can form for purposes of harvesting IFQ crab.

Comment 187: Arbitration Organizations will incur some cost, perhaps substantial cost, preparing for and executing an arbitration proceeding. The proposed rule at § 680.20(e)(2)(vi)(A)(*4*) provides payment for analysts and arbitrators but does not provide for the sharing of the expenses of the Arbitration Organization initiating the action. Non-member IFQ holders may opt-in to an arbitration result without sharing the full cost of the arbitration. The result is a negative incentive for IFQ holders to support a professional, informed and useful Arbitration Organization. The burden of maintaining such an organization will fall to responsible IFQ holders while freeloaders wait for the smoke to clear and opt-in to the result.

One solution to this problem would be that the opt-in provision would only apply to IFQ holders who belong to the arbitration association directly involved in an arbitration proceeding. IPQ holders can notify other Arbitration Organizations of a proceeding and those organizations can do their own work and bring their own information and price ideas to the table at that time. Their members can then opt-in if they want to. Another alternative would be to allow an opt-in fee set by the arbitrator for IFQ holders who are not members of participant Arbitration Organizations. This alternative may also include opt-ins by affiliated vessels.

Response: The costs for engaging in an arbitration could be significant and NMFS agrees that it would be appropriate to consider fees for any post arbitration opt-in. The regulations at § 680.20(h)(9)(A) note that IFQ holders that opt-in do so under the terms of the arbitrated contract. The arbitrated contract could include a provision that requires a proportional payment of fees for any IFQ holder that opts-in to a completed arbitration contract. Limiting the ability of certain IFQ holders to opt-in based solely on their participation in a specific Arbitration Organization would run counter to the overall intent of the opt-in provisions. The regulations at § 680.20(h)(9) have been modified to state that the Contract Arbitrator may set the fees for the IFQ holder opting-in if those fees have not been determined in the Binding Arbitration contract.

Comment 188: The provision at § 680.20(2)(e)(vii) is important to avoid antitrust violations for Processors, but why is this provision extend to harvester Arbitration Organizations organized as FCMA collective bargaining associations? It is my

understanding that individual IFQ entities may form an Arbitration Organization with one member. Is that member then prohibited from forming a contract on his own behalf? This provision should apply to processor and affiliated Arbitration Organizations only.

Response: The Arbitration Organizations are not permitted to negotiate on behalf of their members to avoid potential complications of allowing associations that are not FCMA cooperatives, and therefore not accorded the antitrust protections of that Act, to negotiate collectively. In the case of an individual who wishes to form his own Arbitration Organization, that individual could still participate in contracts, but the roles of the Arbitration Organization under each contract would be considered separate. If a group of IFQ holders joins an FCMA cooperative and an Arbitration Organization, they could collectively bargain under the name of the FCMA cooperative, but not as the Arbitration Organization. The rule has not been modified.

Comment 189: Under § 680.20(e)(4), can Affiliated QS Arbitration Organizations also select ''one Market Analyst, one Formula Arbitrator, and Contract Arbitrator(s) for each crab QS fishery'' or are they lumped with either harvesters or processors? Since affiliated vessels cannot participate in arbitrations, should they have a voice in the matter? Define role of affiliated vessels in selection of analysts and arbitrators at § 680.20(e)(4).

Response: Affiliated QS holders are not permitted to participate in the selection of the Market Analyst, Formula Arbitrator, or Contract Arbitrator(s) as established under § 680.20(e)(4). Those regulations stipulate that only Arbitration QS holders and PQS holders can participate in the selection of these experts. A PQS holder who also holds QS could not participate in this selection process as a QS holder, but could participate as a PQS holder.

Comment 190: Because an FCMA collective bargaining association may not be a ''harvesting'' entity or an IFQ holder, and QS/IFQ holders are allowed to belong to both a harvesting and non-harvesting cooperative, the arbitrator, at § 680.20(g)(2)(iv), should be allowed to meet with representatives (employees and professional advisors) of the collective bargaining association cooperative or with members of that association.

Response: The regulations require that the contract with the Formula Arbitrator must specify that the Formula Arbitrator may meet with members of any FCMA cooperative collectively and shall meet with distinct FCMA cooperatives separately. These requirements are intended to limit the ability of the Formula Arbitrator to meet with members of more than one FCMA cooperative simultaneously. Nothing in the contract requirements would limit the ability of a Formula Arbitrator to meet with members of the same FCMA cooperative and their representatives (employees and professional advisors) at the same time.

Comment 191: Under § 680.20(3)(i)(b), members of different crab harvesting cooperatives shall not participate collectively unless they are also members of the same non-IFQ holding FCMA collective bargaining association.

Response: NMFS agrees. The regulations have not been modified.

Comment 192: At § 680.20(3)(iv) in the proposed rule, a distinction should by made between individual IFQ and cooperative IFQ share matching commitment. I think the idea here is to disincentive frivolous share matching and ''fishing expedition'' arbitrations, however this provision would restrict the inner machinations of cooperatives whose members wish to harvest ''their own'' IFQ and to match their shares with traditional markets. It is a disincentive to cooperative and the provision should by modified to exclude harvesting cooperatives.

Response: The requirement to commit shares to the IPQ holder has been modified in response to previous comments. Twenty-five percent of the IFQ held by a cooperative would have to be matched. This requirement should permit cooperative members to negotiate internal arrangements adequate for them to establish markets with multiple partners if desired.

Comment 193: Independent harvesters who fail to match shares and form a contract or initiate arbitration prior to the arbitration initiation deadline (15-days before the season) may want to ''cherrypick'' arbitration results for the highest price. However, if a processor has uncommitted IPQ but did not engage in an arbitration proceeding, this ''last man'' harvester is at the mercy of the processor and without recourse. This situation can be avoided by a share matching deadline prior to an arbitration initiation deadline or by eliminating the ''15-day before the season'' deadline for initiating arbitration.

Response: This comment has been addressed in response to comment 153.

Comment 194: How does one initiate a performance dispute arbitration 15 days prior to the season if there hasn't yet been any performance to dispute? Remove deadline for initiating arbitration. In addition, a ''statute of limitations'' restricting performance dispute arbitrations to a reasonable time frame should be included.

Response: The time frame for performance disputes has been addressed in response to comment 155. NMFS agrees, that a time frame may be appropriate, but the specific timing of such a limitation is difficult to determine at this time. The contract terms with the Contract Arbitrator can establish a time-frame for an opt-in provision but that does not require a specific regulatory requirement in the regulations. The regulations at § 680.20(h)(9) have been modified to note that the Contract Arbitrator may specify a time-frame by which opt-in may be exercised for a particular arbitration decision.

Comment 195: A problem with the opt-in provision is that a single arbitration proceeding may result in multiple arbitration results. The opt-ins will want to join the arbitration with the best result. Again, there is disincentive to participate in the process, as it would be beneficial to sit back and select the highest result. In addition, the processor may not be able to accommodate the delivery terms extended to all the opt-ins (for example the plant capacity may not be adequate to handle the amount of crab required to be delivered between two specific dates). In addition, because affiliated vessels are left without recourse to arbitration, they should be allowed to opt in to an arbitration result provided an appropriate fee determined by the arbitrator goes to the harvester Arbitration Organization conducting the arbitration. Restrict opt-in provision to non-affiliated IFQ holders in the same Arbitration Organization. Allow some flexibility for delivery and perhaps other terms as determined by the arbitrator.

Response: The ability of an uncommited Arbitration IFQ holder to opt-in to the best result is precisely what the opt-in provision is intended to allow. As noted in the response to comment 187, the Contract Arbitrator may establish fees for any opt-in contract. Affiliated IFQ holders are specifically excluded from the opt-in provisions based on concerns about increased risks of antitrust violations that may arise if affiliated members participate in price setting negotiations that could result in information being shared among harvesters and processors.

Comment 196: The quality specialist should only determine the quality of the crab, not the price. The quality

specialist may be eminently qualified to make judgments on the quality of crab and at the same time know nothing of crab prices. Section 680.20(h)(12)(ii) should be modified. appropriately.

Response: NMFS agrees. The quality specialist should determine the quality of the crab, but would likely be limited on his ability to comment on prices. NMFS has modified the final rule at § 680.20(h)(11) modified to limit the tasks of the quality specialist to that of determining the quality of the crab. Due to renumbering of this section the proposed § 680.20(h)(12)(ii) is renumbered § 680.20(h)(11)(ii).

Comment 197: The binding arbitration process should be strictly construed to give full effect to applicable antitrust law, and as a result, processor-affiliated harvesters should be prohibited from participating in the arbitration process. Though the Council motion did not prohibit processors and processor affiliates from participating in the binding arbitration process as IFQ holders, it did acknowledge that there were substantial antitrust concerns with such participation and authorized its prohibition to the extent necessary to comport with antitrust laws. The DOJ has already opined that participation by affiliated IFQ holders would violate applicable antitrust law because the binding arbitration process acts as a collaborative price setting mechanism. The prohibition in the proposed rule is therefore appropriate, both as a matter of complying with the mandate of the Council motion and as a preservation of the binding arbitration objectives.

Response: NMFS agrees. Affiliated IFQ holders will not participate in the arbitration process in the final rule.

Comment 198: To the extent the proposed rule restricts the ability of cooperatives to collaborate in the binding arbitration process, it does so inappropriately. Throughout § 680.20, cooperatives are restricted from collectively negotiating and sharing pricing information. Nothing in Amendment 18 prohibits cooperation between FCMA cooperatives. To the extent that the post-arbitration opt-in right is meaningful, it would presumably require knowledge of the arbitration decision, and in many cases, this knowledge will only be acquired on an inter-cooperative basis. Blocking the exchange of information under the guise of antitrust protection only serves to limit the negotiation power of unaffiliated harvesters that have formed FCMA cooperatives to counterbalance the pricing leverage granted to IPQ processors under the Program framework. Under applicable antitrust law, however, cooperatives formed under the FCMA are permitted to engage in marketing activity, both individually and collectively. It is likely that the arbitration process will be deemed marketing activity within the scope of the FCMA cooperative antitrust exemption. Therefore, any prohibition on inter-cooperative negotiation and information sharing contained in the proposed rule should be replaced with a standard that permits such activity to the extent permitted by applicable antitrust law.

Response: The limitations on data exchanges is intended to reduce the potential increased risks of antitrust violations that could occur if information is freely traded among cooperatives that are not engaged in the same negotiations. While it may be the case that inter-cooperative information exchange among IFQ holders that are parties to different arbitration proceedings may not be a violation of antitrust laws, the risk of inappropriate information exchange is increased if this activity is specifically condoned. NMFS has adopted a risk averse policy as it pertains to Binding Arbitration. Information on the availability of uncommitted IPQ shares and the results of any arbitration decisions are made available through provisions at § 680.20(e)(2)(iv). This information exchange mechanism should provide an adequate mechanism to ensure that Arbitration IFQ holders with uncommitted shares are apprised of decisions in a timely fashion.

Comment 199: Membership in an Arbitration Organization should be permissive, not mandatory, and those who opt not to join should be required to remit their portion of the arbitration expense directly to NMFS. Membership on an Arbitration Organization should be permissive because many stakeholders in the Program cannot participate in binding arbitration or may opt not to do so. Eliminating the mandatory membership in Arbitration Organizations will decrease the overall cost of binding arbitration to the fishery, likely resulting in fewer price disputes.

Response: NMFS Disagrees. Amendments 18 and 19 clearly provide that the costs of arbitration are meant to be split among QS and PQS holders. Regulations at § 680.20(e)(2)(vi) establish Arbitration Organizations as a mechanism to ensure that the QS/IFQ and PQS/IPQ holders coordinate in the selection and the payment of the Market Analyst, Formula Arbitrator, and Contract Arbitrator. These costs are shared by all QS/IFQ and PQS/IPQ holders because the results of the Market Report, Non-Binding Price Formula, and the Contract Arbitrator are available to all fishery participants. The costs of entering a lengthy season approach, share matching, Binding Arbitration, quality and performance disputes are established through the Arbitration Organizations. The Arbitration Organizations may establish methods for assessing increased fees to IFQ or IPQ holders that use a lengthy season approach, share matching, Binding Arbitration, quality and performance dispute mechanisms relative to other IFQ or IPQ holders that do not use those mechanisms. The specific method for sharing fees among the IFQ and IPQ holders may be determined by negotiation among the various Arbitration Organizations.

Comment 200: Consistent with the assertion that membership in Arbitration Organizations should be voluntary, the requirement at § 680.20(e)(vii) that transfer of QS, PQS, IFQ or IPQ be conditioned on the transferee's membership in an Arbitration Organization should be eliminated. This provision creates a condition to transfer eligibility that is dependent on resolution of private contract negotiations. To the extent negotiation of Arbitration Organization documents are contentious, this requirement diminishes the negotiating power of individuals in a position to receive QS or IFQ by transfer. Moreover, because this provision conditions the transfer of a Federal harvesting privilege on acts beyond the control of either the applicant or the agency, it is fundamentally unreasonably and unfair.

Response: The intent behind this provision was to ensure that if QS/IFQ or PQS/IPQ is transferred after the Annual Arbitration Organization Report or the start of the season that the recipient of that QS/IFQ or PQS/IPQ has fulfilled the requirements necessary in order to participate in the Arbitration System, including the payment of fees. The commenter is correct in that this requirement could limit the ability of transfers to occur and does condition the transfer on the transferee meeting certain private contractual arrangements. If a person receives QS/IFQ or PQS/IPQ by transfer, there is no requirement that they are members of an Arbitration Organization. NMFS agrees that this transfer restriction as a contract term is not well-suited to meeting these goals. NMFS is revising the regulations to delete this provision and adding a provision at § 680.20(c)(4) that requires that if a person receives QS/IFQ or PQS/IPQ by transfer they are required to join an Arbitration Organization upon transfer. Payment of fees or other cost sharing measures could be established

by the Arbitration Organization for any new members.

Comment 201: For the purpose of share matching under § 680.20(h)(3)(iv)(B), a cooperative's offer to match up uncommitted Arbitration IFQ should be deemed substantial if it is 50 percent or more of the average individual IFQ holder's remaining uncommited Arbitration IFQ, not 50 percent or more if the cooperative's total uncommited Arbitration IFQ. The proposed rule required that a cooperative seeking to commit Arbitration IFQ make an offer of at least 50 percent of that cooperative's uncommited Arbitration IFQ. Because this requirement is beyond that expressed in the Council's motion, and because it would decrease the marketability of a cooperatives IFQ and its ability to take advantage of the arbitration process, the proposed rule should be modified to better comport with the Council's intent. And, because the Council's motion focuses on the substantiality of an individual's offer to match up uncommited Arbitration IFQ, the proposed rule should permit cooperatives to meet this substantiality requirement by making an offer to commit Arbitration IFQ in an amount that is equal to 50 percent or more of an average individual IFQ holder's uncommited Arbitration IFQ.

Response: This response has been addressed in the response to comment 152.

Comment 202: In the case of binding arbitration at § 680.20, there is good reason to apply greater restrictions on processor interest than apply elsewhere. The reason is that the exchange of information contemplated by the arbitration process is necessary to its effectiveness, but also an invitation to abuse, if made open to processors.

Response: The regulations regarding information exchange in the Arbitration System are intended to minimize antitrust risks to participants in the system while facilitating the exchange of information.

Monitoring and Enforcement

Comment 203: The additional requirements for CPs at § 680.23 will add undue costs to a system that already works. Finding additional space aboard a CP for larger floor scales in the observer area will be problematic, if not impossible. NMFS should adopt the following procedure:

Each day the observer on board the vessel will periodically take a sample and this crab will be held separately. The observer will record the number and total weight of the crab, This crab will be processed separately each day and the observer and foreman will be available to verify the actual recovery rate of finished product. After 75 percent of the trip is complete, the observer and foreman will agree on an overall recovery percentage and both will sign a statement noting this rate and the process used to arrive at this rate. The final round weight to apply against the IFQ can be determined by taking the total net box weight and dividing it by the agreed upon recovery rate.

Response: NMFS disagrees. The method described by the commenter would put additional burden on the observer and would require NMFS to specify observer duties in regulations. Because the State of Alaska is responsible for setting levels of observer coverage and training, NMFS is not able to base a catch accounting system on presumed levels of observer coverage, nor does NMFS believe it is appropriate to specify observer duties in regulation.

Comment 204: The requirement for CPs to have internet connectivity at § 680.5(b) as part of interagency electronic reporting system is unreasonably burdensome on CPs for two reasons. First, the technology for reliable at-sea internet connectivity is not yet perfected and may not work in certain sea conditions. These vessels are relatively small by comparison to large trawl vessels and are not well suited to reliable data transfer by satcom internet due to the ship's motion. Second, there is a well tested and reliable data transfer system in place by text over satellite communications systems, and weekly production reports are now transferred in this fashion. Considering the expense and potential for unreliability, CPs should be allowed to report catch data using existing sat-com systems as used in WRPs.

Response: NMFS agrees. It was not NMFS' intent to require CPs to submit catch reports over the internet. This final rule amends the regulations at § 679.5(d)(2)(ii) to clarify that CPs are not required to use the Interagency Electronic Reporting System and may use other, NMFS approved, means of reporting catch.

Comment 205: The requirement at § 680.5(c)(2) to report daily catch for CPs is unreasonably burdensome and without good purpose. Daily reporting of crab catch is not required of the catcher vessel component of the fleet, reporting is at delivery or landing. Managers will not be using daily catch reports from CPs to manage the fishery but will assume that individual CP catch will be limited to the amount of IFQ they hold. WPRs, offload reports, and transfer logs will be required at the point of delivery. These will be sufficient for managers and regulators to monitor the activity of the CP sector. Replace a daily catch reporting requirement for the CP fleet with a requirement for weekly report as required in other federal fisheries.

Response: NMFS agrees and has amended the final rule at § 680.5(d)(4) to require weekly, rather than daily, catch reporting for CPs. NMFS notes, however, that this change does not relieve the burden upon CPs to accurately account for catch internally on an ongoing basis.

Comment 206: The Council Motion recognized that onboard observer requirements for the BSAI crab fisheries should remain deferred to the Alaska Board of Fisheries, as prescribed in the FMP. Therefore, descriptive and regulatory language at § 680.23(h) of the proposed rule, regarding requirements for the provision of observer work stations, should be removed. If these provisions of the regulations, as written, are adopted into regulation, then every time the Alaska Board of Fisheries makes a regulatory change through its cyclic public process, a duplicative or parallel complimentary Council action would be required.

Response: NMFS disagrees that Amendment 18 prevents NMFS from implementing standards for observer work areas. While Amendment 18 does defer observer coverage to the State of Alaska, NMFS is responsible for ensuring that quotas are adequately monitored and reported. NMFS does not believe that Amendment 18 prevents NMFS from implementing regulations to adequately monitor and account for catch simply because they benefit or involve the observer.

However, NMFS agrees that duplicative regulations could be confusing and create potential regulatory conflict and such duplicative regulations could be created in the event that the State of Alaska implements regulations governing working facilities for observers on CPs. Further, catch accounting for CPs is based on not only on the round weight of crab as verified by the observer at-sea, but also upon a full accounting of product when the crab is landed. Although NMFS believes that catch accounting accuracy could be improved by implementing standards for the observers' work areas, NMFS concurs that the State should have the opportunity to address this issue. NMFS will revisit the situation in the future to determine whether additional regulations governing observer's work areas are necessary.

Comment 207: The requirement to land product processed on board at a

shoreside location in the U.S. accessible by road or regularly scheduled air service should be modified to specifically identify the port of Adak as a designated port. While Adak has regularly scheduled air service at this time, that may change. It is important to golden king crab CPs to have the ability to off-load product at the Adak port, rather than being forced to travel to Dutch Harbor to off-load.

Response: NMFS disagrees. There is no reason to suppose that Adak is any more likely to lose regularly scheduled air service than other small communities, such as Akutan, Sand Point, King Cove, or Saint Paul where crab product may be offloaded. All of these communities have received essential air service determinations from the Department of Transportation and are eligible to receive subsidized air service. In the unlikely event that a community where crab product had been offloaded for accounting were to lose regularly scheduled air service, NMFS would work closely with the affected vessels to ensure accurate and affordable catch accounting.

Comment 208: A product recovery rate should be an option instead of scales to weigh the catch. This is particularly true for smaller CPs that will have difficulty in installing the scales, due to space constraints and cost. The initial estimated cost of $100,000 or more will be a significant financial hardship for the small vessel to absorb. The ability to have a product recovery rate established is available and NMFS should move forward with an analysis of this important issue.

Response: NMFS intends to further investigate recovery rate based accounting. However, at this time NMFS does not believe that a recovery rate accounting system is appropriate for several reasons. First, recovery rate data exist only for very short periods of the year and only for certain areas. Under a rationalized fishery, NMFS anticipates that fishing will take place during a much longer season and data are not available to predict the extent to which a change in fishing time or area will affect recovery rates. Second, recovery rates vary among vessels for numerous reasons. Most importantly, some vessels glaze crab prior to final packaging while others dry freeze the crab. NMFS would need to either develop seasonal rates, vessel specific glaze rates, or publish rates based on an absence of glaze. Such rates would unfairly debit quota from those boats that do glaze their finished product. Third, any recovery rate based accounting system would require observer coverage levels designed to ensure accurate accounting and an observer training program. Finally, a rate-based accounting system would require development and specification of product recovery rates. Such a process would needlessly delay implementation of this action.

Comment 209: Where are the provisions to catch violators, fine them and jail them? Measures are necessary to prevent harvesters from catching more that they report to NMFS.

Response: NMFS agrees that enforcement is an important component of ensuring compliance with fishery regulations, and, therefore, NMFS has implemented monitoring and enforcement measures for this Program. NMFS believes the fines and other sanctions available under the Magnuson-Stevens Act are sufficient to deter unlawful activity.

Comment 210: The definition of Processing at § 680.2 should specifically state that deliveries for the purposes of live shipping are allowed. Crab delivered for the purpose of live shipment are not suitable for consumption or storage. In addition, live shipping is not considered ''processing'' as defined by the USCG. The intent is to continue to allow all typical pre-rationalization product forms.

Response: None of the regulations in this rule preclude any crab product form, including live crab, from being produced or shipped. The regulations require that all crab harvested by catcher vessels be landed at, and accounted for by, an RCR. This accounting must take place at the time of offloading and before any processing has taken place. After accounting, the receiver of the crab may ship the crab on in their unprocessed form or produce any product they wish. NMFS' definition of processing is designed to prevent a harvesting vessel from producing a crab product that is suitable for long term storage or whose weight would be different than live, whole crab before that crab has been properly accounted for at the time of landing or, for CPs, reporting.

Comment 211: The current proposed harvest overage cap of 3 percent is too low and places harvesters at a disadvantage. The overage cap should be increased to 5 percent.

Response: The harvest overage provision of 3 percent is a provision of Amendment 18. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program provisions in Amendment 18. NMFS does not possess the discretion to alter the harvest overage provision as it exists in statute. Any change to the harvest overage provision requires an amendment to the Program and should be addressed with the Council.

Comment 212: Concerning fishing overages, any overage of three percent or less of the ''last trip'' should be forfeited, with the proceeds to be dedicated to the observer program. Additional sanctions for overages above three percent may be necessary. Further a post-delivery harvester QS transfer process should be developed to accommodate in-season overages.

Response: See Response to comment 18 (post-delivery transfers) and 213 (IFQ overages). Amendment 18 does not direct how penalties will be administrated or resolved for any IFQ overages. Nonetheless, NOAA does not have the authority to provide proceeds from any seizures resulting from a violation to any agency other than NOAA. Therefore, NOAA cannot forward any proceeds from IFQ overage seizures to the State of Alaska observer program.

Comment 213: The Council motion provides for the forfeiture of any overage from the last trip from a fishery and for penalties for any overage in excess of three percent of the unused IFQ on the last trip. These provisions appear to be missing from the regulation. The final rule should clarify that all overages are forfeited and that overages in excess of three percent are a violation.

Response: See Response to Comment 18 on post-delivery transfers. NMFS agrees that Amendment 18 states, ''Overages up to 3 percent will be forfeited. Overages above 3 percent results in a violation and forfeiture of all overages.'' However, as a general policy, NMFS does not include penalties schedules in regulation. Therefore, NMFS has not included any regulatory language addressing overages and this discussion serves to inform the public of their rights and obligations regarding overages that occur during the last fishing trip.

The Council did not provide a carryover provision in this Program similar to the halibut and sablefish IFQ program and harvesters are prohibited from exceeding their IFQ. Thus, NMFS interprets that any overage of any allocation under the program is a violation. This means that NMFS will address any overage through an enforcement action. The is necessary because the Magnuson-Stevens Act requires that a violation must exist in order for NMFS to seize any crab or the proceeds from any crab.

NMFS also interprets the 3 percent statutory provision as a minimum standard by which penalties would be levied under the Program and additional

penalties may be imposed depending on the facts of each case. This means that a crab fisherman will always forfeit any overage as part of any enforcement action, and may or may not receive an additional monetary penalty depending on the facts and circumstances surrounding the violation. Absent any aggravating or other factors, the penalty will be based on the penalty schedule developed by NOAA. Under all circumstance, NOAA reserves the right to evaluate each overage case on its own merits.

Comment 214: Overages and shortfalls present important issues. There should be a grace period in which there is an opportunity, without forfeiture or penalty, to find available, unutilized IFQ to cover harvesting overages. Forfeiture and a penalty would only apply where there remained an overage in excess of 3 percent after the grace period. If there is IFQ to cover an overage, there is no conservation impact, any overage less than three percent would likely have no such impact. There should also be a grace period in which there is an opportunity, without forfeiture or penalty, to find available, uncommitted IPQ to cover shortfalls for deliveries of harvested crab. The Council, at its December 2004 meeting, heard numerous witnesses testify in support of these positions.

Response: See Response to Comment 18 (post-delivery transfers) and 213 (IFQ overages). Amendment 18 clearly directs that IPQ holders may not receive any Class A IFQ in excess of the amount of IPQ they possess. Amendment 18 does not provide for any overage or underage of IPQ, nor does it include a 3 percent forfeiture provision for IPQ similar to that for IFQ overages. Therefore, any Class A IFQ purchased by an IPQ holder in excess of their IPQ constitutes a violation.

Since any overage of IPQ constitutes a violation, NMFS would issue IPQ holders who exceed their IPQ a notice of enforcement action for any overage. Penalties for IPQ overages would be handled at the discretion of NOAA based on penalty schedules developed independent of this final rule.

Similar to IFQ overages, Amendment 18 does not provide any provisions for IPQ overages or the ability to undertake post-delivery transfers of IPQ. Therefore, NMFS cannot accommodate a ''grace period'' to allow post-delivery transfers of IPQ at this time. Any change addressing IPQ overages or post-delivery transfers of IPQ requires an amendment to the Program and should be addressed with the Council.

Comment 215: The Council motion provides that deadloss would be counted against QS. This provision appears to be missing from the regulation. Include provision providing for deadloss accounting.

Response: NMFS has added provisions for deadloss accounting to the final rule at § 680.5(b)(5) and (6). NMFS also recognized a related problem with accounting for personal use crab after publication of the proposed rule and has included the personal use accounting provision in this response.

Amendment 18 clearly directs that all landings including deadloss will be counted against IFQs. Amendment 18 also directs that any Class A IFQ crab received by a processor must be deducted from that processor's IPQ. NMFS interprets these two statements to mean that deadloss and personal use crab must always be debited from the harvester's IFQ, but are to be counted against the receiving processor's IPQ only if they are Class A IFQ crab received by the IPQ holder. NMFS revised the final rule at § 680.5(b)(5) and (6) to clarify that deadloss and personal use crab will be debited from IFQ, but will not be debited from the receiving processor's IPQ unless the crab is purchased. NMFS also added a definition of ''retain'', in § 680.2 of the final rule, to aid in enforcement of the recordkeeping and reporting requirements involving deadloss and personal use crab.

Economic Data Collection

Comment 216: The time for providing the completed submission of historic data at § 680.6(c)(2), (e)(2) and (g)(2) is limited to 60 days after final rule becomes effective. Given the historic nature of these data and the complexity of consolidating information into reports, the 60 day interval provided for submitters of the EDR from the publishing of the final rule in the **Federal Register** is not a sufficient amount of time to submit accurate and complete historical EDR data. The commenter requests that the number of days available to respond to the EDR be extended.

Response: NMFS agrees with the comment that the 60-day period to provide data for the historic EDR should be extended. In response to this public comment, the final rule at §§ 680.6(a)(2), 680.6(c)(2), 680.6(e)(2), and 680.6(g)(2) is modified to provide 90 days after the effective date of the FR notice for submission of the historic EDR. The proposed rule provided notice to the affected industry that data collection for historical crab fisheries will be required. Many operations may be preparing records for submitting the historic EDR in the period following the proposed rule. For an IFQ permit application to be considered valid, an EDR must be submitted to the DCA in time for the DCA to review the form, verify certain data, and notify RAM that a submitter has responded to the requirement. The 90-day interval will provide sufficient time for submitters of the historic EDR to gather records, fill out, and submit the historic EDR forms in time to be issued IFQ or IPQ for the 2005 crab fisheries.

Comment 217: The commenter notes that once the Data Collection Agent receives a data form, the submitter has 15 days to respond to a contact by the Data Collection Agent. In the active and longer fishing seasons under the Program, this may not be a sufficient interval of time for persons who may be on the fishing grounds to respond. Also the commenter requests that the daily notice should not be based on the 'issuance' of a request, but rather on certified receipt of the request.

Response: NMFS agrees with the comment that the 15 day period to provide a response to an inquiry by the DCA should be extended. NMFS has provided submitters several ways to facilitate communication, including use of a representative to respond to questions. While it should be feasible for persons to respond to verification questions on the EDR in 15 days, we are providing a greater amount of time to respond by extending the number of days noted at § 680.6(i)(2) to 20 days. We cannot start counting the time period for responding to verification questions on the EDR on the date of a certified receipt of the request. NMFS is unable to legally verify that contact to request verification has been received if someone refuses to sign a return receipt. Also, each submitter will have previously provided an address and other contact information on the EDR, and they have the option of identifying a representative for responding to EDR questions if they will be difficult to reach.

Comment 218: The commenter asks that data from not less than 2 years prior to the implementation of the Program be used for estimating rationalization impacts. The proposed rule at § 680.6(c)(3), (e)(3) and (g)(3), also provides for the submission of information concerning the 2004 crab fishery. The 2004 crab fishery would be used as a baseline for estimating the economic impacts of the Program on the fishery. The commenter requests that the final rule remove the provision requiring submission of data from the 2004 fisheries. The commenter asserts that the year 2004 should not be used as a representative year for historical

data because it would not be a representative baseline for the crab fisheries prior to rationalization.

Response: Section 313(j) of the Magnuson Stevens Act authorizes a mandatory data collection system ''to study the impacts of the Crab Rationalization Program'' and to ensure that the program would achieve ''equity between the harvesting and processing sectors'' and to monitor the ''economic stability for harvesters, processors and coastal communities''. It also requires that we evaluate the before and after effects of the program at an 18-month and 3-year interval. A number of transitions in the BSAI crab fisheries have occurred during 2004 and 2005, including consolidation of BSAI crab vessel and processing plant ownership. To capture those changes and display the economic effects of the CR fishery program for the required 18-month review of the crab program, including year 2004 in the mandatory data collection is necessary to generate economic estimates of efficiency and distributional effects. As the 18-month review will consist of only one full year of data from the mandatory EDR, data collected during 2004 will be an important indicator of directional change in the fishery.

We agree that the year 2004 should not be used as a single baseline to compare an entire sector's economic status as it uses that year in combination with other years to define the pre-Program state. No data from a single historic year is intended to be used in isolation of other historic years as each EDR for a sector will be made up of data from at least three years between 1998 and 2004.

Comment 219: The data collection agent, Pacific States Marine Fisheries Commission, should be required to negotiate a confidentiality agreement with any party the Council gives review authority, which may or may not include NMFS. That confidentiality agreement should include penalties for individuals who divulge data. The proprietary economic data being collected are highly sensitive because of competition.

Response: In compliance with NOAA administrative orders an existing regulation regarding confidentiality of data, and when appropriate, confidentiality agreements will be required for recipients of data.

Comment 220: The proposed rule provides an optimal approach to the disclosure of commercially sensitive data, having due regard to the antitrust laws, the relevant provisions of the enabling statute for the rationalization program, and the Council's intent. The proposed rule should not be altered to restrict disclosure of data beyond the extent necessary to comply with antitrust laws. Any changes to the proposed rule should be based on the objectives of maximum transparency of data to industry participants, consistent with antitrust law, the enabling statute for the program, and the Council's intent, and maximum availability of data to NMFS, the Council, the DOJ and FTC for the purposes of review, monitoring, and enforcement, as the case may be.

Response: NMFS concurs with the comment.

Cost Recovery and Fee Collection

Comment 221: Why would CP ex-vessel price proxies be lagged a year when real-time ex-vessel values are collected shoreside, especially with the IERS. A weighted average could be computed daily, weekly or monthly across shoreside crab buyers? One-year lagged proxies should not be allowed.

Response: NMFS explored several different methods for calculating CP standard prices. NMFS based the CP standard prices for ex-vessel values based on the current method used to calculate standard prices under the halibut and sablefish IFQ regulations. The halibut and sablefish IFQ standard price regulations were developed recognizing that the ex-vessel value of a CP product often possesses a value added cost that would be subject to a fee liability that substantially exceeds the fee liability for shoreside deliveries of unprocessed fish. Therefore, NMFS developed an ex-vessel value methodology that calculated, as closely as possible by month and port or port-group, the variations in the actual ex-vessel values of IFQ halibut and IFQ sablefish landings based on information provided by shoreside buyers which included: (1) Landed pounds by IFQ species, port-group, and month; (2) total ex-vessel value by IFQ species, port-group, and month; and (3) price adjustments, including IFQ retro-payments. This method provides for a more equitable fee distribution between the CP and shoreside sectors. Because the rationalized crab fishery will function similarly to the halibut and sablefish IFQ fisheries, NMFS adopted a similar methodology to accommodate CP ex-vessel price calculation that bases standard prices on the preceding year's values.

NMFS recognizes that information will be available through the Interagency Electronic Reporting System (IERS) on a real time basis, which could allow for daily, weekly, or quarterly standard price calculations. NMFS cannot implement more frequent standard price calculations than annually due to confidentiality issues and administrative constraints. However, NMFS agrees that CP standard prices should be based on information available at the time a CP harvests crab. Therefore, NMFS revised the language of the regulation at § 680.44(b) to indicate that CPs will be responsible for calculating their fee liability at the end of a crab fishing year based on the current year's CP standard prices as provided to them by RAM. Each CP would be responsible for retaining their own estimated fees up to 3 percent of their estimated ex-vessel value until the end of the crab fishing year and submitting their actual fees based on the CP standard prices provided by NMFS. CP standard prices would be based on the current year's shoreside ex-vessel value thereby minimizing any disparity between the fee liability paid by shoreside processors and CPs.

Loan Program

Comment 222: The proposed rule contains no provision for the crew loan program that is intended to support purchase of shares by captains and crew. This program is a critical component that should be implemented simultaneously with all other aspects of the program. In addition, the provision of seed money to fund the program from its inception would substantially increase the effectiveness of the loan program.

Response: NMFS recognizes the importance of crab QS loans for crab vessel captains and crew. If Congress enacts the necessary loan ceiling, NMFS intends to make crab QS loans available in time to finance captains and crew purchasing crab QS when it first begins to trade.

Under the Federal Credit Reform Act, Federal loans are available only in accordance with annually enacted loan ceilings. Congress has not yet enacted a loan ceiling for crab QS loans, but crab industry representatives advise us that they are working to ensure timely enactment of the necessary loan ceiling.

General Comments

Comment 223: We are sure that for the years 2002–3 the NMFS' budget was in the billions of dollars. We are also sure that there are people who think that the NMFS programs are failing miserably. NMFS is not only responsible for the management and conservation of our marine resources but also fishing industry jobs. NMFS does not seem to be very good at its job description. What did NMFS do with our fish, what happened to our jobs?

Response: NMFS regrets that the commentator has such a negative perception of the agency. It is unclear to which programs the commentator is specifically referring. Thus, NMFS is unable to respond to the sufficiency of the budget or the relative success of the program the commentator addresses. However, NMFS would like to note that the North Pacific fisheries continue to be recognized as the most productive and sustainable in U.S. waters, due in part to the extensive management measures undertaken by NMFS.

NMFS is responsible for the management, conservation and protection of living marine resources within the United States Exclusive Economic Zone. NMFS also plays a supportive and advisory role in the management of living marine resources in coastal areas under state jurisdiction, provides scientific and policy leadership in the international arena and implements international conservation and management measures as appropriate.

Under this mission, the goal is to optimize the benefits of living marine resources to the Nation through sound science and management. This requires a balancing of multiple public needs and interests in the sustainable benefits and use of living marine resources, without compromising the long-term biological integrity of coastal and marine ecosystems.

Many factors, both natural and human-related, affect the status of fish stocks, protected species and ecosystems. Although these factors cannot all be controlled, available scientific and management tools enable the agency to have a strong influence on many of them. Maintaining and improving the health and productivity of these species is the heart of NMFS' stewardship mission. These activities will maintain and enhance current and future opportunities for the sustainable use of living marine resources as well as the health and biodiversity of their ecosystems.

NMFS continues to believe that the Crab Rationalization Program is consistent with NMFS mission and goals. NMFS also believes that the Program will increase resource conservation, improve economic efficiency, and improve safety. NMFS continues to work diligently to ensure the needs and interests in the sustainable benefits and use of the crab resources remain properly balanced with the long-term biological integrity of the crab stocks.

Comment 224: Giving away resources for free is an important public policy and needs independent public scrutiny.

Response: NMFS agrees that the Program is important public policy and requires independent public scrutiny. NMFS believes that the public has had ample opportunity for independent scrutiny throughout the development of the Program. The Council developed this Program over a 6-year period through its public process, starting with an ad hoc industry committee, which was formalized into the Council's BSAI Crab Rationalization Committee. The Council appointed members to the BSAI Crab Rationalization Committee, which included representatives from harvesters, processors, skippers and crew, communities, and environmental organizations. The BSAI Crab Rationalization Committee was tasked with developing elements and options for analysis and reporting to the Council. Also, the Council, the Advisory Panel (AP), and Scientific and Statistical Committee (SSC) have discussed rationalization at a number of meetings since October 1999. The Council, AP, and SSC accepted public testimony, written and oral, at each of these meetings.

During the period from February 2002 to August 2004, the Council and NMFS developed the EIS. The Preliminary draft EIS for Council review was published November 2003 and distributed to the Council family and posted on the NMFS Alaska Region and Council web pages. The Council then recommended releasing the draft EIS for public review, along with some revisions to the analysis. The Draft EIS was filed with the Environmental Protection Agency and released for public review on March 19, 2004. The 45-day public comment period closed on May 3, 2004. The Comment Analysis Report, in Chapter 8 of the Final EIS, provides the public comments received during the comment period and presents the agency's response to the public comments. NMFS released the Final EIS in August 2005. These EIS documents were distributed to the Council and available to the public at the Council meetings and on the NMFS web page. The Council heard public testimony on the EIS at its meetings.

In January 2004, the U.S. Congress amended section 313 of the Magnuson-Stevens Act to require the Secretary to approve the Program developed by the Council. NMFS is publishing notice and comment rule making to implement this Program, which allows for additional public review.

Comment 225: NMFS reports contain worthless data that are never verified.

Response: NMFS disagrees. First, in accordance with National Standard 2 of the Magnuson-Stevens Act, NMFS must use the best available scientific information in developing fishery conservation and management measures. NMFS ensures compliance with National Standard 2 by using the highest quality scientific information collected from agency, industry, academic, and public resources. Second, in accordance with the Data Quality Act, NMFS must provide for and maximize the quality, objectivity, utility, and integrity of any information it disseminates. NMFS ensures compliance with the Data Quality Act by ensuring transparency of data, reproducibility of information, and an appropriate level of peer review. Therefore, through compliance with the Magnuson-Stevens Act and the Data Quality Act, NMFS ensures that the information used in developing the Crab Rationalization Program, as well as all other NMFS reports, is not only initially high-quality, but also is subjected to several significant independent verification steps.

Comment 226: Marine sanctuaries should be established now.

Response: Marine sanctuaries are not part of the Program and, therefore, are not addressed in this rule. However, as discussed in the Final EIS (*see* **ADDRESSES**), existing closed areas protect crab and their habitat from the effects of fishing. Trawl fishing is prohibited in the Pribilof Islands Habitat Conservation Zone established to protect crab habitat in the Pribilof Islands area. The Red King Crab Savings Area in the Bering Sea and the Nearshore Bristol Bay Closure protect female and juvenile red king crab and their habitat from trawl fishing. The State of Alaska established a no-fishing zone to protect blue king crab in state waters around the St. Matthew, Hall, and Pinnacles Islands.

Comment 227: NMFS should reconsider the LLP's exemption for vessels under 32 foot in the Norton Sound king crab fishery because this exemption reduces the value of the LLP licenses, jeopardizes investments made in the fishery, and results in overcapitalization of a very limited resource.

Response: This final rule does not address reducing capacity in the Norton Sound king crab fishery. As discussed in the Final EIS, the Council determined that inclusion of the Norton Sound king crab fishery in the Crab Rationalization Program was unwarranted at this time. We encourage you to petition the Council to make these changes in the LLP for this fishery.

Comment 228: NMFS has issued too many LLP licenses for the Norton Sound king crab fishery because it is a very

small fishery with a limited resource and value. NMFS should consider revoking the LLP licenses that are not being used to restore the value of the remaining LLP licenses and protect the fishery from overcapitalization.

Response: See response to comment 227.

Comment 229: In the proposed rule, § 679.4(k)(1)(ii)(B) and (D) refer to the U.S. Russian Convention line of 1867. This line is no longer recognized as the Maritime Boundary line between the U.S. and Russia.

Response: NMFS agrees and has changed references to the U.S. Russian Convention line of 1867 in the final rule to the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991).

Comment 230: The proposed rule does not contain specific measures to improve the safety of the BSAI crab fisheries. Specific measure are necessary to achieve the stated goals of the Program. Specific measures should include requiring vessels to be better built and equipped, mandatory USCG inspections, crew training, and pot limits to ensure vessel stability. QS holders not interested in complying with these safety measures could join a cooperative or lease or sell their QS/IFQ. NMFS should include language in the proposed rule ordering the Council to consult with the Coast Guard to develop an amendment that specifically addresses vessel and crew safety in the rationalized crab fishery. NMFS should publish the implementing regulations for the amendment to coincide with the sunset of the QS leasing option for QS holders.

Although the Agency clearly states in the summary of the proposed action that ''The proposed action is necessary to increase resource conservation, improve economic efficiency and *improve safety.*'' (emphasis added by commenter), in the proposed rule there is virtually no discussion of precisely how—or whether—the crab rationalization program will actually improve the safety for fisherman in the Bering Sea (other than the discussion in rule that rationalization will end the race for fish and likely lead to more measured fisheries thus decreasing the dangers inherent in being forced to fish in dangerous weather and that a smaller, consolidated fleet with fewer participants will lead to fewer accidents). Nowhere in the rule is the protection of life and limb directly addressed, despite the rule's stated goal of improving safety.

Response: Improved vessel safety is one of the goals of the Program for NMFS, the U.S. Congress, and the Council. As explained in the Final EIS, the safety benefits provided by the Program include improved opportunity for vessel owners to invest in safety, improved opportunity for captains to take weather and other considerations into account when making decisions, and more professional crews. NMFS agrees that the regulations do not contain specific measures to regulate how a participant improves vessel safety. NMFS believes that the Program, as mandated by the Magnuson-Stevens Act, is sufficient to improve safety and that no additional measures or changes to the regulations are required at this time. However, the Council, working with the Coast Guard, may develop recommendations to amend the Program with specific measures to improve safety.

Comment 231: The Council motion provides that AFA crab harvesting and processing sideboards would be removed on implementation of the program. The regulation does not appear to contain a provision concerning the removal of AFA sideboards. Include provisions removing the AFA crab harvesting and processing sideboards.

Response: The regulations do remove the AFA crab harvesting and processing sideboards, consistent with Amendment 18. The final rule removes the requirement for AFA crab sideboard endorsements at § 679.4(l)(3)(ii)(D) and § 679.7(k)(4)(ii), and the crab processing sideboard limits at § 679.7(k)(8) and § 679.65.

Additional Changes From Proposed Rule

NMFS made the following changes from the proposed rule to the final rule to clarify regulatory language or correct mistakes in the proposed rule.

At § 680.41(l)(2)(ii)(C) a typographical error was corrected to change 3 days to 30 days.

Crab Harvesting Cooperatives. At § 680.21 the crab harvesting cooperative IFQ permit deadline was changed from July 1 to August 1 to conform with the IFQ application deadline.

NMFS has removed the provision in the proposed rule at § 680.21(g)(2) that allowed crab harvesting cooperatives to acquire individually held IFQ. Amendment 18 does not provide for crab harvesting cooperatives to acquire individually held IFQ. NMFS has determined that allowing crab harvesting cooperatives to acquire individually held IFQ could be a disincentive for QS holder to join crab harvesting cooperatives and a disincentive for crab harvesting cooperatives to acquire members, thus undermining the Program. Without this provision, the total amount of crab harvesting cooperative IFQ will be set at the start of the season, facilitating crab harvesting cooperative management. Removing this provision does not effect the ability of crab harvesting cooperatives to conduct intercooperative transfers.

Permits. In § 680.4, NMFS substituted the requirement in the proposed rule that each company obtain a separate RCR permit for each facility with a requirement in the final rule that each IPQ holder must hold an RCR permit. And, the application for an RCR permit is also changed accordingly to delete unnecessary information. At the time the proposed rule was prepared, development work on the IERS had not progressed to the point where the data collection organization and structure was defined. It is now clear that providing a single, unequivocal match between the holder of the IPQ permit(s) to be debited for a landing with the RCR receiving crab accomplishes several important results: it relieves the burden for an IPQ holder to obtain multiple RCR permits; it greatly simplifies landings reporting and eliminates need to enter data multiple times for a landing; it clarifies which entity is responsible for crab landings reporting; and it simplifies cost recovery statements and payments.

Table 14. Tables 14a–14c have been updated to provide a corresponding NMFS port code for each ADF&G port code in the tables. Tables 14a–14c were provided for groundfish reporting, and there were several ports where groundfish were not customarily delivered. No NMFS port code was necessary from these locations for groundfish reporting. The ADF&G list of port codes in Tables 14a–14c was assembled to accommodate all fisheries including groundfish and shellfish. NMFS is populating the table with the necessary codes to provide reporting capabilities for any port from which shellfish as well as groundfish could be reported.

IFQ overages. NMFS added language to address how accounting must occur for IFQ overages in relation to IPQ. Under Amendment 18, harvesters must forfeit any IFQ overages. NMFS believes that IFQ overages should not be debited from IPQ for two reasons. First,

processors should not be penalized for overages by the harvesters. Second, and more importantly, once crab is forfeited or seized it is no longer classified as ''IFQ.'' For instance, a harvester will be required to bring in their crab and have that crab weighed at a processor. If an overage of any amount occurs, NMFS would seize the overage (the harvester would forfeit) and debit the harvester's account only to the full amount of the offending harvester's IFQ. The processor would purchase the seized crab from NMFS without debiting their IPQ.

Economic Data Collection. To reduce the burden to submitters and improve the quality of responses for the historic and annual EDRs for CVs, CPs, stationary floating crab processors-, and inshore processors, NMFS conducted pretests of the draft EDRs prepared for the proposed rule with industry experts. The industry expert reviews were used to evaluate the EDR for comprehension, clarity of instructions, form layout, as well as the probability of soliciting the most accurate response possible for each data field in the survey. From the industry expert review, changes to § 680.6 are included in the final rule to improve the quality, comprehension, and reduce burden for submitters of the EDR. These changes consist of three types: Editorial changes, changes that eliminate or modify a data field, or substantive changes that would extend the reporting response time for submission of the EDR.

NMFS has reorganized and renamed several data fields at § 680.6 of the final rule to organize the requested data in a manner that is consistent with the records kept by the submitters and to rename data fields to make it clearer to the submitters by using a term that is familiar to the fishing industry. NMFS also edit a portion of the instructions for a data field that is listed in a data form to provide an accurate explanation. Examples include the change of ''owner name'' to ''name of company,'' the change of ''pounds processed'' to ''finished pounds processed'' clarifying the interval of time during a year for reporting costs as observed payments for which a record may be verified as opposed to estimates of costs from operator guesses. These changes occur in several paragraphs of § 680.6 and do not constitute addition or removal of any data fields.

NMFS removed data fields in the annual EDR related to the season interval at §§ 680.6(b)(4)(i), 680.6(d)(4)(i), 680.6(f)(4)(i) and 680.6(h)(4)(i), because they conflicted with the approach used by submitters to retain and organize historical vessel data, processing data and other records by crab fishery. The use of a season interval was conceived of to allow for collection of data by time interval, where multiple fisheries may occur at the same point in time. Industry expert reviews of draft data forms revealed that most of these fisheries will still occur with minimal overlap in the early years and that the operators can adequately parse out fishing or processing costs and activities at the fishery level. This modification will have the added advantage of reducing reporting burden to the respondents.

NMFS added a new data field to the historical and annual CP EDR at § 680.6(c)(5)(x), and § 680.6(d)(5)(x) ''BSAI crab-specific vessel costs'', called ''gear storage''. Pretesting identified this as a significant cost category that was not reported in the EDR prepared at the time of the proposed rule, and is typically available in historical and annual records. Including this data field avoids confusion regarding where to locate these costs in the EDR.

NMFS added Table 3c, Crab Product Codes for Economic Data Reports, in the final rule because Tables 3a and 3b do not include information needed for the EDR for purposes of recording production information in the processor EDRs. Table 3c is added to differentiate descriptions of processed crab products from descriptions of delivery, condition, and disposition codes at the point of landing.

Administrative Appeals. The following explanation of revisions to § 679.43(a) was inadvertently left out of the preamble to the proposed rule although the proposed regulatory changes were published. The administrative appeals regulations at § 679.43 currently apply to IADs issued under 50 CFR part 679 and part 300. The final rule adds part 680 to the applicability statement so that the same administrative appeals process that applies to IADs issued for the halibut/sablefish IFQ program and other programs established in part 679 will apply to any IADs issued for the Crab Rationalization Program. The final rule also specifically excludes IADs issued for approval or disapproval of CDQ allocations and Community Development Plans under § 679.30(d) from the administrative appeals process at § 679.43. CDQ allocations are made every three years through a lengthy administrative process that includes the CDQ groups, the State of Alaska, the Council, and NMFS. The crab CDQ allocations provided for under this Program are among the species that must be allocated among the CDQ groups using this CDQ allocation process. As a result of an evolving understanding of NMFS's legal responsibilities for the CDQ allocation decision, NMFS will provide an opportunity for the CDQ groups to administratively appeal NMFS'' IAD to approve or disapprove the State's CDQ allocation recommendations. However, the deadlines and process described at § 679.43 for IADs issued primarily for permits and QS fisheries are not appropriate for the CDQ allocation process. Therefore, NMFS will develop specific procedures for administrative appeals of the IAD issued about CDQ allocations in 2005 through a letter from the Regional Administrator to the CDQ groups. The administrative appeals procedure also would be made available to the State, the Council, and the public at the time it is provided to the CDQ groups. This procedure for administrative appeals of the CDQ allocations will be done this way one time. After completion of the 2006–2008 CDQ allocation decision process, NMFS will propose regulations to either revise the procedure for making CDQ allocations or codify an appropriate administrative appeals process at § 679.43.

Classification

This final rule has been determined to be significant for the purposes of Executive Order 12866.

Congressional Review Act: The Office of Information and Regulatory Affairs has determined that this rule is major under 5 U.S.C. 801 *et seq.* Under 5 U.S.C. 808, the minimum 60-day delay in effectiveness required for major rules is not applicable because this rule establishes a regulatory program for a commercial activity related to fishing.

A Draft Environmental Impact Statement (EIS) (dated March 2004) was prepared for this rule and made available to the public for comment (69 FR 13036, March 19, 2004). The Final EIS was prepared and made available to the public on September 3, 2004 (69 FR 53915). Copies of the Final EIS for this action are available from NMFS (*see* **ADDRESSES**). On November 19, 2004, NMFS issued the Record of Decision for the Final EIS. The EIS contains as appendices the Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and Social Impact Assessment (SIA) prepared for this action.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA). The FRFA incorporates the IRFA, response to public comments received on the IRFA, and a summary of the analyses completed to support the action. A copy of this analysis is available from NMFS (*see* **ADDRESSES**). The FRFA did not

reveal any Federal rules that duplicate, overlap, or conflict with the action. The following summarizes the FRFA.

The FRFA evaluates the impacts of the Crab Rationalization Program for the king and Tanner fisheries in the BSAI on small entities. The FRFA addresses the statutory requirements of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 601–612). It specifically addresses the requirements at section 604(a).

Issues Raised by Public Comments on the IRFA

The proposed rule for the Program was published in the **Federal Register** on October 29, 2004 (69 FR 63200). An IRFA was prepared for the proposed rule, and described in the classifications section of the preamble to the rule. The public comment period ended on December 13, 2004. NOAA Fisheries Service received 49 letters of public comment on the proposed rule. NOAA Fisheries Service summarized these letters into 234 separate comments. Of these, three comments were on the IRFA and are presented below. No changes were made to the final rule from the proposed rule in response to the comments on the IRFA. Several comments directly or indirectly dealt with economic impacts to small entities resulting from the management measures presented in the proposed rule. These comments and responses are under Response to Comments in this preamble.

Comment 1: The IRFA incorrectly states the number of small entities. The ownership affiliation standard in the proposed rule surely reduces the number of small businesses to far less than 223. The EIS Appendix identifies approximately 39 processor-affiliated vessels, including CPs. So, this statement seems to presume all non-processor-affiliated vessels are unique, small entities. Application of the affiliation standard in the proposed regulations makes this number highly suspect, especially in light of CDQ ownership affiliations.

Response: As stated in the IRFA, the SBA establishes the principles of affiliation for defining small entities in an IRFA. The analysis in the IRFA used these principles of affiliation to define the number of small entities, and not the proposed rule's affiliation standard for the Program. Additionally, NOAA Fisheries Service has limited information on vessel ownership, therefore, the analysis is based on the best available information. The estimation of the number of small entities under the IRFA is likely over inclusive because of the lack of better ownership information. NOAA Fisheries Service has determined that the extensive economic data collection that is part of this Program will enable the agency to better determine the small business status of participants in the Program.

Comment 2: This statement in the IRFA concerning entry of new processors is not complete. They may also buy or lease IPQ in order to purchase and process Class A IFQ. This means of entry should be added to the text.

Response: NOAA Fisheries Service agrees and has added this means of entry to the FRFA. NOAA Fisheries Service points out that this means of entry discussed in the preamble to the proposed rule.

Comment 3: NOAA Fisheries Service expressed interest in receiving comments regarding the definition of crab catcher processor in the IRFA. For the most part, crab catcher processors should be classified as small business size entities.

Response: Comment noted. The commenter did not provide any information supporting the statement that catcher/processor vessels should be considered small business entities. The Small Business Administration has established size criteria for all major industry sectors in the U.S., including fish harvesting and fish processing businesses and these criteria are also included in NOAA Fisheries Service guidelines for RFA. NOAA Fisheries Service considers catcher/processors to be small entities for the analysis in the IRFA and this FRFA. NOAA Fisheries Service has determined that the extensive economic data collection that is part of this Program will enable the agency to better determine the small business status of catcher/processors.

Need for and Objectives of This Action

The BSAI crab fisheries are currently managed under the LLP. Under current management, the fisheries are prosecuted in an economically inefficient manner with significant amounts of the capital idle between seasons. The race to fish also creates incentives for participants to compromise safety to increase catch. The Council developed the Program which slows the race for fish, minimizes bycatch and associated mortalities, provides for conservation to increase the efficacy of crab rebuilding strategies, and addresses the social and economic concerns that have arisen under current management. The U.S. Congress mandated NOAA Fisheries Service approve and implement the Program by amending section 313(j) of the Magnuson-Stevens Act through the Consolidated Appropriations Act of 2004 (Pub. L. 108–199, section 801).

Number and Description of Small Entities Affected by the Rule

Approximately 238 small entities own crab harvest vessels or crab catcher/processors. They are directly regulated by the final rule. Eight small entities appear to qualify for processor allocations. Thirteen communities, which are considered small government jurisdictions, could be directly impacted by the community protection provisions under consideration. The six non-profit CDQ groups are small entities directly regulated by the final rule.

Recordkeeping and Reporting Requirements

Implementation of the final rule will change the overall reporting structure and recordkeeping requirements of the participants in the BSAI crab fisheries. Under the final rule, all participants will be required to provide additional reporting. Each harvester will be required to track harvests to avoid exceeding his or her allocation. As in other North Pacific rationalized fisheries, processors will provide catch recording data to managers to monitor harvest of allocations. Processors will be required to record deliveries and processing activities to aid in Program administration.

To participate in the Program, persons will be required to complete application forms, transfer forms, EDR forms, reporting requirements, and other collections-of-information. These forms are either required by the Magnuson-Stevens Act or required for the administration of the Program. These forms impose costs on small entities in gathering the required information and completing the forms. Persons will be required to complete most of the forms at the start of the Program, like applications for initial issuance of QS and PQS and the historic EDR. Persons will be required to complete some forms every year, like applications for IFQ/IPQ and annual EDRs. Participation in the Arbitration System will be also be annual. Additionally, catch reporting will be completed more frequently.

Description of Significant Alternatives and Description of Steps Taken To Minimize the Significant Economic Impacts on Small Entities

The Council considered an extensive and elaborate series of alternatives, options, and suboptions as it designed and evaluated the potential for

rationalization of the BSAI crab fisheries, including the ''no action'' alternative. The RIR presents the complete set of alternatives, in various combinations with the complex suite of options. The EIS presents four alternative programs for management of the BSAI crab fisheries, namely, Status Quo/No Action (Alternative 1); the Crab Rationalization Program (Alternative 2); an Individual Fisherman's Quota (IFQ) Program (Alternative 3); and a Cooperative Program (Alternative 4). These alternatives constitute the suite of ''significant alternatives'', under the action, for RFA purposes. Each is addressed briefly below. Please refer to the EIS and its appendices for more detail. The following is a summary of the contents of those more extensive analyses, specifically focusing on the aspects which pertain to small entities, the reasons why each alternative to the action was rejected, and the reasons why the Crab Rationalization Program was selected.

In January 2004, the U.S. Congress amended section 313 of the Magnuson-Stevens Act through the Consolidated Appropriations Act of 2004 (Pub. L. 108–199, section 801), by adding paragraph (j). As amended, section 313(j)(1) requires the Secretary to approve and implement by regulation the Crab Rationalization Program, as it was approved by the North Pacific Fishery Management Council (Council) between June 2002 and April 2003, and all trailing amendments, including those reported to Congress on May 6, 2003.

Under the status quo (no action), the BSAI crab fisheries have followed the well known pattern associated with managed open access. Enticed by the prospect of capturing 100 percent of the benefits, while externalizing all but a very small ''common'' share of the cost of an individual fishing decision (*i.e.,* no enforceable ownership rights to ration access) these BSAI crab fisheries have been characterized by a ''race-for-fish'', capital stuffing behavior, excessive risk taking, and a dissipation of potential rents. In the face of substantial stock declines, participants in these fisheries are confronted by significant surplus capacity (in both the harvesting and processing sectors), financial distress (for some, failure), and widespread economic instability, all contributing to resource conservation and management difficulties.

In response to worsening biological, economic, social, and structural conditions in many of the BSAI crab fisheries, the Council and NMFS found that the status quo management structure was causing significant adverse impacts to the participants in these fisheries, as well as the communities that depend on these fisheries. As indicated in the IRFA, many small entities, as defined under RFA, are negatively impacted under current managed open access rules. The management tools in the existing FMP (*e.g.,* time/area restriction, LLP, pot limits) do not provide managers with the ability to effectively solve these problems, thereby making Magnuson-Stevens Act goals difficult to achieve and forcing reevaluation of the existing FMP. For these reasons, the Council and NMFS rejected the status quo alternative as a means to rationalize the crab fisheries.

In an effort to alleviate the problems caused by excess capacity and the race for fish, the Council and NMFS determined that the institution of some form of rationalization program is needed to improve crab fisheries management in accordance with the amended Magnuson-Stevens Act.

The IFQ alternative would, as the name implies, allocate individual shares of the crab TAC to harvesters, imparting a ''quasi-private property interest'' (*i.e.* a transferrable access privilege) in a share of the TAC, thus removing the undesirable ''common property'' attributes of the status quo on qualifying harvesters. The rationalization of the BSAI crab fisheries would likely benefit the approximately 223 businesses that own harvest catcher vessels and are considered small entities. In recent years these entities have competed in the race to fish against larger businesses. The IFQ alternative would allow these operators to slow their rate of fishing and give more attention to efficiency. Some of these operations and the vessels they use could be negatively impacted if the allocations they qualify for are small and cannot be fished economically. The participants, however, would be permitted to lease or sell their allocations, and could obtain some return from their allocations. Differences in efficiency implications of rationalization by business size cannot be predicted. Some participants believe that smaller vessels could be more efficient than larger vessels in a rationalized fishery because a vessel only needs to be large enough to harvest the IFQ. Conversely, under open access, a vessel has to be large enough to outcompete the other fishermen and, hence, the overcapacity problems under the race for fish. If that is true, it is possible that some of the smaller participants in the fishery could increase their activity (by purchasing or leasing QS/IFQ) in a rationalized fishery.

Council and NMFS rejected the IFQ alternative because the IFQ alternative would fail to protect the economic and social interests of other participants, also dependent on these crab fisheries, namely, processor and community entities. As the analysis in the RIR demonstrates, while harvesters clearly benefit, the IFQ alternative likely would increase the negative economic impacts relative to status quo on processor and community small entities. Specifically, as discussed in the RIR and SIA, harvesters may deliver crab to new processors in locations with more access to the outside world, forcing the closing of processing facilities in remote areas that are dependent on the crab fisheries, such as Saint Paul, Saint George, and Unalaska/Dutch Harbor.

The Cooperative alternative yields many of the positive economic, social, and structural results cited above for the IFQ alternative. In addition, however, the Cooperative alternative holds out the promise of providing efficiency gains to both small entity harvesters and the processors. Data on cost and operating structure within each sector are unavailable, so a quantitative evaluation of the size and distribution of these gains, accruing to each sector under this management regime, cannot be provided. Nonetheless, it appears that the Cooperative alternative offers all of the same ''improvements'' over the status quo as does the IFQ alternative (*e.g.,* institution of ''rights-based-management'' structure, reduction in uncertainty) while including another population of participants, the crab processors, that the Council expressed explicit concern about protecting in its problem statement and objectives for this action.

While on the basis of available information, the Cooperative alternative appears to minimize negative economic impacts on small entities to a greater extent than does an IFQ alternative, and both appear to minimize negative economic impacts compared to the Status Quo, it is apparent, on the basis of the EIS and RIR analyses, that the Cooperative alternative does not extend the benefits of rationalization to the third population of small entities, fishery dependent communities. Therefore, the Council and NMFS rejected the Cooperative alternative.

After an exhaustive public process, spanning several years, the Council and NMFS selected the Crab Rationalization Program alternative because it concluded that the Crab Rationalization Program best accomplishes the stated objectives articulated in the problem statement and applicable statutes, and minimizes to the extent practicable

adverse economic impacts on the universe of directly regulated small entities; harvesters, processors, and communities. This final rule will implement the Program.

The Program contains many provisions to minimize significant negative impacts on small entities, consistent with stated objectives of applicable statutes. The Program makes three separate allocations; one to the harvest sector, one to the processing sector, and one to defined regions. All three allocations are based on historic participation, to protect investment in and reliance on the fisheries. Harvesters will receive harvest allocations, processors will receive processing allocations, and regions will receive allocations of landings and processing activity. These three separate allocations are also intended to mitigate the negative effects of the transition from a regulated open access race-for-fish to rationalized fisheries, burdens which tend to fall most heavily on small entities.

The competing interests of harvesters and processors, many of which are small entities, are balanced by allocating different portions of the total harvest to the two sectors. Harvesters will be allocated harvest shares for 100 percent of the TAC, minus the community allocations. Processors will be allocated processing shares for 90 percent of the TAC. To ensure corresponding allocations to the two sectors, 90 percent of the harvest allocation is allocated as Class A IFQ that require delivery to a processor that holds IPQ. The remaining 10 percent will be Class B IFQ shares that can be delivered to any processor. Under the Program, harvesters (many of whom, as noted, are small entities) will be permitted to form cooperatives to achieve efficiencies and reduce transaction costs through the coordination of harvest activities and deliveries to processors.

Small harvester entities that receive allocations large enough to support their participation could benefit from not needing to participate in the race for fish, as with the IFQ alternative. The portion of the fishery allocated as Class B IFQ, also known as open delivery IFQ, will also impact the effects of the Program on small harvesters, since Class B IFQ are likely to provide harvesters with additional power in their delivery negotiations with processors.

Small processors appear to have been exiting the crab fishery in recent years as the harvest levels have declined and seasons have been compressed. The final rule will allocate PQS to processors that participated in the fishery in either 1998 or 1999. ''Small'' processors that plan to enter or reenter the crab fisheries (but did not participate during the qualifying years) will be allowed to process crab harvested with Class B IFQ and CDQ crab, or lease IPQ to process crab caught with Class A IFQ. Class B IFQ and CDQ crab will provide a mechanism for small processors to enter the fishery without large capital outlays to purchase PQS or IPQ. Class B IFQ, however, will reduce the allocation of PQS to the small and large processors that qualify for the Program. Class B IFQ therefore may negatively impact small processors, if they are unable to compete with large processors in the marketplace for the Class B IFQ.

To resolve impasses in price negotiations, a potentially crippling occurrence for the smaller operators, the Program will include a mandatory binding arbitration program for the settlement of price disputes between harvesters and processors. Historically, prices have been settled by protracted, often contentious negotiations, from time to time resulting in harvesters delaying fishing (*i.e.*, strikes), which can be detrimental to all concerned. An effective system of binding arbitration could protect the interests of both sectors in negotiations, while avoiding costly delays in fishing due to strikes.

A number of small governmental jurisdictions will be directly regulated by, and therefore could be impacted by, this final rule. All communities benefitting from these special provisions of the final rule are ''small'', under SBA criteria. Community interests have been explicitly considered in the Program, and special provisions have been included to minimize (to the extent practicable) adverse impacts on these small entities. Under these provisions, the degree of protection will likely vary community-to-community.

The allocation to regions is accomplished by regionally designating all Class A IFQ (delivery restricted) and all corresponding IPQ to be delivered and processed in a designated region. In most fisheries, regionalized IFQ and IPQ are either North or South, with North IFQ designated for delivery in areas on the Bering Sea north of 56°20′ north latitude and South IFQ designated for any other areas, including Kodiak and other areas on the Gulf of Alaska. IFQ and IPQ designations are based on the historic location of the landings and processing that gave rise to the shares. The final rule will also increase the allocation of crab to CDQ groups from 7.5 percent to 10 percent, providing additional aid to the 65 CDQ communities (all small entities).

Community processing requirements in the first two years of the Program and ROFR will benefit communities with history supporting initial allocations and are intended to protect community interests. The ROFR provisions are likely to benefit communities that are more capable of exercising the right. Under the more general regional protection, processing activity could move between communities in a region. This is likely to benefit those communities able to attract additional processing activity from other communities in the region and harm communities that processing activity leaves. IPQ caps will benefit communities able to attract processing in years of high total harvest. Additionally, CDQ groups will be able to purchase QS and PQS to increase their participation in the BSAI crab fisheries above the CDQ allocation.

The final rule also contains several additional measures to protect various interests. Eligible crew will receive 3 percent of the initial allocation of QS. Sideboards will limit the activity of crab vessels in other fisheries (such as the GOA groundfish fisheries) to protect participants in those fisheries from a possible influx of activity that could arise from vessels that exit the crab fisheries, or are able to time activities to increase participation in other fisheries. While these benefactors of this provision are not directly regulated, and therefore not counted among the entities addressed in this IRFA, they are predominantly small entities.

Fish taxes will likely be redistributed with any redistribution of processing activity. In addition, the provision of support services and associated sales taxes will likely be redistributed to some extent by redistribution of landings in a rationalized fishery. Increased efficiency in the fisheries arising from the Program could reduce the demand for support services, impacting sales tax revenues, if the fleet is able to reduce their overall costs. These impacts may occur in large and small communities. Since the redistribution of activity and the increased efficiency cannot be predicted, these effects cannot be fully characterized.

NMFS made a series of changes in issuing the final rule from measures included in the proposed rule in response to public comments, as explained in this preamble. NMFS determined these changes were necessary to meet the requirements of Amendment 18 and 19. Many of these changes were designed to further mitigate the cost of the Program on small entities. These changes mitigate

the impact of the Program on small entities in the following ways. The changes for the harvester, crew, and processor sectors mitigate the effects on small entities by improving clarity in the regulations to ensure compliance, providing additional harvest opportunities to small entities affiliated with processors, and refining the application of use caps to reduce the effects of excessive QS/PQS consolation on small entities. The changes for Crab Harvesting Cooperatives mitigate the effects on small entities by providing additional opportunities for economic efficiencies for small entities affiliated with processors while ensuring compliance with anti-trust laws, maintaining the owner on board requirements for crew QS/IFQ to ensure entry level access into the crab fisheries, and applying the use caps to crab harvesting cooperatives to reduce the effects of excessive QS consolation on small entities. The changes for ROFR mitigate the effects on small entities by reducing potential confusion for small entities in compliance with civil contract terms required under section 313(j) of the Magnuson-Stevens Act. NMFS made changes to the Arbitration System that mitigate the effects on small entities by clarifying requirements for small entities to participate in the Arbitration System, and ensuring improved compliance with the Arbitration System to improve its ability to resolve price disputes while complying with anti-trust law.

Additionally, NMFS made a number of changes as a result of public comments to the Program's compliance requirements to mitigate impacts on small entities. In response to public comment requesting additional time to prepare and submit the historic EDRs, NMFS increased the submission interval for the historic EDR from 60 days to 90 days to provide both the time to gather records and complete an accurate EDR. Also in response to public comment, NMFS extended the time interval allowed for verification of data by all submitters in the final rule to 20 days from the 15-day interval identified in the proposed rule. NMFS made two major changes to requirements for catcher/processors as a result of public comment. Both changes reduce the burden on small entity participants in the crab fishery. NMFS reduced the required reporting interval for crab catch by catcher/processors from once every twenty-four hours to weekly. NMFS also clarified regulations governing the use of the IERS to ensure that vessels that are unable to use the Internet may report catch using an alternative, NMFS approved method such as an e-mail attachment to report catch. NMFS made one change to the cost recovery fee system in response to public comment by adjusting the methodology by which catcher/processors must calculate and submit fees to reduce any disparity between fees paid by catcher/processors and shoreside processors.

Collection-of-Information

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB. Public reporting burden per response for these requirements are listed by OMB control number.

OMB No. 0648–0213

Requirements for recordkeeping and reporting forms and their associated burden estimates per response are: 14 minutes for Vessel activity report, 20 minutes for Product transfer report, 28 minutes for Catcher vessel longline and pot gear daily fishing logbook, and 41 minutes for Catcher/processor longline and pot gear daily cumulative production logbook.

OMB No. 0648–0272

Requirements for crab IFQ forms and their associated burden estimates per response are: 6 minutes for Application for replacement of certificates, permits, or cards; 6 minutes for Transshipment authorization; 6 minutes for Departure report; 6 minutes for Administrative waiver, and 18 minutes for Application for Registered Buyer permit.

OMB No. 0648–0330

Requirements for scales and catch weighing and their associated burden estimates per response are: 6 minutes for At-sea inspection request, 45 minutes for Record of daily scale tests, 45 minutes for printed output of at-sea scale weight, 45 minutes for printed output of State of Alaska scale weight, 80 hours for scale type evaluation, 6 minutes for at-sea scale approval report/sticker, 2 hours for Observer sampling station inspection request, 2 minutes for prior notice to Observers of scale tests, and 40 hours for Crab catch monitoring plan.

OMB No. 0648–0445

Requirements for a VMS and their associated burden estimates per response are: 12 minutes for VMS check-in form, 6 hours for VMS installation, 4 hours for VMS annual maintenance, and 6 seconds for each VMS transmission.

OMB No. 0648–0503

Requirements for crab arbitration reports and their associated burden estimates per response are: 4 hours for Annual Arbitration Organization Report, 1 hour for Arbitration Organization miscellaneous reporting, 40 hours for Market Report, 40 hours for Non-binding Price Formula Report, and 45 minutes to establish price for arbitration negotiations.

OMB No. 0648–0504

Requirements for applications for crab permits, transfers, and submittal of fees and their associated burden estimates per response are: 2 hours for Annual Application for Crab IFQ/IPQ Permit; 2 hours for Application for Crab QS or PQS; 2 hours for Application for annual crab harvesting cooperative IFQ permit; 30 minutes for Application for Crab IFQ Hired Master permit; 30 minutes for Application for RCR Permit; 20 minutes for Application for Federal crab vessel permit; 2 hours for Application for eligibility to receive Crab QS/IFQ or PQS/IPQ by transfer; 2 hours for Application to Become an ECCO; 2 hours for Application for transfer of crab QS/IFQ or PQS/IPQ; 2 hours for Application for transfer of crab QS/IFQ to or from an ECCO; 2 hours for Application for Inter-cooperative Transfer; 30 minutes for RCR fee submission form; and 4 hours for a letter of appeal, if denied a permit.

OMB No. 0648–0505

Requirements for crab reports and their associated burden estimates per response are: 35 minutes to electronically submit crab landing report and print receipts, 35 minutes to submit crab landing report paper backup (ADF&G fish ticket), 15 minutes for application for user ID, 20 minutes for CP offload report, 40 hours for ECCO annual report for an ECC.

OMB No. 0648–0506

Requirements for crab EDRs and their associated burden estimates per response are: 25 hours for Catcher processor historical EDR, 25 hours for Catcher processor annual EDR, 15 hours for Catcher vessel historical EDR, 15 hours for Catcher vessel annual EDR, 15 hours for Catcher vessel annual EDR, 15 hours for Stationary crab floating processor historical EDR, 15 hours for Stationary crab floating processor annual EDR, 15 hours for Shoreside crab processor historical EDR, 15 hours for Shoreside crab processor annual EDR, and 3 hours for verification of data by DCA.

Response times include the time for reviewing instructions, searching

existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on these burden estimates, including suggestions for reducing the burden, or any other aspect of these data collections-of-information to NMFS, Alaska Region (*see* **ADDRESSES**) and e-mail to *DRostker@omb.eop.gov,* or facsimile to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a 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.

Small Entity Compliance Guide

NMFS will post a small entity compliance guide on the Internet at *http://www.fakr.noaa.gov/sustainablefisheries/crab/crfaq.htm* to satisfy the Small Business Regulatory Enforcement Fairness Act of 1996, which requires a plain language guide to assist small entities in complying with this rule. Contact NMFS to request a hardtop of the guide (*see* **ADDRESSES**).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Parts 679 and 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 15 CFR part 902 is amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by adding in numerical order entries for § 679.5(l)(3)(i), § 679.5(l)(4), § 679.28(f) and (g), § 680.4, § 680.5, § 680.6, § 680.20, § 680.21, § 680.23(d)(1), § 680.23(d)(2), § 680.23(e), (f), (g) and (h), § 680.40(f), (g), (h), (i), (j), (k), (l), and (m), § 680.41, § 680.42, § 680.43, and § 680.44(a) through (f) to read as follows:

§ 902.1 OMB Control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR.	
* * * * *	
679.5(l)(3)(i), (l)(4)	–0272
* * * * *	
679.28(f)	–0445
679.28(g)	–0330
* * * * *	
680.4	–0504
680.5	–0505
680.6	–0506
680.20	–0503
680.21	–0504
680.23(d)(1) and (d)(2)	–0445
680.23(e), (f), (g) and (h)	–0330
680.40(f), (g), (h), (i), (j), (k), (l), and (m)	–0504
680.41	–0504
680.43	–0504
680.44(a), (b), (c), (d), (e)	–0505
680.44(f)	–0504
* * * * *	

50 CFR Chapter VI

■ For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31, 113 Stat. 57; 16 U.S.C. 1540(f).

■ 2. In § 679.1, revise paragraphs (g) and (j) to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(g) *Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs.* Regulations in this part govern commercial fishing for king and Tanner crab in the Bering Sea and Aleutian Islands Area by vessels of the United States, and supersede State of Alaska regulations applicable to the commercial king and Tanner crab fisheries in the Bering Sea and Aleutians Islands Area EEZ that are determined to be inconsistent with the FMP (see subpart A, B, and E of this part). Additional regulations governing commercial fishing for, and processing of, king and Tanner crab managed pursuant to section 313(j) of the Magnuson-Stevens Act and the Crab Rationalization Program are codified at 50 CFR part 680.

* * * * *

(j) *License Limitation Program (LLP).* (1) Regulations in this part implement the LLP for the commercial groundfish fisheries in the EEZ off Alaska and the LLP for the commercial crab fisheries in the Bering Sea and Aleutians Islands Area.

(2) Regulations in this part govern the commercial fishing for groundfish under the LLP by vessels of the United States using authorized gear within the GOA and the Bering Sea and Aleutians Islands Area and the commercial fishing for crab species under the LLP by vessels of the United States using authorized gear within the Bering Sea and Aleutians Islands Area.

* * * * *

■ 3. In § 679.2, revise the definitions of ''Alaska local time,'' and ''Shoreside processor,'' revise paragraphs (2) and (3) of the ''Directed fishing'' definition, and add a definition of ''Registered crab receiver'' in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Alaska local time (A.l.t.) means the time in the Alaska time zone.

* * * * *

Directed fishing means:

* * * * *

(2) With respect to license limitation groundfish species, directed fishing as defined in paragraph (1) of this definition.

(3) With respect to crab species under this part, the catching and retaining of any crab species.

* * * * *

Registered crab receiver (RCR) means a person issued an RCR permit, described under 50 CFR part 680, by the Regional Administrator.

* * * * *

Shoreside processor means any person or vessel that receives, purchases, or arranges to purchase, unprocessed groundfish, except catcher/processors, motherships, buying stations, restaurants, or persons receiving groundfish for personal consumption or bait.

* * * * *

■ 4. In § 679.3, revise paragraph (d) to read as follows:

§ 679.3 Relation to other laws.

* * * * *

(d) *King and Tanner crabs.* Additional regulations governing conservation and management of king crabs and Tanner crabs in the Bering Sea and Aleutian Islands Area are contained in 50 CFR part 680 and in Alaska Statutes at A.S. 16 and Alaska Administrative Code at 5 AAC Chapters 34, 35, and 39.

* * * * *

■ 5. In § 679.4, revise paragraph (k)(1)(ii), remove and reserve paragraphs (l)(3)(ii)(D), (l)(4)(i), and (l)(5)(ii), and remove paragraphs, (l)(4)(ii)(D), (l)(4)(ii)(E), (l)(5)(iv)(E), and (l)(5)(iv)(F), to read as follows:

§ 679.4 Permits.

* * * * *

(k) * * *

(1) * * *

(ii) Each vessel must have a crab species license, defined in § 679.2, issued by NMFS on board at all times it is engaged in fishing activities for the crab fisheries identified in this paragraph. A crab species license may be used only to participate in the fisheries endorsed on the license and on a vessel that complies with the vessel designation and MLOA specified on the license. NMFS requires a crab species license endorsed for participation in the following crab fisheries:

(A) Aleutian Islands red king crab in waters of the EEZ with an eastern boundary the longitude of Scotch Cap Light (164°44′ W. long.) to 53°30′ N. lat., then west to 165° W. long., a western boundary of 174° W. long., and a northern boundary of a line from the latitude of Cape Sarichef (54°36′ N. lat.) westward to 171° W. long., then north to 55°30′ N. lat., and then west to 174° W. long.;

(B) Aleutian Islands Area *C. opilio* and *C. bairdi* in waters of the EEZ with an eastern boundary the longitude of Scotch Cap Light (164°44′ W. long.) to 53°30′ N. lat., then west to 165° W. long, a western boundary of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991), and a northern boundary of a line from the latitude of Cape Sarichef (54°36′ N. lat.), with a southern boundary of 54°30′ N. lat. to 171° W. long., and then south to 54 36′ N. lat.;

(C) Norton Sound red king and Norton Sound blue king in waters of the EEZ with a western boundary of 168° W. long., a southern boundary of 62° N. lat., and a northern boundary of 65°36′ N. lat.;

(D) Minor Species endorsement includes:

(*1*) Bering Sea golden king crab (*Lithodes aequispinus*) in waters of the EEZ east of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991), with a southern boundary of 54°36′ N. lat. to 171° W. long., and then south to 54°30′ N. lat.

(*2*) Scarlet or deep sea king crab (*Lithodes couesi*) in the waters of the Bering Sea and Aleutian Islands Area;

(*3*) Grooved Tanner crab (*Chionoecetes tanneri*) in the waters of the Bering Sea and Aleutian Islands Area; and

(*4*) Triangle Tanner crab (*Chionoecetes angulatus*) in the waters of the Bering Sea and Aleutian Islands Area.

* * * * *

■ 6. In § 679.5, revise paragraphs (a)(7)(i) table only, (a)(15) introductory text, (c)(1), (g), (k), and (l)(4); revise introductory paragraph (l), introductory paragraph (l)(2)(iii)(M), introductory paragraph (l)(2)(iv), paragraph (l)(2)(iv)(C), paragraph (l)(2)(iv)(D), paragraph (l)(3)(i); remove paragraphs (a)(15)(i) through (viii), including the table; and remove and reserve (l)(2)(iv)(A) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

(a) * * *

(7) * * *

(i) * * *

If participant is . . .	And fishing activity is . . .	An active period is . . .	An inactive period is . . .
(A) CV [1]	Harvest or discard of groundfish	When gear remains on the grounds in a reporting area (except 300, 400, 550, or 690), regardless of the vessel location.	When no gear remains on the grounds in a reporting area.
(B) SS, SFP	Receipt, purchase or arrange to purchase, or processing of groundfish.	When checked in or processing	When not checked in or processing.
(C) MS	Receipt, discard, or processing of groundfish.	When checked in or processing	When not checked in or not processing.
(D) CP	Harvest, discard, or processing of groundfish.	When checked in or processing	When not checked in or not processing.
(E) BS	Receipt, discard, or delivery of groundfish.	When conducting fishing activity for an associated processor.	When not conducting fishing activity for an associated processor.

[1] CV = Catcher vessel; SS = Shoreside processor; SFP = stationary floating processor; MS = mothership; Catcher/processor = CP; BS = Buying station.

* * * * *

(15) *Transfer comparison.* The operator, manager, Registered Buyer, or Registered Crab Receiver must refer to Table 13 to this part for paperwork submittal, issuance, and possession requirements for each type of transfer activity of non-IFQ groundfish, IFQ halibut, IFQ sablefish, CDQ halibut, and crab rationalization (CR) crab.

* * * * *

(c) *Catcher vessel DFL and catcher/processor DCPL*—(1) *Longline and pot gear catcher vessel DFL and catcher/processor DCPL.* (i) In addition to information required at paragraphs (a) and (b) of this section:

(A) *Groundfish fisheries.* (*1*) The operator of a catcher vessel using longline or pot gear to harvest groundfish and that retains any groundfish from the GOA, or BSAI, must maintain a longline and pot gear DFL.

(*2*) The operator of a catcher/processor using longline or pot gear to

harvest groundfish and that retains any groundfish from the GOA, or BSAI, must maintain a longline and pot gear DCPL.

(B) *IFQ halibut, CDQ halibut, and IFQ sablefish fisheries.* (*1*) The operator of a catcher vessel using longline or pot gear to harvest IFQ sablefish, IFQ halibut, or CDQ halibut from the GOA, or BSAI, must maintain a longline and pot gear DFL.

(*2*) The operator of a catcher/processor using longline or pot gear to harvest IFQ sablefish, IFQ halibut, or CDQ halibut from the GOA, or BSAI, must maintain a longline and pot gear DCPL.

(C) *CR fisheries.* (*1*) The operator of a catcher vessel using pot gear to harvest CR crab from the BSAI, must maintain a longline and pot gear DFL.

(*2*) The operator of a catcher/processor using pot gear to harvest CR crab from the BSAI, must maintain a longline and pot gear DCPL.

(ii) *Required information.* The operator of a catcher vessel or catcher/processor identified in paragraph (c)(1)(i) of this section must record in the DFL or DCPL, the following information:

(A) *Federal reporting area.* Federal reporting area code (see Figures 1 and 3 to this part) where gear retrieval (*see* § 679.2) was completed, regardless of where the majority of the set took place. Use a separate logsheet for each reporting area.

(B) *Crew size.* If a catcher vessel, the number of crew, excluding observer(s), on the last day of a trip. If a catcher/processor, the number of crew, excluding observer(s), on the last day of the weekly reporting period.

(C) *Gear type.* Use a separate logsheet for each gear type.

(*1*) Circle gear type used to harvest the fish. If gear is other than those listed, circle ''Other'' and describe. If using hook-and-line gear, enter the alphabetical letter that coincides with gear description.

(*2*) If gear information is the same on subsequent pages, mark the box instead of re-entering the gear type information.

(*3*) *Pot gear.* If you checked pot gear, enter the number of pots set and the number of pots lost (if applicable).

(*4*) *Hook-and-line gear.* If you checked hook-and-line gear:

(*i*) Indicate whether gear is fixed hook (conventional or tub), autoline, or snap (optional, but may be required by IPHC regulations).

(*ii*) *Skates.* Indicate length of skate to the nearest foot (optional, but may be required by IPHC regulations), number of skates set, and number of skates lost (optional, but may be required by IPHC regulations).

(*iii*) *Hooks.* Indicate size of hooks, hook spacing in feet, number of hooks per skate (optional, but may be required by IPHC regulations).

(*iv*) *Seabird avoidance gear code.* Record seabird avoidance gear code(s) (see § 679.24(e) and Table 19 to this part).

(D) *Permit numbers.* Enter the permit number(s) for the applicable fishery in which you participated.

(*1*) IFQ permit number of the operator and of each IFQ permit holder aboard the vessel.

(*2*) CDQ group number (if applicable).

(*3*) Halibut CDQ permit number (if applicable).

(*4*) Federal crab vessel permit number (if applicable).

(E) *Observer information.* Record the number of observers aboard, the name of the observer(s), and the observer cruise number(s).

(F) *Management program.* Use a separate logsheet for each management program. Indicate whether harvest occurred under one of the following management programs. If harvest is not under one of these management programs, leave blank:

(*1*) *Exempted Fishery.* Record exempted fishery permit number (see § 679.6).

(*2*) *Research Fishery.* Record research program permit number (see § 600.745(a) of this chapter).

(*3*) Aleutian Islands Pollock (AIP) (see paragraph (a)(7)(xv)(F) of this section).

(G) *Catch by set.* (See § 679.2 for definition of ''set''). The operator must record the following information for each set, if applicable:

(*1*) If no catch occurred for a day, write ''no catch;'

(*2*) Set number, sequentially by year;

(*3*) Gear deployment date (month-day), time (in military format, A.l.t.), and begin position coordinates (in lat and long to the nearest minute);

(*4*) Gear retrieval date (month-day), time (in military format, A.l.t.), and end position coordinates (in lat and long to the nearest minute);

(*5*) *Begin and end buoy or bag numbers* (optional, but may be required by IPHC regulations);

(*6*) *Begin and end gear depths,* recorded to the nearest fathom (optional, but may be required by IPHC regulations);

(*7*) *Target species code.* Enter the species code of the species you intend to catch;

(*8*) *Estimated haul weight.* Enter the total estimated haul weight of all retained species. Indicate whether to the nearest pound or to the nearest 0.001 mt (2.20 lb);

(*9*) *IR/IU Species (see § 679.27).* If a catcher/processor, enter species code of IR/IU species and estimated total round weight for each IR/IU species; indicate whether to the nearest pound or the nearest 0.001 mt (2.20 lb);

(*10*) Estimated total round weight of IFQ halibut and CDQ halibut to the nearest pound;

(*11*) Number and estimated total round weight of IFQ sablefish to the nearest pound;

(*12*) Circle to indicate whether IFQ sablefish product is Western cut (WC), Eastern cut (EC), or round weight (RD); and

(*13*) Number and scale weight of raw CR crab to the nearest pound.

(H) *Data entry time limits.* (*1*) The operator must record in the DFL or DCPL within 2 hours after completion of gear retrieval: Set number; time and date gear set; time and date gear hauled; begin and end position; CDQ group number, halibut CDQ permit number, halibut IFQ permit number, sablefish IFQ permit number, crab IFQ permit number, and/or Federal crab vessel permit number (if applicable), number of pots set, and estimated total haul for each set.

(*2*) If a catcher vessel, the operator must record all other required information in the DFL within 2 hours after the vessel's catch is off-loaded, notwithstanding other time limits.

(*3*) If a catcher/processor, the operator must record all other required information in the DCPL by noon of the day following completion of production.

(*4*) If a catcher/processor, the operator must record product information in the DCPL by noon each day to record the previous day's production information.

* * * * *

(g) *Product transfer report (PTR)*—(1) *General requirements.* Except as provided in paragraph (g)(1)(i) through (vi) of this section:

(i) *Groundfish.* The operator of a mothership or catcher/processor or the manager of a shoreside processor or SFP must complete and submit a separate PTR for each shipment of groundfish and donated prohibited species caught in groundfish fisheries. A PTR is not required to accompany a shipment.

(ii) *IFQ halibut, IFQ sablefish, and CDQ halibut.* A Registered Buyer must submit a separate PTR for each shipment of halibut or sablefish for which the Registered Buyer submitted an IFQ landing report or was required to submit an IFQ landing report. A PTR is not required to accompany a shipment.

(iii) *CR crab.* A Registered Crab Receiver (RCR) must submit a separate

PTR for each shipment of crab for which the RCR submitted a CR crab landing report or was required to submit a CR crab landing report. A PTR is not required to accompany a shipment.

(2) *Exceptions*—(i) *Bait sales (non-IFQ groundfish only).* During one calendar day, the operator or manager may aggregate and record on one PTR the individual sales or shipments of non-IFQ groundfish to vessels for bait purposes during the day recording the amount of such bait product shipped from a vessel or facility that day.

(ii) *Retail sales*—(A) *IFQ halibut, IFQ sablefish, CDQ halibut, and non-IFQ groundfish.* During one calendar day, the operator, manager, or Registered Buyer may aggregate and record on one PTR the amount of transferred retail product of IFQ halibut, IFQ sablefish, CDQ halibut, and non-IFQ groundfish if each sale weighs less than 10 lb or 4.5 kg.

(B) *CR crab.* During one calendar day, the RCR may aggregate and record on one PTR the amount of transferred retail product of CR crab if each sale weighs less than 100 lb or 45 kg.

(iii) *Wholesale sales (non-IFQ groundfish only).* The operator or manager may aggregate and record on one PTR, wholesale sales of non-IFQ groundfish by species when recording the amount of such wholesale species leaving a vessel or facility in one calendar day, if invoices detailing destinations for all of the product are available for inspection by an authorized officer.

(iv) *Dockside sales.* (A) A person holding a valid IFQ permit, IFQ card, and Registered Buyer permit may conduct a dockside sale of IFQ halibut or IFQ sablefish with a person who has not been issued a Registered Buyer permit after all IFQ halibut and IFQ sablefish have been landed and reported in accordance with paragraph (*l*) of this section.

(B) A person holding a valid halibut CDQ permit, halibut CDQ card, and Registered Buyer permit may conduct a dockside sale of CDQ halibut with a person who has not been issued a Registered Buyer permit after all CDQ halibut have been landed and reported in accordance with paragraph (*l*) of this section.

(C) A Registered Buyer conducting dockside sales must issue a receipt to each individual receiving IFQ halibut, CDQ halibut, or IFQ sablefish in lieu of a PTR. This receipt must include:

(*1*) Date of sale;

(*2*) Registered Buyer permit number;

(*3*) Weight by product of the IFQ halibut, CDQ halibut or IFQ sablefish transferred.

(D) A Registered Buyer must maintain a copy of each dockside sales receipt as described in paragraph (l) of this section.

(v) *Transfer directly from the landing site to a processing facility (CDQ halibut, IFQ halibut, IFQ sablefish, or CR crab only).* A PTR is not required for transportation of unprocessed IFQ halibut, IFQ sablefish, CDQ halibut, or CR crab directly from the landing site to a facility for processing, provided the following conditions are met:

(A) A copy of the IFQ landing report receipt (Internet receipt) documenting the IFQ landing accompanies the offloaded IFQ halibut, IFQ sablefish, or CDQ halibut while in transit.

(B) A copy of the CR crab landing report receipt (Internet receipt) documenting the IFQ landing accompanies the offloaded CR crab while in transit.

(C) A copy of the IFQ landing report or CR crab landing report receipt is available for inspection by an authorized officer.

(D) The Registered Buyer submitting the IFQ landing report or RCR submitting the CR crab landing report completes a PTR for each shipment from the processing facility pursuant to paragraph (g)(1) of this section.

(3) *Time limits and submittal.* The operator of a mothership or catcher/processor, the manager of a shoreside processor or SFP, the Registered Buyer, or RCR must:

(i) Record all product transfer information on a PTR within 2 hours of the completion of the shipment.

(ii) Submit a PTR by facsimile or electronic file to OLE, Juneau, AK (907–586–7313), by 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period in which the shipment occurred.

(iii) If any information on the original PTR changes prior to the first destination of the shipment, submit a revised PTR by facsimile or electronic file to OLE, Juneau, AK (907–586–7313), by 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period in which the change occurred and indicate the confirmation number of the original PTR.

(4) *Required information.* The operator of a mothership or catcher/processor, the manager of a shoreside processor or SFP, the Registered Buyer, or RCR must include the following information on a PTR:

(i) *Original or revised PTR.* Whether a submittal is an original or revised PTR. If revised, record the confirmation number of the original PTR.

(ii) *Shipper information.* Name, telephone number, and facsimile number of the representative. According to the following table:

If you are shipping . . .	Enter under "Shipper" . . .
(A) Non-IFQ groundfish	Your processor's name, Federal fisheries or Federal processor permit number.
(B) IFQ halibut, CDQ halibut or IFQ sablefish	Your Registered Buyer name and permit number.
(C) CR crab	Your RCR name and permit number.
(D) Non-IFQ groundfish, IFQ halibut, CDQ halibut or IFQ sablefish, and CR crab on the same PTR.	(*1*) Your processor's name and Federal fisheries permit number or Federal processor permit number, (*2*) Your Registered Buyer's name and permit number, and (*3*) Your RCR name and permit number.

(iii) *Transfer information.* Using descriptions from the following table, enter receiver information, date and time of product transfer, location of product transfer (*e.g.,* port, position coordinates, or city), mode of transportation, and intended route:

If you are the shipper and . . .	Then enter . . .			
	Receiver	Date & time of product transfer	Location of product transfer	Mode of transportation and intended route
(A) Receiver is on land and transfer involves one van, truck, or vehicle.	Receiver name and Federal fisheries, Federal processor, or Federal crab vessel permit number (if any).	Date and time when shipment leaves the plant.	Port or city of product transfer.	Name of the shipping company; destination city and state or foreign country.
(B) Receiver is on land and transfer involves multiple vans, trucks or vehicles.	Receiver name and Federal fisheries, Federal processor, or Federal crab vessel permit number (if any).	Date and time when loading of vans or trucks, is completed each day.	Port or city of product transfer.	Name of the shipping company; destination city and state or foreign country.
(C) Receiver is on land and transfer involves one airline flight.	Receiver name and Federal fisheries, Federal processor, or Federal crab vessel permit number (if any).	Date and time when shipment leaves the plant.	Port or city of product transfer.	Name of the airline company; destination airport city and state.
(D) Receiver is on land and transfer involves multiple airline flights.	Receiver name and Federal fisheries, Federal processor, or Federal crab vessel permit number (if any).	Date and time of shipment when the last airline flight of the day leaves.	Port or city of product transfer.	Name of the airline company(s); destination airport(s) city and state.
(E) Receiver is a vessel and transfer occurs at sea.	Vessel name and call sign	Start and finish dates and times of transfer.	Transfer position coordinates in latitude and longitude, in degrees and minutes.	The first destination of the vessel.
(F) Receiver is a vessel and transfer takes place in port.	Vessel name and call sign	Start and finish dates and times of transfer.	Port or position of product transfer.	The first destination of the vessel.
(G) Receiver is an agent (buyer, distributor, shipping agent) and transfer is in a containerized van(s).	Agent name and location (city, state).	Transfer start and finish dates and times.	Port, city, or position of product transfer.	Name (if available) of the vessel transporting the van; destination port.
(H) You are aggregating individual retail sales for human consumption. (see paragraph (g)(2) of this section).	"RETAIL SALES"	Date of transfer.	Port or city of product transfer.	N/A.
(I) You are aggregating individual bait sales during a day onto one PTR (non-IFQ groundfish only).	"BAIT SALES"	Date of transfer.	Port or city of product transfer.	N/A.
(J) *Non-IFQ Groundfish only.* You are aggregating wholesale non-IFQ groundfish product sales by species during a single day onto one PTR and maintaining invoices detailing destinations for all of the product for inspection by an authorized officer.	"WHOLESALE SALES"	Time of the first sale of the day; time of the last sale of the day.	Port or city of product transfer.	N/A.

(iv) *Products shipped.* The operator, manager, Registered Buyer, or RCR must record the following information for each product shipped:

(A) *Species code and product code.* (*1*) For non-IFQ groundfish, IFQ halibut, IFQ sablefish, and CDQ halibut, the species code and product code (Tables 1 and 2 to this part).

(*2*) For CR crab, the species code and product code (Tables 1 and 2 to 50 CFR part 680).

(B) *Species weight.* Use only if recording 2 or more species with 2 or more product types contained within the same production unit. Enter the actual scale weight of each product of each species to the nearest kilogram or pound (indicate which). If not applicable, enter ''n/a'' in the species weight column. If using more than one line to record species in one carton, use a brace ''}'' to tie the carton information together.

(C) *Number of units.* Total number of production units (blocks, trays, pans, individual fish, boxes, or cartons; if iced, enter number of totes or containers).

(D) *Unit weight.* Unit weight (average weight of single production unit as listed in ''No. of Units'' less packing materials) for each species and product code in kilograms or pounds (indicate which).

(E) *Total weight.* Total weight for each species and product code of shipment less packing materials in kilograms or pounds (indicate which).

(F) *Total or partial offload.* (*1*) If a mothership or catcher/processor, the

operator must indicate whether fish or fish products are left onboard the vessel (partial offload) after the shipment is complete.

(*2*) If a partial offload, for the products remaining on board after the transfer, the operator must enter: Species code, product code, and total product weight to the nearest kilogram or pound (indicate which) for each product.

* * * * *

(k) *U.S. Vessel Activity Report (VAR)*—(1) *Fish or fish product other than crab onboard.* Except as noted in paragraph (k)(4) of this section, the operator of a catcher vessel greater than 60 ft (18.3 m) LOA, a catcher/processor, or a mothership required to hold a Federal fisheries permit issued under this part and carrying fish or fish product onboard must complete and submit a VAR by facsimile or electronic file to OLE, Juneau, AK (907–586–7313) before the vessel crosses the seaward boundary of the EEZ off Alaska or crosses the U.S.-Canadian international boundary between Alaska and British Columbia.

(2) *Combination of non-IFQ groundfish with IFQ halibut, CDQ halibut, IFQ sablefish or CR crab.* If a vessel is carrying non-IFQ groundfish and IFQ halibut, CDQ halibut, IFQ sablefish or CR crab, the operator must submit a VAR in addition to an IFQ Departure Report required by paragraph (l)(4) of this section.

(3) *Revised VAR.* If fish or fish products are landed at a port other than the one specified on the VAR, the operator must submit a revised VAR showing the actual port of landing before any fish are offloaded.

(4) *Exemption: IFQ Departure Report.* A VAR is not required if a vessel is carrying only IFQ halibut, CDQ halibut, IFQ sablefish, or CR crab onboard and the operator has submitted an IFQ Departure Report required by paragraph (l)(4) of this section.

(5) *Information required.* (i) Whether original or revised VAR.

(ii) Name and Federal fisheries permit number of vessel or RCR permit number.

(iii) Type of vessel (whether catcher vessel, catcher/processor, or mothership).

(iv) Name, daytime telephone number (including area code), and facsimile number and COMSAT number (if available) of representative.

(v) *Return report.* ''Return,'' for purposes of this paragraph, means returning to Alaska. If the vessel is crossing the seaward boundary of the EEZ off Alaska or crossing the U.S.-Canadian international boundary between Alaska and British Columbia into U.S. waters, indicate a ''return'' report and enter:

(A) Intended Alaska port of landing (*see* Table 14a to this part);

(B) Estimated date and time (hour and minute, Greenwich mean time) the vessel will cross the boundary; and

(C) The estimated position coordinates in latitude and longitude where the vessel will cross.

(vi) *Depart report.* ''Depart'' means leaving Alaska. If the vessel is crossing the seaward boundary of the EEZ off Alaska and moving out of the EEZ or crossing the U.S.-Canadian international boundary between Alaska and British Columbia and moving into Canadian waters, indicate a ''depart'' report and enter:

(A) The intended U.S. port of landing or country other than the United States (*see* Table 14b to this part);

(B) Estimated date and time (hour and minute, Greenwich mean time) the vessel will cross the boundary; and

(C) The estimated position coordinates in latitude and longitude where the vessel will cross.

(vii) *The Russian Zone.* Indicate whether the vessel is returning from fishing in the Russian Zone or is departing to fish in the Russian Zone.

(viii) *Fish or fish products.* For all fish or fish products (including non-groundfish) on board the vessel, enter:

(A) Harvest zone code;

(B) Species codes;

(C) Product codes; and

(D) Total fish product weight in lbs or to the nearest 0.001 mt (2.20 lb).

(1) *IFQ halibut, CDQ halibut, IFQ sablefish, or CR crab R&R.* In addition to the R&R requirements in this section, in 50 CFR part 680 with respect to CR crab, and as prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of this title, the following reports and authorizations are required, when applicable: IFQ Prior Notice of Landing, Product Transfer Report (*see* § 679.5(g)), IFQ landing report, IFQ Transshipment Authorization, and IFQ Departure Report.

* * * * *

(2) * * *

(iii) * * *

(M) After the Registered Buyer enters the landing data in the Internet submission form(s) and receipts are printed, the Registered Buyer, or his/her representative, and the IFQ cardholder or CDQ cardholder must sign the receipts to acknowledge the accuracy of the IFQ landing report.

(iv) *Submittals.* Except as indicated in paragraph (1)(2)(iv)(C) of this section, IFQ landing reports must be submitted electronically to OLE, Juneau, AK by using the Internet as follows:

* * * * *

(C) *Manual landing report.* Waivers from the Internet reporting requirement can only be granted in writing on a case-by-case basis by a local clearing officer. If a waiver is granted, manual landing instructions must be obtained from OLE, Juneau, AK, (800–304–4846, Select Option 1). Registered Buyers must complete and submit manual landing reports by facsimile to OLE, Juneau, AK, (907–586–7313). When a waiver is issued, the following additional information is required: Whether the manual landing report is an original or revised; and name, telephone number, and facsimile number of individual submitting the manual landing report.

(D) *Properly debited landing.* A properly concluded printed Internet submission receipt or a manual landing report receipt which is sent by facsimile from OLE to the Registered Buyer, and which is then signed by both the Registered Buyer and cardholder constitutes confirmation that OLE received the landing report and that the cardholder's account is properly debited. A copy of each receipt must be maintained by the Registered Buyer as described in § 679.5(l).

(3) * * *

(i) No person may transship processed IFQ halibut, CDQ halibut, IFQ sablefish, or CR crab between vessels without authorization by a local clearing officer. Authorization from a local clearing officer must be obtained for each instance of transshipment at least 24 hours before the transshipment is intended to commence.

* * * * *

(4) *IFQ departure report*—(i) *General requirements*—(A) *Time limit and submittal.* A vessel operator who intends to make a landing of IFQ halibut, CDQ halibut, IFQ sablefish, or CR crab at any location other than in an IFQ regulatory area for halibut and sablefish or in a crab fishery for CR crab (*see* Table 1 to part 680) in the State of Alaska must submit an IFQ Departure Report, by telephone, to OLE, Juneau, AK, (800–304–4846 or 907–586–7163) between the hours of 0600 hours, A.l.t., and 2400 hours, A.l.t.

(B) *Completion of fishing.* A vessel operator must submit an IFQ Departure Report after completion of all fishing and prior to departing the waters of the EEZ adjacent to the jurisdictional waters of the State of Alaska, the territorial sea of the State of Alaska, or the internal waters of the State of Alaska when IFQ

halibut, CDQ halibut, IFQ sablefish, or CR crab are on board.

(C) *Permit*—(*1*) *Registered Crab Receiver permit.* A vessel operator submitting an IFQ Departure Report for CR crab must have a Registered Crab Receiver permit.

(*2*) *Registered Buyer permit.* A vessel operator submitting an IFQ Departure Report for IFQ halibut, CDQ halibut, or IFQ sablefish must have a Registered Buyer permit.

(D) *First landing of any species.* A vessel operator submitting an IFQ Departure Report must submit IFQ landing reports for all IFQ halibut, CDQ halibut, and IFQ sablefish on board at the same time and place as the first landing of any IFQ halibut, CDQ halibut, or IFQ sablefish.

(E) *Permits on board.* (*1*) A vessel operator submitting an IFQ Departure Report to document IFQ halibut or IFQ sablefish must have one or more IFQ cardholders on board with a combined IFQ balance equal to or greater than all IFQ halibut and IFQ sablefish on board the vessel.

(*2*) A vessel operator submitting an IFQ Departure Report to document CDQ halibut must ensure that one or more CDQ cardholders are on board with enough remaining CDQ halibut balance to harvest amounts of CDQ halibut equal to or greater than all CDQ halibut on board.

(*3*) A vessel operator submitting an IFQ Departure Report to document CR crab must have one or more permit holders on board with a combined CR balance equal to or greater than all CR crab on board the vessel.

(ii) *Required information.* When submitting an IFQ Departure Report, the vessel operator must provide the following information:

(A) Intended date, time (A.l.t.), and location of landing;

(B) Vessel name and ADF&G vessel registration number;

(C) Vessel operator's name and Registered Buyer permit or Registered Crab Receiver permit number;

(D) Halibut IFQ, halibut CDQ, sablefish IFQ, and CR crab permit numbers of IFQ and CDQ cardholders on board;

(E) *Area of harvest.* (*1*) If IFQ or CDQ halibut, then halibut regulatory areas (*see* Figure 15 to this part).

(*2*) If IFQ sablefish, then sablefish regulatory areas (*see* Figure 14 to this part).

(*3*) If CR crab, then the crab rationalization fishery code (*see* Table 1 to part 680).

(F) Estimated total weight as appropriate of IFQ halibut, CDQ halibut, IFQ sablefish, or CR crab on board (lb/kg/mt).

(iii) *Revision to Departure Report.* A vessel operator who intends to make an IFQ landing at a location different from the location named on the IFQ Departure report must submit a revised report naming the new location at least 12 hours in advance of the offload. Revisions must be submitted by telephone, to OLE, Juneau, AK, (800–304–4846 or 907–586–7163) between the hours of 0600 hours, A.l.t., and 2400 hours, A.l.t.

* * * * *

■ 7. In § 679.7, revise paragraph (a)(15) and (k)(1)(iii), remove and reserve paragraphs (k)(2)(ii), (k)(3)(iii), (k)(4)(ii), and remove paragraph (k)(8) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(15) *Federal processor permit.* Receive, purchase or arrange for purchase, discard, or process groundfish harvested in the GOA or BSAI by a shoreside processor or SFP that does not have on site a valid Federal processor permit issued pursuant to § 679.4(f).

* * * * *

(k) * * *

(1) * * *

(iii) *Processing BSAI crab.* Use a listed AFA catcher/processor to process any crab species harvested in the BSAI.

* * * * *

■ 8. In § 679.28, add a new paragraph (b)(1)(v) and revise paragraph (f)(4)(i) to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(b) * * *

(1) * * *

(v) *Exceptions.* A scale manufacturer or their representative may request that NMFS approve a custom built automatic hopper scale under the following conditions:

(A) The scale electronics are the same as those used in other scales on the Regional Administrator's list of scales eligible for approval;

(B) Load cells have received Certificates of Conformance from NTEP or OIML;

(C) The scale compensates for motion in the same manner as other scales made by that manufacturer which have been listed on the Regional Administrator's list of scales eligible for approval;

(D) The scale, when installed, meets all of the requirements set forth in paragraph 3 of appendix A to this part, except those requirements set forth in paragraph 3.2.1.1.

* * * * *

(f) * * *

(4) * * *

(i) Contact the OLE by Facsimile (907–586–7703) and provide: the VMS transmitter ID, the vessel name, the Federal Fisheries Permit number or Federal crab vessel permit number.

* * * * *

■ 9. In § 679.31, revise paragraph (d) to read as follows:

§ 679.31 CDQ reserves.

* * * * *

(d) *Crab CDQ reserves.* Crab CDQ reserves for crab species governed by the Crab Rationalization Program are specified at § 680.40 (a)(1). For Norton Sound red king crab, 7.5 percent of the guideline harvest level specified by the State of Alaska is allocated to the crab CDQ reserve.

■ 10. In § 679.43, revise paragraph (a) to read as follows:

§ 679.43 Determinations and appeals.

(a) *General.* This section describes the procedure for appealing initial administrative determinations made under parts 300, 679, 680, and subpart E, of this title. This section does not apply to initial administrative determinations made under § 679.30(d).

* * * * *

§ 679.65 [Removed and Reserved]

■ 11. Remove and reserve § 679.65.

■ 12. In part 679, Tables 14a, 14b, and 15 are revised; and Tables 13 and 14c are added to read as follows:

TABLE 13 TO PART 679.—TRANSFER FORM SUMMARY

If participant type is . . .	And has . . . Fish product on-board	And is involved in this activity	Submit				Issue	Possess
			VAR (§ 679.5(k))	PTR (§ 679.5(g))	Trans-ship (§ 679.5(l)(3))	Departure report (§ 679.5(l)(4))	Dockside sales receipt (§ 679.5(g)(1)(v))	Landing receipt (§ 679.5(g)(1)(vi))
Catcher vessel greater than 60 ft LOA, mothership or catcher/processor.	Only non-IFQ groundfish	Vessel leaving or entering Alaska.	X	.....	.....	.....	.....	.....

TABLE 13 TO PART 679.—TRANSFER FORM SUMMARY—Continued

If participant type is . . .	And has . . . Fish product onboard	And is involved in this activity	Submit				Issue	Possess
			VAR (§ 679.5(k))	PTR (§ 679.5(g))	Trans-ship (§ 679.5(l)(3))	Departure report (§ 679.5(l)(4))	Dockside sales receipt (§ 679.5(g)(1)(v))	Landing receipt (§ 679.5(g)(1)(vi))
Catcher vessel greater than 60 ft LOA, mothership or catcher/processor.	Only IFQ sablefish, IFQ halibut, CDQ halibut, or CR crab.	Vessel leaving Alaska.				X		
Catcher vessel greater than 60 ft LOA, mothership or catcher/processor.	Combination of IFQ sablefish, IFQ halibut, CDQ halibut, or CR crab and non-IFQ groundfish.	Vessel leaving Alaska.	X			X		
Mothership, catcher/processor, shoreside processor, or SFP.	Non-IFQ groundfish	Transfer of product.		X				
Registered Buyer	IFQ sablefish, IFQ halibut or CDQ halibut.	Transfer of product.		X				
Registered Crab Receiver	CR crab	Transfer of product.		X				
A person holding a valid IFQ permit, IFQ card, and Registered Buyer permit.	IFQ sablefish, IFQ halibut or CDQ halibut.	Transfer of product.					XXX	
Registered Buyer	IFQ sablefish, IFQ halibut or CDQ halibut.	Transfer from landing site to Registered Buyer's processing facility.						XX
Registered Crab Receiver	CR crab	Transfer from landing site to RCR's processing facility.						XX
Vessel operator	Processed IFQ sablefish, IFQ halibut, CDQ halibut, or CR crab.	Transshipment between vessels.			XXXX			

"X" indicates under what circumstances each report is submitted.
"XX" indicates that the document must accompany the transfer of IFQ species from landing site to processor.
"XXX" indicates receipt must be issued to each receiver in a dockside sale.
"XXXX" indicates authorization must be obtained 24 hours in advance.

TABLE 14A TO PART 679.—PORT OF LANDING CODES [1]: ALASKA

Port name	NMFS code	ADF&G code
Adak	186	ADA
Akutan, Akutan Bay	101	AKU
Alitak	103	ALI
Anchorage	105	ANC
Angoon	106	ANG
Aniak	300	ANI
Anvik	301	ANV
Atka	107	ATK
Auke Bay	136	JNU
Beaver Inlet	119	DUT
Bethel	302	BET
Captains Bay	119	DUT
Chefornak	189	CHF
Chignik	113	CHG
Cordova	115	COR
Craig	116	CRG
Dillingham	117	DIL
Douglas	136	JNU
Dutch Harbor/Unalaska.	119	DUT
Egegik	122	EGE
Ekuk	303	EKU
Elfin Cove	123	ELF
Emmonak	304	EMM
Excursion Inlet	124	XIP
False Pass	125	FSP
Fairbanks	305	FBK
Galena	306	GAL
Glacier Bay	307	GLB
Glennallen	308	GLN
Gustavus	127	GUS
Haines	128	HNS
Halibut Cove	130	HBC
Homer	132	HOM
Hoonah	133	HNH
Hydaburg	309	HYD
Hyder	134	HDR
Juneau	136	JNU
Kake	137	KAK
Kaltag	310	KAL

TABLE 14A TO PART 679.—PORT OF LANDING CODES [1]: ALASKA—Continued

Port name	NMFS code	ADF&G code
Kasilof	138	KAS
Kenai	139	KEN
Kenai River	139	KEN
Ketchikan	141	KTN
King Cove	142	KCO
King Salmon	143	KNG
Kipnuk	144	KIP
Klawock	145	KLA
Kodiak	146	KOD
Kotzebue	311	KOT
Mekoryuk	147	MEK
Metlakatla	148	MET
Moser Bay	312	MOS
Naknek	149	NAK
Nenana	313	NEN
Nikiski (or Nikishka)	150	NIK
Ninilchik	151	NIN
Nome	152	NOM
Nunivak Island	314	NUN
Old Harbor	153	OLD
Other Alaska [1]	499	UNK
Pelican	155	PEL
Petersburg	156	PBG
Port Alexander	158	PAL
Port Armstrong	315	PTA
Port Bailey	159	PTB
Port Graham	160	GRM
Port Lions	316	LIO
Port Moller	317	MOL
Port Protection	161	PRO
Quinhagak	187	QUK
Sand Point	164	SPT
Savoonga	165	SAV
Selawik	326	SWK
Seldovia	166	SEL
Seward	167	SEW
Sitka	168	SIT
Skagway	169	SKG
Soldotna	318	SOL

TABLE 14A TO PART 679.—PORT OF LANDING CODES [1]: ALASKA—Continued

Port name	NMFS code	ADF&G code
St. George	170	STG
St. Mary	319	STM
St. Paul	172	STP
Tee Harbor	136	JNU
Tenakee Springs	174	TEN
Togiak	176	TOG
Toksook Bay	177	TOB
Tununak	178	TUN
Ugashik	320	UGA
Unalakleet	321	UNA
Valdez	181	VAL
Wasilla	322	WAS
Whittier	183	WHT
Wrangell	184	WRN
Yakutat	185	YAK

[1] To report a landing at a location not currently assigned a location code number, use the code for "Other Alaska" code "499" "OAK".

TABLE 14B TO PART 679.—PORT OF LANDING CODES: NON-ALASKA

[California, Oregon, Canada, Washington]

Port name	NMFS code	ADF&G code
CALIFORNIA		
Eureka	500	EUR
Other California [1]	1599	OCA
CANADA		
Other Canada [1]	899	OCN
Port Edward	802	PRU
Prince Rupert	802	PRU
OREGON		
Astoria	600	AST
Newport	603	NPT
Other Oregon [1]	699	OOR

TABLE 14B TO PART 679.—PORT OF LANDING CODES: NON-ALASKA—Continued

[California, Oregon, Canada, Washington]

Port name	NMFS code	ADF&G code
Portland	323	POR
Warrenton	604	WAR
WASHINGTON		
Anacortes	700	ANA
Bellingham	702	BEL
Blaine	717	BLA

TABLE 14B TO PART 679.—PORT OF LANDING CODES: NON-ALASKA—Continued

[California, Oregon, Canada, Washington]

Port name	NMFS code	ADF&G code
Everett	704	EVT
La Conner	708	LAC
Olympia	324	OLY
Other Washington [1].	799	OWA
Seattle	715	SEA

TABLE 14B TO PART 679.—PORT OF LANDING CODES: NON-ALASKA—Continued

[California, Oregon, Canada, Washington]

Port name	NMFS code	ADF&G code
Tacoma	325	TAC

[1] To report a landing at a location not currently assigned a location code number, use the code for "Other" for the state or country at which the landing occurs.

TABLE 14C TO PART 679.—AT-SEA OPERATION TYPE CODES TO BE USED AS PORT CODES FOR VESSELS MATCHING THIS TYPE OF OPERATION

Description of code		
Code	NMFS Alaska region	ADF&G
FCP	Catcher/processor	Floating catcher processor.
FLD	Mothership	Floating domestic mothership.
IFP	Stationary Floating Processor	Inshore floating processor—processing in State of Alaska waters only.

TABLE 15 TO PART 679.—GEAR CODES, DESCRIPTIONS, AND USE

[X indicates where this code is used]

Name of gear	Use alphabetic code to complete the following:			Use numeric code to complete the following:				
	Alpha gear code	NMFS logbooks & paper forms [1]	Electronic WPR & check-in/check-out code [1]	Numeric gear code	Shoreside electronic logbook (SSPELR)	IFQ Internet & forms	CR crab	ADF&G COAR
Diving	OTH	X	X	11	X			X
Dredge	OTH	X	X	22	X			X
Dredge, hydro/mechanical	OTH	X	X	23	X			X
Fish wheel	OTH	X	X	08	X			X
Gillnet, drift	OTH	X	X	03	X			X
Gillnet, herring	OTH	X	X	34	X			X
Gillnet, set	OTH	X	X	04	X			X
Gillnet, sunken	OTH	X	X	41	X			X
Hand line/jig/troll (IFQ name: hand troll).	n/a			05	X	X		X
Handpicked	OTH	X	X	12	X			X
Hatchery	n/a			77	X			X
Hook-and-line	HAL	X	X	61	X	X		X
Jig, mechanical (IFQ name: jigs).	JIG	X	X	26	X	X		X
Net, dip	OTH	X	X	13	X			X
Net, ring	OTH	X	X	10	X			X
Other/specify	OTH	X	X	99	X			X
Pair trawl	(1)			37				X
Pot	POT	X	X	91	X	X	X	X
Pound	OTH	X	X	21	X			X
Seine, purse	OTH	X	X	01	X			X
Seine, beach	OTH	X	X	02	X			X
Shovel	OTH	X	X	18	X			X
Trap	OTH	X	X	90	X			X
Trawl, beam	(1)			17	X			X
Trawl, double otter	(1)			27	X		X	
Trawl, nonpelagic/bottom	NPT	X	X	07	X			X
Trawl, pelagic/midwater	PTR	X	X	47	X			X
Troll, dinglebar	TROLL	X	X	25	X	X		X
Troll, power gurdy	TROLL	X	X	15	X	X		X
Weir	OTH	X	X	14	X			X

[1] For groundfish logbooks, forms, electronic WPR, electronic check-in/out reports: all trawl gear must be reported as either nonpelagic trawl (NPT) or pelagic trawl (PTR).

For the reasons set out in the preamble, a new 50 CFR part 680 is added as follows:

PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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Authority: 16 U.S.C. 1862.

Subpart A—General

§ 680.1 Purpose and scope.

Regulations in this part implement policies developed by the North Pacific Fishery Management Council and approved by the Secretary of Commerce in accordance with the Magnuson-Stevens Fishery Conservation and Management Act. In addition to part 600 of this chapter, these regulations implement the following:

(a) *Fishery Management Plan (FMP) for Bering Sea and Aleutian Islands King and Tanner Crabs.* Regulations in this part govern commercial fishing for, and processing of, king and Tanner crabs in the Bering Sea and Aleutian Islands Area pursuant to section 313(j) of the Magnuson-Stevens Act, including regulations implementing the Crab Rationalization Program for crab fisheries in the Bering Sea and Aleutian Islands Area, and supersede State of Alaska regulations applicable to the commercial king and Tanner crab fisheries in the Exclusive Economic Zone (EEZ) of the Bering Sea and Aleutian Islands Area that are determined to be inconsistent with the FMP.

(b) *License Limitation Program.* Commercial fishing for crab species not included in the Crab Rationalization Program for crab fisheries of the Bering Sea and Aleutian Islands Area remains subject to the License Limitation Program for the commercial crab fisheries in the Bering Sea and Aleutian Islands Area under part 679 of this chapter.

§ 680.2 Definitions.

In addition to the definitions in the Magnuson-Stevens Act, in 50 CFR part 600, and § 679.2 of this chapter, the terms used in this part have the following meanings:

Adak community entity means the non-profit entity incorporated under the laws of the state of Alaska that represents the community of Adak and has a board of directors elected by the residents of Adak.

Affiliation means a relationship between two or more entities in which one directly or indirectly owns or controls a 10 percent or greater interest in, or otherwise controls, another, or a third entity directly or indirectly owns or controls a 10 percent or greater interest in, or otherwise controls, both. For the purpose of this definition, the following terms are further defined:

(1) *Entity.* An entity may be an individual, corporation, association, partnership, joint-stock company, trust, or any other type of legal entity, any receiver, trustee in bankruptcy or similar official or liquidating agent, or any organized group of persons whether incorporated or not, that holds direct or indirect interest in:

(i) Quota share (QS), processor quota share (PQS), individual fishing quota (IFQ), or individual processing quota (IPQ); or,

(ii) For purposes of the economic data report (EDR), a vessel or processing plant operating in CR fisheries.

(2) *Indirect interest.* An indirect interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest in a second entity is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's direct or indirect interest in the second entity.

(3) *Controls a 10 percent or greater interest.* An entity controls a 10 percent or greater interest in a second entity if the first entity:

(i) Controls a 10 percent ownership share of the second entity, or

(ii) Controls 10 percent or more of the voting stock of the second entity.

(4) *Otherwise controls.* (i) A PQS or IPQ holder otherwise controls QS or IFQ, or a QS or IPQ holder, if it has:

(A) The right to direct, or does direct, the business of the entity which holds the QS or IFQ;

(B) The right in the ordinary course of business to limit the actions of or replace, or does limit 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 which holds the QS or IFQ;

(C) The right to direct, or does direct, the transfer of QS or IFQ;

(D) The right to restrict, or does restrict, the day-to-day business activities and management policies of the entity holding the QS or IFQ through loan covenants;

(E) The right to derive, or does derive, either directly, or through a minority shareholder or partner, and in favor of a PQS or IPQ holder, a significantly disproportionate amount of the economic benefit from the holding of QS or IFQ;

(F) The right to control, or does control, the management of, or to be a controlling factor in, the entity holding QS or IFQ;

(G) The right to cause, or does cause, the sale of QS or IFQ;

(H) Absorbs all of the costs and normal business risks associated with ownership and operation of the entity holding QS or IFQ; and

(I) Has the ability through any other means whatsoever to control the entity that holds QS or IFQ.

(ii) Other factors that may be indica of control include, but are not limited to the following:

(A) If a PQS or IPQ holder or employee takes the leading role in establishing an entity that will hold QS or IFQ;

(B) If a PQS or IPQ holder has the right to preclude the holder of QS or IFQ from engaging in other business activities;

(C) If a PQS or IPQ holder and QS or IFQ holder use the same law firm, accounting firm, etc.;

(D) If a PQS or IPQ holder and QS or IFQ holder share the same office space, phones, administrative support, etc.;

(E) If a PQS or IPQ holder absorbs considerable costs and normal business risks associated with ownership and operation of the QS or IFQ holdings;

(F) If a PQS or IPQ holder provides the start up capital for the QS or IFQ holder on less than an arm's-length basis;

(G) If a PQS or IPQ holder has the general right to inspect the books and records of the QS or IFQ holder; and

(H) If the PQS or IPQ holder and QS or IFQ holder use the same insurance agent, law firm, accounting firm, or broker of any PQS or IPQ holder with whom the QS or IFQ holder has entered into a mortgage, long-term or exclusive sales or marketing agreement, unsecured loan agreement, or management agreement.

Arbitration IFQ means:

(1) Class A catcher vessel owner (CVO) IFQ held by a person who is not a holder of PQS or IPQ and who is not affiliated with any holder of PQS or IPQ,

(2) Prior to July 1, 2008, catcher vessel crew (CVC) IFQ that the holder has elected to submit to the Arbitration System, and that is held by a person who is not a holder of PQS or IPQ, and who is not affiliated with any holder of PQS or IPQ, and

(3) Beginning July 1, 2008, Class A CVC IFQ held by a person who is not a holder of PQS or IPQ and is not affiliated with any holder of PQS or IPQ.

(4) IFQ held by an FCMA cooperative.

Arbitration QS means:

(1) CVO QS held by a person who is not a holder of PQS or IPQ and is not affiliated with any holder of PQS or IPQ,

(2) Prior to July 1, 2008, CVC QS that the holder has elected to submit to the Arbitration System, and that is held by a person who is not a holder of PQS or IPQ and who is not affiliated with any holder of PQS or IPQ and,

(3) Beginning July 1, 2008, CVC QS held by a person who is not a holder of PQS or IPQ and is not affiliated with any holder of PQS or IPQ.

Arbitration System means the system established by the contracts required by § 680.20, including the process by which the Market Report and Non-Binding Price Formula are produced, the negotiation approaches, the Binding Arbitration process, and fee collection.

Assessed value means the most recent value for a vessel and gear provided in a marine survey.

Auditor means an examiner employed by, or under contract to, the data collection agent to verify data submitted in an economic data report.

Blind data means any data collected from the economic data report by the data collection agent that are subsequently amended by removing personal identifiers, including, but not limited to social security numbers, crew permit numbers, names and addresses, Federal fisheries permit numbers, Federal processor permit numbers, Federal tax identification numbers, State of Alaska vessel registration and permit numbers, and by adding in their place a nonspecific identifier.

Box size means the capacity of a crab-packing container in kilograms or pounds.

BSAI crab means those crab species governed under the Fishery Management Plan (FMP) for Bering Sea/Aleutian Islands King and Tanner Crabs.

BSAI Crab Capacity Reduction Program means the program authorized by Public Law 106–554, as Amended by Public Law 107–20 and Public Law 107–117.

BSAI crab fisheries means those crab fisheries governed under the Fishery Management Plan (FMP) for Bering Sea/Aleutian Islands King and Tanner Crabs.

Captain means, for the purposes of the EDR, a vessel operator.

Catcher/processor (CP) means a vessel that is used for catching crab and processing that crab.

Catcher vessel means a vessel that is used for catching crab and that does not process crab on board.

CDQ community means a community eligible to participate in the Western Alaska Community Development Program under subpart C of 50 CFR part 679.

CDQ group means a CDQ group as that term is defined at 50 CFR 679.2.

Committed IFQ means:

(1) Any Arbitration IFQ for which the holder of such IFQ has agreed or committed to delivery of crab harvested with the IFQ to the holder of previously uncommitted IPQ and for which the holder of the IPQ has agreed to accept delivery of that crab, regardless of whether such agreement specifies the price or other terms for delivery, or

(2) Any Arbitration IFQ for which, on or after the date which is 25 days prior to the opening of the first crab fishing season in the crab QS fishery for such IFQ, the holder of the IFQ has unilaterally committed to delivery of crab harvested with the IFQ to the holder of previously uncommitted IPQ, regardless of whether the IFQ and IPQ holders have reached an agreement that specifies the price or other terms for delivery.

Committed IPQ means any IPQ for which the holder of such IPQ has received a commitment of delivery from a holder of Arbitration IFQ such that the Arbitration IFQ is committed IFQ, regardless of whether the Arbitration IFQ and IPQ holders have reached an agreement that specifies the price or other terms for delivery.

CP standard price means price, expressed in U.S. dollars per raw crab pound, for all CR crab landed by a CP as determined for each crab fishing year by the Regional Administrator and documented in a CP standard price list published by NMFS.

Crab cost recovery fee liability means that amount of money, in U.S. dollars, owed to NMFS by a CR allocation holder or RCR as determined by multiplying the appropriate ex-vessel value of the amount of CR crab debited from a CR allocation by the appropriate crab fee percentage.

Crab fee percentage means that positive number no greater than 3 percent determined for each crab fishing year by the Regional Administrator and used to calculate the crab cost recovery fee liability for a CR allocation holder or RCR under the Crab Rationalization Program.

Crab fishing year means the period from July 1 of one calendar year through June 30 of the following calendar year.

Crab grade means a grading system to describe the quality of crab.

(1) Grade 1 means standard or premium quality crab, and

(2) Grade 2 means below standard quality crab.

Crab harvesting cooperative, for the purposes of this part 680, means a group of crab QS holders who have chosen to form a crab harvesting cooperative, under the requirements of § 680.21, in order to combine and collectively harvest their crab IFQ through a crab harvesting cooperative IFQ permit issued by NMFS.

Crab harvesting cooperative IFQ means the annual catch limit of IFQ crab that may be harvested by a crab harvesting cooperative that is lawfully allocated a harvest privilege for a specific portion of the TAC of a crab QS fishery.

Crab individual fishing quota (crab IFQ) means the annual catch limit of a crab QS fishery that may be harvested by a person who is lawfully allocated a harvest privilege for a specific portion of the TAC of a crab QS fishery with the following designations or with the designation as a crab IFQ hired master:

(1) *Catcher vessel crew (CVC) IFQ* means a permit to annually harvest, but not process, a CR crab on board a vessel.

(2) *Catcher vessel owner (CVO) IFQ* means a permit to annually harvest, but not process, a CR crab on board a vessel.

(i) *Class A IFQ* means IFQ that is required to be delivered to a processor holding unused IPQ.

(ii) *Class B IFQ* means IFQ that is not required to be delivered to a processor holding unused IPQ.

(3) *Catcher/processor owner (CPO) IFQ* means a permit to annually harvest and process a CR crab on a catcher/processor.

(4) *Catcher/processor crew (CPC) IFQ* means a permit to annually harvest and process a CR crab on a catcher/processor.

Crab IFQ hired master means a person who holds a crab IFQ hired master permit issued under § 680.4.

Crab IFQ permit holder means the person identified on an IFQ permit.

Crab LLP license history means, for any particular crab LLP license, the legal landings made on the vessel(s) that was used to qualify for that LLP license and any legal landings made under the authority of that LLP license.

Crab quota share (crab QS) means a permit the face amount of which is used as the basis for the annual calculation and allocation of a person's crab IFQ with the following designations:

(1) *Catcher vessel crew (CVC) QS* means a permit that yields CVC IFQ.

(2) *Catcher vessel owner (CVO) QS* means a permit that yields CVO IFQ.

(3) *Catcher/processor owner (CPO) QS* means a permit that yields CPO IFQ.

(4) *Catcher/processor crew (CPC) QS* means a permit that yields CPC IFQ.

Crab QS fishery means those CR fisheries under Table 1 to this part that require the use of QS and PQS, and their resulting IFQ and IPQ, to harvest and receive IFQ crab.

Crab QS program means the program that allocates QS and PQS, and their resulting IFQ and IPQ, for CR crab of the BSAI off Alaska and governed by regulations under this part.

Crab QS regional designation means the designation of QS or PQS and their resulting IFQ and IPQ subject to regional delivery requirements in this part.

Crab Rationalization (CR) allocation means any allocation of CR crab authorized under the CR Program.

Crab Rationalization (CR) crab means those crab species in the crab fisheries subject to management under the Crab Rationalization Program described in Table 1 to this part.

Crab Rationalization (CR) fisheries means those fisheries defined in Table 1 to part 680.

Crab Rationalization (CR) Program means the crab QS program plus the CDQ and the Adak community allocation programs, including all management, monitoring, and enforcement components, for BSAI king and Tanner crabs governed by the regulations of this part.

Crew means:

(1) Any individual, other than the fisheries observers, working on a vessel that is engaged in fishing.

(2) For the purposes of the EDR, each employee on a vessel, excluding the captain and fisheries observers, that participated in any CR fishery.

Custom processing means processing of crab by a person undertaken on behalf of another person.

Data collection agent (DCA) means the entity selected by the Regional Administrator to distribute an EDR to a person required to complete it, to receive the completed EDR, to review and verify the accuracy of the data in the EDR, and to provide those data to authorized recipients.

Days at sea means, for the purposes of the EDR, the number of days spent at sea while fishing for crab, including travel time to and from fishing grounds.

Economic data report (EDR) means the report of cost, labor, earnings, and revenue data for catcher vessels, catcher/processors, shoreside crab processors, and stationary floating crab processors participating in CR fisheries.

Eligible community resident means, for purposes of the Crab QS program, any individual who:

(1) Is a citizen of the United States;

(2) Has maintained a domicile in the ECC, from which the individual requests to lease crab IFQ, for at least 12 consecutive months immediately preceding the time when the assertion of residence is made and who is not claiming residency in another community, state, territory, or country; and

(3) Is otherwise eligible to receive crab QS or IFQ by transfer.

Eligible crab community (ECC) means a community in which at least 3 percent of the initial allocation of processor quota share of any crab fishery is allocated. The specific communities are:

(1) CDQ Communities.

(i) Akutan;

(ii) False Pass;

(iii) St. George; and

(iv) St. Paul.

(2) Non-CDQ Communities.

(i) Unalaska/Dutch Harbor;

(ii) Kodiak;

(iii) King Cove;

(iv) Port Moller; and

(v) Adak.

Eligible crab community (ECC) entity means a non-profit organization specified under § 680.41(j)(2) that is designated by the governing body of an ECC, other than Adak, to represent it for the purposes of engaging in the right of first refusal of transfer of crab PQS or IPQ outside the ECC under contract provisions set forth under section 313(j) of the Magnuson-Stevens Act. For those ECCs that also are CDQ communities, the ECC entity is the CDQ group to which the ECC is a member.

Eligible crab community organization (ECCO) means a non-profit organization that represents at least one ECC, as defined in this part, and that has been approved by the Regional Administrator to obtain by transfer and hold crab QS and to lease the resulting IFQ on behalf of an ECC.

Ex-vessel value means:

(1) *For the shoreside processing sector*. The total U.S. dollar amount of all compensation, monetary and non-monetary, including any retroactive payments, received by a CR allocation holder for the purchase of any CR crab debited from the CR allocation described in terms of raw crab pounds.

(2) *For the catcher/processor sector*. The total U.S. dollar amount of CR crab landings as calculated by multiplying the number of raw crab pounds debited from the CR allocation by the appropriate CP standard price determined by the Regional Administrator.

FCMA cooperative, for the purposes of this part 680, means a cooperative formed in accordance with the Fishermen's Collective Marketing Act of 1934 (15 U.S.C. 521).

Finished pounds means the total weight, in pounds, of processed product, not including the container.

IFQ account means the amount of crab IFQ in raw crab pounds that is held by a person at any particular time for a crab QS fishery, sector, region, and class.

IFQ crab means crab species listed in Table 1 to this part subject to management under the crab QS program.

Individual processor quota (IPQ) means the annual amount of crab, in pounds, representing a specific portion of the TAC for a crab QS fishery, that may be received for processing by a person who is lawfully allocated PQS or IPQ.

Initial processor quota share (PQS) pool means the total number of PQS units for each crab QS fishery which is the basis of initial PQS allocations.

Initial quota share (QS) pool means the total number of non-processor QS units for each crab QS fishery which is the basis of initial QS allocations.

IPQ account means the amount of crab IPQ in raw crab pounds that is held by a person at any particular time for a crab QS fishery and region.

Landing means the transfer of raw crab harvested by a vessel prior to that crab being reported on a CR crab landing report.

(1) For catcher/processors, the amount of crab retained during a reporting period constitutes a landing.

(2) For catcher vessels, the amount of crab removed from the boat at a single location/time constitutes a landing.

Lease of QS/IFQ or PQS/IPQ means a temporary, annual transfer of crab IFQ or IPQ without the underlying QS or PQS.

Leaseholder means, for purposes of the EDR, a person who:

(1) Is identified as the leaseholder in a written lease of a catcher vessel, catcher/processor, shoreside crab processor, or stationary floating crab processor, or

(2) Pays the expenses of a catcher vessel, catcher/processor, shoreside crab processor, or stationary floating crab processor, or

(3) Claims expenses for the catcher vessel, catcher/processor, shoreside crab processor, or stationary floating crab processor as a business expense on schedule C of his/her Federal income tax return or on a state income tax return.

Magnuson-Stevens Act means the Magnuson-Stevens Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*).

Mutual Agreement means, for purposes of the Arbitration System, the consent and agreement of Arbitration Organizations that represent an amount of Arbitration QS equal to more than 50 percent of all the Arbitration QS in a fishery, and an amount of PQS equal to more than 50 percent of all the PQS in a fishery based upon the Annual Arbitration Organization Reports.

Newly constructed vessel means, for the purposes of initial QS issuance, a vessel on which the keel was laid by June 10, 2002.

Official crab rationalization record means the information prepared by the Regional Administrator about the legal landings and legal processing by vessels and persons in the BSAI crab fisheries during the qualifying periods specified at § 680.40.

Processing, or to process means the preparation of, or to prepare, crab to render it suitable for human consumption or storage. This includes, but is not limited to: Cooking, canning, butchering, sectioning, freezing or icing.

Processor quota share (PQS) means a permit the face amount of which is used as the basis for the annual calculation and allocation of IPQ.

Raw crab pounds means the weight of raw crab in pounds when landed.

Registered crab receiver (RCR) means a person holding an RCR Permit issued by the Regional Administrator.

Retain means to fail to return crab to the sea after a reasonable opportunity to sort the catch.

Right of First Refusal (ROFR) means the civil contract provisions set forth under section 313(j) of the Magnuson-Stevens Act between the holders of PQS and IPQ and ECC entities, other than Adak, for the opportunity of ECCs to exercise the right to purchase or lease PQS or IPQ proposed to be transferred by a holder of PQS or IPQ in an ECC.

Seafood Marketing Association Assessment (SMAA) means the seafood processing assessment collected by processing firms and buyers from fishery harvesters for the State of Alaska.

Share payment means an amount of monetary compensation (not salary or wages) based on gross or net earnings of a BSAI crab fishing vessel.

Shoreside crab processor means any person or vessel that receives, purchases, or arranges to purchase unprocessed crab, except a catcher/processor or a stationary floating crab processor.

Stationary floating crab processor (SFCP) means a vessel of the United States that remains anchored or otherwise remains stationary while receiving or processing crab in the waters of the State of Alaska.

Uncommitted IFQ means any Arbitration IFQ that is not Committed IFQ.

Uncommitted IPQ means any IPQ that is not Committed IPQ.

U.S. Citizen means:

(1) Any individual who is a citizen of the United States; or

(2) Any corporation, partnership, association, or other entity that is organized under Federal, state, or local laws of the United States or that may legally operate in the United States.

§ 680.3 Relation to other laws.

(a) *King and Tanner crab.* (1) Additional laws and regulations governing the conservation and management of king crab and Tanner crab in the BSAI area are contained in 50 CFR part 679, Alaska Statutes at A.S. 16, and Alaska Administrative Code at 5 AAC Chapters 34, 35, and 39.

(2) The Alaska Administrative Code (at 5 AAC 39.130) governs reporting and permitting requirements using the ADF&G ''Intent to Operate'' registration form and ''Fish Tickets.''

(b) *Sport, personal use, and subsistence.* (1) For State of Alaska statutes and regulations governing sport and personal use crab fishing other than subsistence fishing, see Alaska Statutes, Title 16—Fish and Game; 5 AAC Chapters 47 through 77.

(2) For State of Alaska statutes and regulations governing subsistence fishing for crab, see Alaska Statutes, Title 16—Fish and Game; 5 AAC 02.001 through 02.625.

§ 680.4 Permits.

(a) *General information.* Persons participating in the CR fisheries are required to possess the permits described in this section.

(1) *Approval.* Approval of applications under this part may be conditioned on the payment of fees under § 680.44 or the submission of an EDR as described under § 680.6.

(2) *Issuance.* The Regional Administrator may issue or amend any permits under this section or under § 680.21 annually or at other times as needed under this part.

(3) *Transfer.* Crab QS and PQS permits issued under § 680.40 and Crab IFQ and IPQ permits issued under this section are transferable, as provided under § 680.41. Crab IFQ hired master permits, Federal crab vessel permits, and RCR permits issued under this section are not transferable.

(4) *Inspection.* The holder of a Federal crab vessel permit, crab IFQ permit, crab IPQ permit, or crab IFQ hired master permit, must present a legible copy of the permit on request of any authorized officer or RCR receiving a crab IFQ landing. A legible copy of the RCR permit must be present at the location of a crab IFQ landing and an individual representing the RCR must make the RCR permit available for inspection on request of any authorized officer.

(b) *Crab QS permit.* Crab QS is issued by the Regional Administrator to persons who successfully apply for an initial allocation under § 680.40 or to receive QS by transfer under § 680.41. Once issued, a crab QS permit is valid until modified by transfer under § 680.41; or until the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904. To qualify for a crab QS permit, the applicant must be a U.S. Citizen.

(c) *Crab PQS permit.* Crab PQS is issued by the Regional Administrator to persons who successfully apply for an initial allocation under § 680.40 or receive PQS by transfer under § 680.41. Once issued, a PQS permit is valid until modified by transfer under § 680.41 or until the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904.

(d) *Crab IFQ permit.* (1) A crab IFQ permit authorizes the person identified on the permit to harvest crab in the

fishery identified on the permit at any time the fishery is open during the crab fishing year for which the permit is issued, subject to conditions of the permit. A crab IFQ permit is valid under the following circumstances:

(i) Until the end of the crab fishing year for which the permit is issued;

(ii) Until the amount harvested is equal to the amount specified on the permit;

(iii) Until the permit is modified by transfers under § 680.41; or

(iv) Until the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904.

(2) A legible copy of the crab IFQ permit must be carried on board the vessel used by the permitted person at all times that IFQ crab are retained on board.

(3) A crab IFQ permit is issued on an annual basis by the Regional Administrator to persons who hold crab QS, of the type specified on the crab QS permit, and who have submitted a complete annual application for crab IFQ/IPQ permit, described at paragraph (f) of this section, that is subsequently approved by the Regional Administrator.

(4) To qualify for a crab IFQ permit, the applicant must be a U.S. Citizen.

(e) *Crab IPQ permit.* (1) A crab IPQ permit authorizes the person identified on the permit to receive/process the IFQ crab identified on the permit during the crab fishing year for which the permit is issued, subject to conditions of the permit. A crab IPQ permit is valid under the following circumstances:

(i) Until the end of the crab fishing year for which the permit is issued;

(ii) Until the amount received/processed is equal to the amount specified on the permit;

(iii) Until the permit is modified by transfers under § 680.41; or

(iv) Until the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904.

(2) A legible copy of the crab IPQ permit authorizing receiving/processing of IFQ crab must be retained on the premises or vessel used by the permitted person to process the IFQ crab at all times that IFQ crab are retained on the premises or vessel.

(3) A crab IPQ permit is issued on an annual basis by the Regional Administrator to persons who hold crab PQS, and who have submitted a complete annual application for crab IFQ/IPQ permit, described at paragraph (f) of this section, that is subsequently approved by the Regional Administrator.

(f) *Contents of annual application for crab IFQ/IPQ permit.* (1) A complete application must be received by NMFS no later than August 1 of the crab fishing year for which a person is applying to receive IFQ or IPQ. If a complete application is not received by NMFS by this date, that person will not receive IFQ or IPQ for that crab fishing year.

(2) For the application to be considered complete, all fees required by NMFS must be paid, and any EDR required under § 680.6 must be submitted to the DCA. In addition, the applicant must include the following information:

(i) *Applicant information.* Enter applicant's name and NMFS Person ID; applicant's date of birth or, if a non-individual, date of incorporation; applicant's social security number (optional) or tax identification number; applicant's permanent business mailing address and any temporary mailing address the applicant wishes to use; and applicant's business telephone number, facsimile number, and e-mail address.

(ii) *Crab IFQ or IPQ permit identification.* Indicate the type of crab IFQ or IPQ permit for which applicant is applying by QS fishery(ies) and indicate (YES or NO) whether applicant has joined a crab harvesting cooperative. If YES, indicate cooperative's name and ensure that this application is submitted by the applicant's cooperative with its completed application for an annual crab harvesting cooperative IFQ permit.

(iii) *Identification of ownership interests.* If the applicant is not an individual, provide the names of all persons, to the individual level, holding an ownership interest in the entity and the percentage ownership each person and individual holds in the applicant.

(iv) *Documentation of affiliation.* Complete a documentation of affiliation declaring any and all affiliations, as the term ''affiliation'' is defined at § 680.2. A documentation of affiliation includes affirmations by the applicant pertaining to relationships that may involve direct or indirect ownership or control of the delivery of IFQ crab and any supplemental documentation deemed necessary by NMFS to determine whether an affiliation exists. Indicate whether any entity that holds PQS or IPQ is affiliated with the applicant, as affiliation is defined in § 680.2. If the applicant is considered affiliated, the applicant must provide a list of all PQS or IPQ holders with which he/she is affiliated, including full name, business mailing address, and business telephone number.

(v) *Certification of applicant.* The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. Print the name of the applicant. If the application is completed by an authorized representative, proof of authorization must accompany the application.

(g) *Crab IFQ hired master permit.* (1) A crab IFQ hired master permit is issued on an annual basis and authorizes the individual identified on the permit to harvest and land IFQ crab for debit against the specified crab IFQ permit until the crab IFQ hired master permit expires or is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904, or on request of the crab IFQ permit holder.

(2) A legible copy of the crab IFQ hired master permit must be on board the vessel used by the hired master to harvest IFQ crab at all times IFQ crab are retained on board. Except as specified in § 680.42, an individual who is issued a crab IFQ hired master permit must remain aboard the vessel used to harvest IFQ crab, specified under that permit, during the crab fishing trip and at the landing site until all crab harvested under that permit are offloaded and the landing report for IFQ crab is completed.

(h) *Contents of application for crab IFQ hired master permit.* In order for the application to be considered complete, a copy of the USCG *Abstract Of Title* or *Certificate Of Documentation* must be included with this application to demonstrate percent of vessel ownership by the IFQ permit holder. A complete application for a crab IFQ hired master permit must include the following information:

(1) *Purpose of application.* Indicate whether the application is to add or to delete a hired master and identification of crab IFQ permit(s) for which this application is submitted.

(2) *IFQ permit holder information.* Enter permit holder's name, NMFS Person ID, and social security number (optional) or tax identification number; permit holder's permanent or temporary business mailing address; and permit holder's business telephone number, facsimile number, and e-mail address (if available).

(3) *Identification of vessel upon which crab IFQ will be harvested.* Enter the vessel's name, ADF&G vessel registration number, and USCG documentation number. Indicate whether (YES or NO) the permit holder has at least a 10 percent ownership interest in the vessel the crab IFQ hired master will use to fish permit holder's IFQ crab. If YES, provide documentation of IFQ permit holder's 10 percent ownership interest.

(4) *IFQ hired master permit holder information.* Complete a separate section for each crab IFQ hired master. Enter the hired master's name, NMFS Person ID, social security number (optional) or tax identification number, and date of birth; hired master's permanent or temporary business mailing address; and hired master's business telephone number, facsimile number, and e-mail address (if available).

(5) *Applicant certification.* The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. If the application is completed by an authorized representative, then authorization must accompany the application.

(i) *RCR permit.* (1) An RCR permit is issued on an annual basis. An RCR permit is valid during the crab fishing year for which it is issued until the RCR permit expires or is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904.

(2) An RCR permit is required for any person who receives unprocessed CR crab from the person(s) who harvested the crab, the owner or operator of a vessel that processes CR crab at sea, any person holding IPQ, and any person required to submit a Departure Report under 50 CFR 679.5(l)(4).

(j) *Contents of application for RCR permit.* For the application to be considered complete, all fees required by NMFS must be paid, and any EDR required under § 680.6 must be submitted to the DCA. In addition, the applicant must include the following information:

(1) *Purpose of application.* Indicate whether the application is a request for a new RCR permit, a renewal of an existing RCR permit, or an amendment to an existing RCR permit. If a renewal of or amendment to an existing RCR permit, include the applicant's RCR permit number.

(2) *Applicant identification.* Enter applicant's name and NMFS Person ID; applicant's social security number or tax ID number (required); name of contact person for the applicant, if applicant is not an individual; applicant's permanent business mailing address; and business telephone number, facsimile number, and e-mail address (if available).

(3) *Type of activity.* Select type of receiving or processing activity and whether catcher/processor or shoreside processor.

(4) *Individual responsible for submission of EDR.* Enter the name of the designated representative submitting the EDR on behalf of the RCR, if an EDR is required at § 680.6. If different from the RCR's contact information, also enter the designated representative's business mailing address, telephone number, facsimile number, and e-mail address (if available).

(5) *Application certification.* The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. If the application is completed by an authorized representative, then proof of authorization must accompany the application.

(k) *Federal crab vessel permit.* The owner of a vessel must have a Federal crab vessel permit on board that vessel when used to fish for CR crab.

(1) A Federal crab vessel permit is issued on an annual basis to the owner of the vessel and is in effect from the date of issuance through the end of the crab fishing year for which the permit was issued, unless it is revoked, suspended, or modified under § 600.735 or § 600.740.

(2) A Federal crab vessel permit may not be surrendered at any time during the crab fishing year for which it was issued.

(3) A Federal crab vessel permit issued under this paragraph is not transferable or assignable and is valid only for the vessel for which it is issued.

(4) To qualify for a Federal crab vessel permit, the applicant must be a U.S. Citizen.

(5) The holder of a Federal crab vessel permit must submit an amended application for a Federal crab vessel permit within 10 days of the date of change in: the ownership of the vessel (a copy of the current USCG documentation for the vessel showing the change in ownership must accompany the amended application), or the individual responsible for submission of the EDR on behalf of the vessel's owner(s).

(l) *Contents of application for federal crab vessel permit.* For the application to be considered complete, all fees required by NMFS must be paid, and any EDR required under § 680.6 must be submitted to the DCA. Also, if ownership of the vessel has changed or if the permit application for a vessel to which a Federal crab vessel permit has never been issued, a copy of the USCG *Abstract Of Title* or *Certificate Of Documentation.* In addition the applicant must include the following information:

(1) *Purpose of application.* Indicate whether the application is a request for a new permit, a renewal of an existing permit, or an amendment to an existing permit. If a renewal of or amendment to an existing permit, include the current Federal crab vessel permit number.

(2) *Contact owner information.* The name(s), permanent business mailing address, social security number (voluntary) or tax ID number, business telephone number, business facsimile number, business e-mail address (if available) of all vessel owners, and the name of any person or company (other than the owner) that manages the operation of the vessel.

(3) *Vessel information.* Enter the vessel's name and home port (city and state); ADF&G processor code, if vessel is a catcher/processor or stationary floating crab processor; whether a vessel of the United States; USCG documentation number; ADF&G vessel registration number; and vessel's LOA (in feet), registered length (in feet), gross tonnage, net tonnage, and shaft horsepower. Indicate all types of operations the vessel may conduct during a crab fishing year.

(4) *Designated representative for EDR.* Enter the name of the designated representative who is responsible for completion and submission of the EDR, and the representative's business mailing address, telephone number, facsimile number, and e-mail address (if available).

(5) *Applicant certification.* The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. Print the applicant name. If the application is completed by an authorized representative, then authorization must accompany the application.

(m) *Annual crab harvesting cooperative IFQ permit.* See § 680.21.

§ 680.5 Recordkeeping and reporting (R&R).

(a) *General requirements*—(1) *Recording and reporting crab.* Any CR crab harvested that is retained must be recorded and reported.

(2) *Responsibility.* (i) The participants in the CR fisheries are responsible for complying with the following R&R requirements:

Recordkeeping and reporting report	Person responsible	Reference
(A) Longline and pot gear catcher vessel daily fishing logbook.	Owner and operator of vessel	§ 679.5(c)(1).
(B) Longline and pot gear catcher/processor daily cumulative production logbook.	Owner and operator of vessel	§ 679.5(c)(1).
(C) Product Transfer Report (PTR)	Owner and operator of catcher/processor; Owner and manager of shoreside processor or SFCP; RCR.	§ 679.5(g).
(D) U.S. Vessel Activity Report (VAR)	Owner and operator of vessel	§ 679.5(k).
(E) Transhipment Authorization	Owner and operator of a catcher/processor; RCR	§ 679.5(l)(3).
(F) IFQ Departure Report	Owner and operator of vessel	§ 679.5(l)(4).
(G) CR crab Landing Report	RCR	§ 680.5(c).
(H) Catcher/processor offload report	Owner and operator of a catcher/processor	§ 680.5(d).
(I) Eligible Crab Community Organization (ECCO) Annual Report for an Eligible Crab Community (ECC).	ECCO	§ 680.5(e).
(J) RCR Fee Submission Form	RCR	§ 680.5(f).
(K) Crab Economic Data Report (EDR)	Owners or leaseholders of a catcher vessel, catcher/processor, shoreside processor, or SFCP.	§ 680.6.

(3) *Representative.* Designation of a representative to complete R&R requirements does not relieve the person(s) responsible for compliance from ensuring compliance with this section.

(4) *Submittal of information.* A person must submit to NMFS all information, records, and reports required in this section in English and in a legible, timely, and accurate manner, based on A.l.t.; if handwritten or typed, in indelible ink.

(5) *Alteration of records.* A person may not alter or change any entry or record submitted to NMFS, except that an inaccurate, incomplete, or incorrect entry or record may be corrected after notifying the Regional Administrator at the address and facsimile number listed on each form, or as provided the opportunity on the Internet.

(6) *Inspection of records.* A person responsible for R&R under paragraph (a)(2) of this section must make available for inspection all reports, forms, scale receipts, and CR crab landing report receipts upon the request of an authorized officer for the time periods indicated in paragraph (a)(7) of this section.

(7) *Retention of records.* A person responsible for R&R under paragraph (a)(2) of this section must retain all reports and receipts as follows:

(i) *On site.* Until the end of the crab fishing year during which the records were made and for as long thereafter as crab or crab products recorded in the records are retained onboard the vessel or on site at the facility; and

(ii) *For 3 years.* For 3 years after the end of the crab fishing year during which the records were made.

(8) *Landing verification and inspection.* Each CR crab landing and all crab retained on board the vessel making a CR crab landing are subject to verification and inspection by authorized officers.

(9) *Sampling.* Each CR crab landing and all crab retained onboard a vessel making a CR crab landing are subject to sampling by authorized officers and observers.

(b) *CR landing report procedure*—(1) *Properly debited landing.* All retained crab catch must be weighed, reported, and debited from the appropriate IFQ or IPQ account under which the catch was harvested, as appropriate.

(2) An RCR must enter his or her authorized user ID and password to access the IERS. An RCR obtains a user ID by submitting to NMFS an IERS application for user ID (see paragraph (c)(1) of this section).

(3) The crab IFQ permit holder, crab IFQ hired master, or person who harvested Adak or CDQ crab must provide his or her name, NMFS person ID, crab IFQ number, and his or her own password or personal identification number (PIN), if required, to enter a CR crab landing report;

(4) The RCR must enter the landing and/or processing data specified under paragraphs (c)(7), (c)(8) or (c)(9) of this section in the Internet submission form(s) or other NMFS-approved method.

(5) Deadloss and personal use crab must be debited from the appropriate CR allocation under which the catch was harvested.

(6) Deadloss and personal use crab that an IPQ holder did not purchase are not required to be debited from the IPQ holder's account.

(7) A properly debited, printed receipt from the IERS or other NMFS-approved reporting method constitutes confirmation that NMFS received the CR crab landing report and that the permit holder's account is properly debited.

(8) The RCR and the crab IFQ permit holder, crab IFQ hired master, IPQ permit holder, or person who harvested Adak or CDQ crab must each sign the printed receipt(s) to indicate that the landing reports are accurate and must enter date signed.

(9) The receipt must be retained as specified under paragraph (a)(7) of this section.

(10) A person who for any reason is unable to properly submit an electronic CR crab landing report or debit a landing as required under paragraph (d) of this section must telephone NMFS (800–304–4846).

(11) The address of the NMFS Alaska Region Internet site will be provided to all RCRs receiving crab.

(c) *Interagency electronic reporting system (IERS).* Unless an alternative reporting method has been approved by NMFS, an RCR must obtain at his or her own expense: hardware, software, and Internet connectivity to support Internet submissions of the CR crab landing report on the IERS. The IERS will provide a web page where the applicant will enter information.

(1) *IERS application for user ID.* (i) Each RCR and the crab IFQ permit holder, crab IFQ hired master, IPQ permit holder, or person who harvested Adak or CDQ crab must submit an IERS application to the Regional Administrator to provide information needed to process account access into the IERS. The IERS will validate that all required information is submitted, that the information entered is in correct format, and that the requested user ID is not already in use. The IERS will generate a PDF document from the information entered by the applicant.

(ii) The user will print, sign, and submit the application by mail to the Regional Administrator. Signature of applicant on form means that the applicant agrees to use access privileges to the IERS for purposes of submitting legitimate fishery landing reports and to safeguard the user ID and password to prevent their use by unauthorized persons. In addition, signature of the

RCR ensures that the applicant is authorized to submit landing reports for the processor permit number(s) listed.

(iii) Agency staff will review the form, confirm that the user should be authorized for the system, and will activate the user on the IERS. The IERS will then send the user an e-mail informing the user that his or her new user ID is ready for use.

(2) *Contents of the IERS application for user ID.* The IERS application for user ID must contain the following information: Date of application, name of applicant (user), processor name and location (city and state) or vessel name, if applicable, business telephone number, business facsimile number, business e-mail address (if available), requested user ID, initial password, security question, security answer, ADF&G processor code(s), Federal processor permit number, if applicable, and RCR permit number(s).

(d) *CR crab landings*—(1) *Joint and several liability.* The RCR and the crab IFQ permit holder, crab IFQ hired master, IPQ permit holder, or person who harvested Adak or CDQ crab are required to provide accurate information to the RCR to complete the CR crab landing report.

(2) *Reporting.* All CR crab must be reported by the receiving RCR unless the crab has been previously reported.

(i) *Reporting by all except catcher/processors.* Crab must be reported using the IERS system described in paragraph (c) of this section.

(ii) *Reporting by catcher/processors.* Catcher/processors may submit CR crab landings by e-mail attachment in a format approved by NMFS.

(3) *Submittal requirement.* An RCR is required to submit a CR crab landing report to the Regional Administrator for each catcher vessel landing or catcher/processor landing.

(4) *Time limits.* (i) For CR crab harvested on a catcher/processor, the owner or operator is required to submit a CR crab landing report to NMFS within 6 hours of the end of each weekly reporting period in which CR crab was harvested.

(ii) For CR crab landed to an RCR that is not a catcher/processor, the owner or manager is required to submit a CR crab landing report to NMFS within 6 hours after all crab is offloaded from a specific vessel.

(5) *Remain at landing site.* Except for landings of CR crab processed at sea, once the landing has commenced, neither the harvesting vessel nor the crab IFQ permit holder, crab IFQ hired master, or person who harvested Adak or CDQ crab may leave the landing facility until the CR crab account is properly debited (as described in paragraph (b)(5) of this section).

(6) *No movement of CR crab.* The landed crab may not be moved from the facility where it was landed until the CR crab landing report is received by the Regional Administrator, and the IFQ permit holder's or IPQ permit holder's account is properly debited (as described in paragraph (b)(5) of this section).

(7) *Contents of CR crab landing report.* The RCR must accurately enter the following information in a CR crab landing report:

(i) RCR permit number;

(ii) ADF&G processor code of first purchaser;

(iii) State of Alaska Interim Use Permit (IUP) number;

(iv) Commercial Fisheries Entry Commission year sequence number;

(v) Indicate (YES or NO) whether a portion of the harvested CR crab was or will be delivered to another RCR (partial delivery);

(vi) Indicate (YES or NO) whether this is the last delivery for the trip;

(vii) Management program: IFQ, CDQ, or Adak. (If CDQ or Adak, see paragraph (c)(11) of this section);

(viii) ADF&G vessel registration number of the delivering vessel;

(ix) Date fishing began;

(x) Date of the CR crab landing;

(xi) Number of pot lifts in each ADF&G statistical area;

(xii) Number of crew, including operator and excluding observer(s);

(xiii) Number of observers;

(xiv) ADF&G fish ticket number (if not automatically supplied);

(xv) If a shoreside processor, type of processing operation; enter port code from Tables 14a or 14b to part 679. If a catcher/processor, enter operation type from Table 14c to part 679;

(xvi) ADF&G statistical area of harvest reported by the IFQ permit holder;

(xvii) Species code of catch from Table 2 to this part;

(xviii) Delivery-condition codes of catch from Table 3a to this part;

(xix) Number of crab retained (optional);

(xx) Price per pound;

(xxi) Scale weight of live crab in pounds;

(xxii) Scale weight of deadloss in pounds;

(xxiii) Scale weight of crab retained for personal use in pounds; and

(xxiv) Gear code to describe gear used to harvest CR crab (see Table 15 to 50 CFR part 679).

(8) *Custom processing.* In addition to the information required in paragraph (c)(7) of this section, if custom processing CR crab, enter the ADF&G processor code of the person for which the CR crab was custom processed;

(9) *CDQ and Adak landings.* Instead of the information described in paragraph (c)(7) of this section, an RCR who receives a landing of CR crab harvested under the CDQ or Adak community allocation programs must submit for each landing the following information for each CR fishery and species:

(i) RCR permit number;

(ii) Crab species code from Table 2 to this part;

(iii) Type of crab, either CDQ or Adak community allocation;

(iv) If CDQ, enter CDQ group number;

(v) Crab species amount. Enter the scale weight(s) in raw crab pounds landed or processed at sea; and

(vi) Price per pound.

(e) *Catcher/processor offload report.* The owner or operator of a catcher/processor that harvested and processed CR crab must complete a catcher/processor offload report at the time of offload of CR crab and attach a scale printout showing gross product offload weight.

(1) *Contents of catcher/processor offload report.* The catcher/processor offload report must include the following: Name, ADF&G processor code, and Federal crab vessel permit number of the catcher/processor; fishing start date and time; fishing stop date and time; product code from Table 3b to this part; total gross weight of product offload, including glaze and packaging (specify lb or kg); estimated glaze percentage; case count and average box weight (specify lb or kg); net weight of crab product (specify lb or kg); completion date and time of catcher/processor offload; location (port) of catcher/processor offload (see Tables 14a and 14b to part 679); and ADF&G fish ticket numbers.

(2) *Submittal.* The RCR must submit electronically or by facsimile (907–586–7465) the catcher/processor offload report and a copy of the scale printout within 2 hours of completion of offload to the Regional Administrator.

(f) *ECCO Annual Report.* (1) Annually by June 30, each ECCO must submit a complete annual report on its crab QS activity for the prior crab fishing year for each ECC represented by the ECCO. The ECCO must submit a copy of the annual report to the governing body of each community represented by the ECCO and to the Regional Administrator, NMFS, Alaska Region; P.O. Box 21668; Juneau, AK 99802.

(2) *Contents of ECCO Annual Report.* A complete annual report must include the following information for the crab

IFQ derived from the QS held by the ECCO:

(i) Name, ADF&G vessel registration number, USCG documentation number, and Federal crab vessel permit of each vessel from which the crab IFQ was harvested;

(ii) Name and business addresses of individuals employed as crew members when fishing the crab IFQ;

(iii) Criteria used by the ECCO to distribute crab IFQ leases among eligible community residents;

(iv) Description of efforts made to ensure that crab IFQ lessees employ crew members who are eligible community residents of the ECC aboard vessels on which crab IFQ derived from QS held by a ECCO is being fished;

(v) Description of the process used to solicit lease applications from eligible community residents of the ECC on whose behalf the ECCO is holding QS;

(vi) Names and business addresses and amount of crab IFQ requested by each individual applying to receive crab IFQ from the ECCO;

(vii) Any changes in the bylaws of the ECCO, board of directors, or other key management personnel;

(viii) Copies of minutes, bylaw changes, motions, and other relevant decision making documents from ECCO board meetings.

(g) *RCR fee submission form* (See § 680.44). (1) *Applicability.* An RCR who receives any CR crab pursuant to § 680.44 or the RCR's authorized representative, must submit a complete RCR fee submission form electronically, by mail, or by facsimile to the Regional Administrator. Mail to: Regional Administrator, NMFS, Alaska Region; Attn: OMI; P.O. Box 21668; Juneau, AK 99802–1668; Facsimile (907–586–7354). Fee submission forms are available from RAM or on the Alaska Region Home Page at *http://www.fakr.noaa.gov/.*

(2) *Due date and submittal.* The reporting period of the RCR fee submission form shall be the crab fishing year. An RCR must submit any crab cost recovery fee liability payment(s) and the RCR fee submission form to NMFS electronically or to the address provided at paragraph (g)(1) of this section not later than July 31 following the crab fishing year in which the CR crab landings were made.

(3) *Required information.* An RCR must accurately record on the RCR fee submission form the following information:

(i) *Identification of the RCR.* Enter the printed full name, NMFS person ID, RCR permit number, social security number or Federal tax identification number of the RCR. Enter the permanent or temporary business mailing address (indicate whether permanent or temporary), and the business telephone number, facsimile number, and e-mail address (if available).

(ii) *Signature of applicant.* Enter printed name and signature of applicant and date signed. If authorized representative, attach authorization to application.

(iii) *Method of Payment (see § 680.44 (a)(4)).* The RCR must select the method of payment for fees; whether by personal check, bank certified check (cashier's check), money order, or credit card. If by credit card, the RCR must select the type of credit card and enter the card number, expiration date, amount of payment, name as printed on the card, signature of the card holder, and date of signature.

(h) *Product transfer report.* (See § 679.5(g).)

(i) *U.S. Vessel activity report (VAR).* (*See* § 679.5(k).)

(j) *Transshipment authorization.* (*See* § 679.5(l)(3).)

(k) *IFQ departure report.* (*See* § 679.5(l)(4).)

(l) *Catcher vessel longline and pot daily fishing logbook (DFL) and catcher/processor daily cumulative production logbook (DCPL).* (*See* § 679.5 (c)).

§ 680.6 Crab economic data report (EDR).

Persons participating in the CR crab fisheries are required to submit the EDRs described in this section for various permit applications to be considered complete. Use these tables to complete the EDRs described in this section: Table 1, Crab Rationalization (CR) Fisheries; Table 2, Crab Species Codes; Table 3c, Crab Product Codes for the EDRs; Table 4, Crab Process Codes; Table 5, Crab Size Codes; and Table 6, Crab Grade Codes.

(a) *Catcher vessel historical EDR.* (1) NMFS will select catcher vessels from a list of known catcher vessels, as determined by NMFS, that made at least one landing from fisheries listed in Table 1 to this part between January 1, 1998, through December 31, 2004, and will publish a **Federal Register** notice identifying vessels whose existing or former owners and leaseholders are required to submit an EDR, as follows:

(i) Owners or leaseholders of catcher vessels that participated in the BSAI crab fisheries between January 1, 1998, through December 31, 2004, and have received an allocation of QS, PQS, IFQ, or IPQ.

(ii) Owners or leaseholders of catcher vessels that participated in the BSAI crab fisheries between January 1, 1998, through December 31, 2004, that did not qualify for and receive QS, PQS, IFQ, or IPQ, but were participants at any time since January 23, 2004, in the BSAI crab fisheries.

(2) *Time limit.* The owner or leaseholder of the identified vessels must submit the historical EDR to the DCA 90 days after the **Federal Register** notice notifying owners or leaseholders, to the address provided on the form.

(3) *Instructions.* Instructions for submitting a catcher vessel historical EDR and certification page are specified in the following table:

If you were . . .	And . . .	You must complete and submit . . .
(i) The catcher vessel owner as described in paragraph (a)(1) of this section.	(A) You harvested BSAI crab in the vessel described at paragraph (a)(4)(ii)(B) of this section and were notified by NMFS to submit an EDR for selected years.	Entire EDR for each year that BSAI crab was harvested.
	(B) No one harvested BSAI crab in the vessel described at paragraph (a)(4)(ii)(B) of this section and you were notified by NMFS to submit an EDR for selected years.	EDR certification pages.
	(C) You leased the vessel to another party, and harvested no BSAI crab in the vessel described at paragraph (a)(4)(ii)(B) of this section and were notified by NMFS to submit an EDR for selected years.	(*1*) EDR certification pages.
		(*2*) Provide the name, business address, and telephone number of the person to whom you leased the vessel during the NMFS-selected years.

If you were . . .	And . . .	You must complete and submit . . .
	(D) You leased the vessel for a portion of the year to another party, but harvested some BSAI crab in the vessel described at paragraph (a)(4)(ii)(B) of this section and were notified by NMFS to submit an EDR for selected years.	(*1*) Entire EDR for each year that BSAI crab was harvested. (*2*) Provide the name, business address, and telephone number of the person to whom you leased the vessel during the NMFS-selected years.
(ii) The leaseholder as described in paragraph (a)(1) of this section.	You harvested BSAI crab in the vessel described at paragraph (a)(4)(ii)(B) of this section vessel and were notified by NMFS to submit an EDR for selected years.	Entire EDR for each year that BSAI crab was harvested.

(4) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* The owner or leaseholder must submit the completed EDR certification pages only, and must attest that they meet the conditions exempting them from submitting the EDR, by signing and dating the certification pages (see paragraph (a)(3) of this section).

(ii) The owner, leaseholder, or designated representative must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar year for which the vessel must submit the EDR;

(B) *Catcher vessel information.* Vessel name, USCG documentation number, ADF&G vessel registration number, crab LLP license number(s), current estimated market value of vessel and equipment, and replacement value of vessel and equipment.

(C) *Owner information.* Name of company, partnership, or sole proprietorship and business telephone number, facsimile number, and e-mail address (if available).

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing this report.* (*1*) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(*2*) If the owner is the person completing this report, check the correct box. If the name and address of the owner provided in paragraph (a)(4)(ii)(C) of this section is the same as the name and address of the person completing the EDR, the information does not need to be repeated here; and

(*3*) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(5) *EDR.* The owner or leaseholder must record the following information on an EDR:

(i) *BSAI Crab activity chart.* Complete a crab activity chart by entering the following information: CR fishery code, ADF&G Fish ticket number(s), number of days at sea, average crew size (including captain), and number of pots lost (if applicable).

(ii) *Crab sales gross revenue.* CR fishery code, pounds sold, and gross revenue.

(iii) *CDQ crab lease costs.* CR fishery code, pounds leased, and total cost of lease. If you did not participate in CDQ fisheries, indicate N/A.

(iv) *Crab harvesting labor costs.* CR fishery code, number of crew earning shares (excluding captain), total crew share payment, and captain's share payment.

(v) *BSAI crab crew residence.* For employees that participated in BSAI crab harvesting, record the locations where they reside and the number of employees that are from each residential location, as follows:

(A) If Alaska, enter primary city of residence.

(B) If state other than Alaska, enter primary state of residence.

(C) If country other than United States, enter primary country of residence.

(vi) *BSAI crab-specific vessel costs.* For the fishing year being reported, record insurance premiums (for hull, property and indemnity, and pollution), insurance deductible fees, quantity and cost of pots purchased, line, and other crab fishing gear purchases, pounds and cost of bait by species, gallons and cost of fuel, cost of lubrication and hydraulic fluids, cost of food and provisions for crew, other crew costs, freight costs of supplies shipped to you for the vessel, freight costs for landed crab, storage, observer costs, fish taxes, and other crab-specific costs.

(vii) *Vessel-specific costs.* Record the total annual costs for each category. If the reported total cost is not exclusively for BSAI crab operations, place an ''X'' in the COST RELATED TO MORE THAN JUST CRAB FISHING column. The agency or contracted analyst will prorate this amount over all fishing activities. Indicate capitalized expenditures for vessel, gear and equipment; repair and maintenance (R&M) expenses for vessel, gear and equipment; and other vessel-specific costs (specify).

(viii) *Labor payment details.* (A) Indicate with an ''X'' in the appropriate column whether the following expenses were deducted, directly charged, or not deducted or directly charged from the total revenue before calculating the crew payments in BSAI fisheries: fuel and lubrication, food and provisions, bait, fish tax, observer costs, CDQ fish, freight, gear loss, and other (specify).

(B) Indicate percentage of the net share that was applied to boat share and crew share (including captain).

(ix) *Annual totals for all fisheries.* For the calendar year, record the total days at sea, gross revenue, round pounds caught (excluding discards), and labor costs for your fishing activities in all fisheries in which you participated (crab, groundfish, etc.).

(b) *Catcher vessel annual EDR*—(1) *Requirement.* On or before May 1 of each year, any owner or leaseholder of a catcher vessel that landed crab from a CR fishery must submit to the DCA, at the address provided on the form, an EDR for annual data for the previous calendar year. For the year 2005, the annual EDR is due on or before May 1, 2006.

(2) *Instructions.* Instructions for submitting a catcher vessel annual EDR and certification page are specified in the following table:

If you are . . .	And . . .	You must complete and submit . . .
(i) The catcher vessel owner	(A) You harvested BSAI crab in the vessel described at paragraph (b)(3)(ii)(B) of this section during this calendar year.	Entire EDR.
	(B) No one harvested BSAI crab in the vessel described at paragraph (b)(3)(ii)(B) of this section during this year.	EDR certification pages.
	(C) You leased the vessel to another party, and harvested no BSAI crab in the vessel described at paragraph (b)(3)(ii)(B) of this section during this calendar year.	(*1*) EDR certification pages. (*2*) Provide the name, address, and telephone number of the person to whom you leased the vessel during this calendar year.
	(D) You leased the vessel for a portion of the year to another party, but harvested some BSAI crab in the vessel described at paragraph (b)(3)(ii)(B) of this section during this calendar year.	(*1*) Entire EDR. (*2*) Provide the name, address, and telephone number of the person to whom you leased the vessel during this calendar year.
(ii) The leaseholder	You harvested BSAI crab in the vessel described at paragraph (b)(3)(ii)(B) of this section vessel during this calendar year.	Entire EDR.

(3) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* The owner or leaseholder must submit the completed EDR certification pages only, and must attest that they meet the conditions exempting them from submitting the EDR, by signing and dating the certification pages.

(ii) The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar year of reporting year;

(B) *Catcher vessel information.* Catcher vessel name, USCG documentation number, ADF&G vessel registration number, Federal crab vessel permit number, crab LLP license number(s), current estimated market value of vessel and equipment, and replacement value of vessel and equipment;

(C) *Owner information.* Name of company, partnership, or sole proprietorship and business telephone number, facsimile number, and e-mail address (if available);

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing this report.* (*1*) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(*2*) If the owner is the person completing this report, check the correct box. If the name and address of the owner provided in paragraph (b)(3)(ii)(C) of this section are the same as the name and address of the person completing the EDR, the information does not need to be repeated here; and

(*3*) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(4) *EDR.* The owner or leaseholder must record the following information on an EDR.

(i) *BSAI Crab activity chart.* Complete a crab activity chart by entering the following information: CR fishery code, ADF&G Fish ticket number(s), number of days at sea, average crew size (including captain), and number of pots lost (if applicable).

(ii) *Crab sales, gross revenue.* CR fishery code, species code, pounds sold, and gross revenue;

(iii) *CDQ and IFQ crab leases.* CR fishery code, species code, pounds leased, and total cost of leasing the quota. If you did not participate in CDQ or IFQ fisheries, indicate N/A.

(iv) *Crab harvesting labor costs*—(A) *Standard crew payment (shares) for non-IFQ crew and/or captains.* CR fishery code, number of crew earning shares, total crew share payment, and captain's share payment;

(B) *Payments to IFQ-holding crew and/or captains.* CR fishery code, number of crew contributing IFQ shares, pounds of IFQ contributed by crew, total payment to crew for IFQ and shares (for all crab caught, and residual profit on their IFQ), pounds of IFQ contributed by captain, and payment to captain for IFQ and shares (for all fish caught, and residual profit on their IFQ);

(v) *BSAI crab crew residence*—(A) *Employees with crew license.* Record the Alaska Commercial Crew license number or the State of Alaska Commercial Fisheries Entry Commission (CFEC) gear operator permit number, and location of crew residence (city and state);

(B) *Employees without crew license.* Record the locations where they reside and the number of employees that are from each residential location as follows:

(*1*) If Alaska, enter primary city of residence;

(*2*) If state other than Alaska, enter primary state of residence; or

(*3*) If country other than United States, enter primary country of residence.

(vi) *BSAI crab-specific vessel costs.* Insurance premiums (hull, property and indemnity, and pollution), insurance deductible fees, pots purchased, line and other gear purchases, pounds and cost of bait by species, gallons and cost of fuel, lubrication and hydraulic fluids, food and provisions for crew, other crew costs, freight costs of supplies shipped to you for the vessel, freight costs for landed crab, storage, observer costs, fish taxes, other crab-specific costs (specify), and fishing cooperative costs.

(vii) *Vessel-specific costs.* Record the total annual costs for each category. If the reported total cost is not exclusively for BSAI crab operations, place an ''X''

in the COST RELATED TO MORE THAN JUST CRAB FISHING column. The agency or contracted analyst will prorate this amount over all fishing activities. Indicate capitalized expenditures for vessel, gear and equipment (city and state where purchased); R&M expenses for vessel, gear and equipment (city and state where repairs were made); and other vessel-specific costs (specify).

(viii) *Labor payment details.* (A) Indicate with an ''X'' in the appropriate column whether the following expenses were deducted, directly charged, or not deducted or directly charged from the total revenue before calculating the crew payments in BSAI crab fisheries: fuel and lubrication, food and provisions, bait, fish tax, observer costs, CDQ fish, IFQ leases, freight, gear loss, and other (specify);

(B) Indicate percentage of the net share that is applied to boat share and crew share (including captain).

(ix) *Annual totals for all fisheries.* For the calendar year, record the total days at sea, gross revenue, round pounds caught (excluding discards), and labor costs for your fishing activities in all fisheries in which you participated (crab, groundfish, etc.).

(c) *Catcher/processor historical EDR*—(1) *Requirement.* Any owner or leaseholder of a catcher/processor that harvested or processed BSAI crab in the calendar years 1998, 2001, or 2004 must submit to the DCA, at the address provided on the form, an EDR for historical data for each of the specified calendar years, if they:

(i) Received an allocation of QS, PQS, IFQ, or IPQ under this program;

(ii) Did not qualify for and receive QS, PQS, IFQ, or IPQ, but are participants at any time since January 23, 2004, in the BSAI crab fisheries.

(2) *Time limit.* Any owner or leaseholder of the catcher/processor described in paragraph (c)(4)(ii)(B) of this section must submit the historical EDR to the DCA by June 30, 2005, at the address provided on the form.

(3) *Instructions.* Instructions for submitting a catcher/processor historical EDR and certification page are specified in the following table:

If you were . . .	And . . .	You must complete and submit . . .
(i) The catcher/processor owner described in paragraph of this section.	(A) You processed BSAI crab in the vessel described at paragraph (c)(4)(ii)(B) of this section during 1998, 2001, or 2004.	Entire EDR for each year that BSAI crab was processed.
	(B) No one processed BSAI crab in the vessel described at paragraph (c)(4)(ii)(B) of this section during 1998, 2001, or 2004.	EDR certification pages for each year that no one processed BSAI crab.
	(C) You leased your catcher/processor to another party, and processed no BSAI crab in the vessel described at paragraph (c)(4)(ii)(B) of this section during 1998, 2001, or 2004.	(*1*) EDR certification pages.
		(*2*) Provide the name, business address, and telephone number of the person to whom you leased the catcher/processor during 1998, 2001, or 2004.
	(D) You leased your catcher/processor for a portion of the year to another party, but processed some BSAI crab in the vessel described at paragraph (c)(4)(ii)(B) of this section during 1998, 2001, or 2004.	(*1*) Entire EDR for each year that BSAI crab was processed.
		(*2*) Provide the name, business address, and telephone number of the person to whom you leased the catcher/processor during 1998, 2001, or 2004.
(ii) The leaseholder described in paragraph (c)(1) of this section.	You processed BSAI crab in the vessel described at paragraph (c)(4)(ii)(B) of this section during 1998, 2001, or 2004.	Entire EDR for each year that BSAI crab was processed.

(4) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification page either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* If the owner or leaseholder did not process BSAI crab in 1998, 2001, or 2004, he or she must submit the completed EDR certification pages only, and must attest that he or she meets the conditions exempting him or her from submitting the EDR, by signing and dating the certification pages, for each year of 1998, 2001, or 2004 that this applies.

(ii) The owner or leaseholder must submit the following information on the certification pages;

(A) *Calendar year of EDR.* Calendar year corresponding to 1998, 2001, or 2004;

(B) *Catcher/processor information.* Catcher/processor name, USCG documentation number, ADF&G processor code, crab LLP license number(s), current estimated market value of vessel and equipment, and replacement value of vessel and equipment.

(C) *Owner information.* Name of company, partnership, or sole proprietorship and business telephone number, facsimile number, and e-mail address (if available).

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing this report.* (*1*) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(*2*) If the owner is the person completing this report, check the correct box. If the name and address of the owner provided in paragraph (c)(4)(ii)(C) of this section are the same as the name and address of the person completing the EDR, the information does not need to be repeated here; and

(*3*) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(5) *EDR.* The owner or leaseholder must record the following information on an EDR.

(i) *BSAI crab activity chart.* Complete a crab activity chart by entering the

following information: CR fishery code; dates covered (beginning and ending day, month and year); number of days at sea; number of crab processing days, and number of pots lost (if applicable).

(ii) *BSAI crab production.* CR fishery code, raw crab pounds, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (yes or no).

(iii) *Crab harvesting labor costs.* CR fishery code, number of crew earning shares, total crew share payment, and captain's share payment.

(iv) *Crab processing labor costs.* CR fishery code, number of crew with pay determined by processing work, average number of crab processing positions, and total processing labor payment.

(v) *BSAI crab crew residence.* For employees that participated in BSAI crab harvesting and processing, record the locations where they reside and the number of employees that are from each residential location, as follows:

(A) If Alaska, enter primary city of residence;

(B) If state other than Alaska, enter primary state of residence;

(C) If country other than United States, enter primary country of residence;

(vi) *BSAI crab custom processing done for you.* CR fishery code, raw crab pounds supplied to custom processors, raw crab pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(vii) *Raw crab purchases from delivering vessels.* CR fishery code, crab size, crab grade, raw crab pounds purchased, and gross payment.

(viii) *CDQ Crab Costs (leases).* CR fishery code, pounds leased, and total cost. If you did not participate in CDQ or IFQ fisheries, indicate N/A.

(ix) *Annual BSAI crab sales.* Record the following information on crab sales to affiliated entities and to unaffiliated entities: species code, product code, process code, crab size, crab grade, box size, finished pounds, and FOB Alaska Revenues.

(x) *BSAI crab-specific vessel costs.* Insurance premiums (hull, property and indemnity, and pollution); insurance deductible fees; total of fisheries taxes which includes the Alaska fisheries business tax, Alaska fisheries resource landing tax, SMAA taxes, and other local sales tax on raw fish; pots purchased (quantity and cost); line and other crab fishing gear purchases; bait (by each CR fishery code, species, pounds and cost); fuel (by CR fishery code, gallons and cost); lubrication and hydraulic fluids; food and provisions for crew; other crew costs; processing and packaging materials, equipment and supplies; re-packing costs, broker fees and promotions for BSAI crab sales (by CR fishery code); observer costs (by CR fishery code); freight costs for supplies to the vessel; freight and handling costs for processed crab products from the vessel; product storage; gear storage; and other crab-specific costs (specify).

(xi) *Vessel-specific costs.* Record the total annual costs for each category. If the reported total cost is not exclusively for BSAI crab operations, place an ''X'' in the COST RELATED TO MORE THAN JUST CRAB FISHING column. The agency or contracted analyst will prorate this amount over all fishing activities. Indicate capitalized expenditures for vessel, gear and equipment; R&M expenses for vessel, gear and equipment (city and state where repairs were made); number of employees and salaries for foremen, managers, and other employees not included in direct labor costs; and other vessel-specific costs (specify).

(xii) *BSAI crab custom processing performed for others.* CR Fishery code, product code, process code, whether OUR CRAB or THEIR CRAB, and processing revenue.

(xiii) *Annual totals for all fisheries.* For the calendar year, record the total processing days, total days at sea, gross revenue, finished pounds processed, round pounds caught (excluding discards), and labor costs for your fishing and processing activities in all fisheries in which you participated (crab, groundfish, etc.).

(xiv) *Labor payment details.* (A) Indicate with an ''X'' in the appropriate column whether the following expenses were deducted, directly charged, or not deducted or directly charged from the total revenue before calculating the crew payments in BSAI fisheries: fuel and lubrication, food and provisions, bait, fish tax, observer costs, CDQ fish, freight, gear loss, and other (specify).

(B) Indicate percentage of the net share that was applied to boat share and harvesting crew share (including captain).

(C) If processing workers were paid on a share system, indicate percentage of the net share (if applicable) that was applied to processing workers based on product value or net share.

(d) *Catcher/processor annual EDR*—(1) *Requirement.* On or before May 1 of each year, any owner or leaseholder of a catcher/processor that landed or processed crab from a CR fishery must submit to the DCA, at the address provided on the form, an EDR for annual data for the previous calendar year. For the year 2005, the annual EDR is due on or before May 1, 2006.

(2) *Instructions.* Instructions for submitting a catcher/processor annual EDR and certification page are specified in the following table:

If you are . . .	And . . .	You must complete and submit . . .
(i) The catcher/processor owner	(A) You processed BSAI crab in the vessel described at paragraph (d)(3)(ii)(B) of this section during this calendar year.	Entire EDR.
	(B) No one processed BSAI crab in the vessel described at paragraph (d)(3)(ii)(B) of this section during this calendar year.	EDR certification pages.
	(C) You leased all of your IPQ to another party, and processed no BSAI crab in the vessel described at paragraph (d)(3)(ii)(B) of this section during this calendar year.	(*1*) EDR certification pages.
		(*2*) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year.
	(D) You leased portions of your IPQ to another party, but processed some BSAI crab in the vessel described at paragraph (d)(3)(ii)(B) of this section during this calendar year.	(1) Entire EDR.

If you are . . .	And . . .	You must complete and submit . . .
		(*2*) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year.
(ii) The leaseholder described in paragraph (d)(1) of this section.	You processed BSAI crab in the described in vessel described at paragraph paragraph (d)(3)(ii)(B) of this section this section during this calendar year.	Entire EDR.

(3) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* The owner or leaseholder must submit the completed EDR certification pages only, and must attest that they meet the conditions exempting them from submitting the EDR, by signing and dating the certification pages.

(ii) The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar year for the reporting year;

(B) *Catcher/processor information.* Catcher/processor name, USCG documentation number, ADF&G processor code, RCR permit number, crab LLP license number(s), current estimated market value of vessel and equipment, and replacement value of vessel and equipment.

(C) *Owner information.* Name of company, partnership, or sole proprietorship and business telephone number, facsimile number, and e-mail address (if available).

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing this report.* (*1*) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(*2*) If the owner is the person completing this report, check the correct box. If the name and address of the owner provided in paragraph (d)(3)(ii)(C) of this section are the same as the name and address of the person completing the EDR, the information does not need to be repeated here; and

(*3*) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(4) *EDR.* The owner or leaseholder must record the following information on an EDR.

(i) *BSAI Crab activity chart.* Complete a crab activity chart by entering the following information: CR fishery code, dates covered (beginning and ending day, month and year), number of days at sea, number of crab processing days, and number of pots lost (if applicable).

(ii) *BSAI crab production.* CR fishery code, species code, raw crab pounds, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (Yes or No).

(iii) *Harvesting labor costs.* Record the following information for crew if they harvest crab only, or harvest and process crab.

(A) *Standard crew payment (shares) for non-IFQ contributing crew and/or captains.* CR fishery code, number of crew earning shares, total crew share payment, and captain's share payment.

(B) *Payments to IFQ-holding crew and/or captains.* CR fishery code, number of crew contributing IFQ shares, pounds of IFQ contributed by crew, total payment to crew for IFQ and shares, pounds of IFQ contributed by captain, and payment to captain for IFQ and shares.

(iv) *Crab processing labor costs.* CR fishery code, number of crew with pay determined by processing work, average number of crab processing positions, and total processing labor payment.

(v) *BSAI crab crew residence*—(A) *Employees with crew license.* Record the Alaska Commercial Crew license number or the State of Alaska Commercial Fisheries Entry Commission (CFEC) gear operator permit number, and location of crew residence (city and state);

(B) *Employees without crew license.* Record the locations where they reside and the number of employees that are from each residential location as follows:

(*1*) If Alaska, enter primary city of residence;

(*2*) If state other than Alaska, enter primary state of residence; or

(*3*) If country other than United States, enter primary country of residence.

(vi) *BSAI crab custom processing done for you.* CR fishery code, species code, raw crab pounds supplied to custom processors, raw crab pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(vii) *Raw crab purchases from delivering vessels.* CR fishery code, species code, crab size, crab grade, raw crab pounds purchased, and gross payment.

(viii) *CDQ and IFQ crab costs (leases).* For CDQ and IFQ leases enter CR fishery code, species code, pounds leased, and total cost. If you did not participate in CDQ or IFQ fisheries, indicate N/A.

(ix) *Annual BSAI crab sales.* For affiliated entities and unaffiliated entities enter species code, product code, process code, crab size, crab grade, box size, finished pounds, and FOB Alaska Revenues.

(x) *BSAI crab-specific vessel costs.* Insurance premiums (hull, property and indemnity, and pollution); insurance deductible fees; total of fisheries taxes which include the Alaska fisheries business tax, Alaska fisheries resource landing tax, SMAA taxes, and other local sales tax on raw fish; pots purchased by city and state (quantity and cost); line and other crab fishing gear purchases by city, state, and cost; bait (by each CR fishery code by city and state, species, pounds, and cost); fuel in gallons and cost by CR fishery code, city and state; lubrication and hydraulic fluids by city and state; food and provisions for crew; other crew costs; processing and packaging materials, equipment and supplies by city and state; re-packing costs; broker fees and promotions for BSAI crab sales (by CR fishery code); observer costs (by CR fishery code); freight costs for products to the vessel; freight and handling costs for processed crab products from the vessel; product storage; gear storage; other crab-specific costs (specify), and fishing cooperative costs.

(xi) *Vessel-specific costs.* Record the total annual costs for each category. If the reported total cost is not exclusively

for BSAI crab operations, place an ''X'' in the COST RELATED TO MORE THAN JUST CRAB FISHING column. The agency or contracted analyst will prorate this amount over all fishing activities. Indicate capitalized expenditures for vessel, gear and equipment (city and state where purchased); R&M expenses for vessel, gear and equipment (city and state where repairs were made); number of employees and salaries for foremen, managers and other employees not included in direct labor costs; and other vessel-specific costs (specify).

(xii) *BSAI crab custom processing performed for others.* CR fishery code, species code, product code, process code, whether OUR CRAB or THEIR CRAB, and processing revenue.

(xiii) *Annual totals for all fisheries.* For the calendar year, record the total processing days, total days at sea, gross revenue, finished pounds processed, round pounds caught (excluding discards), and labor costs for your fishing and processing activities in all fisheries in which you participated (crab, groundfish, etc.).

(xiv) *Labor payment details.* (A) Indicate with an ''X'' in the appropriate column whether the following expenses were deducted, directly charged, or not deducted or directly charged from the total revenue before calculating the crew payments in BSAI fisheries: fuel and lubrication, food and provisions, bait, fish tax, observer costs, CDQ fish, IFQ leases, freight, gear loss, and other (specify).

(B) Indicate percentage of the net share that is applied to boat share and harvesting crew share (including captain).

(C) If processing workers are paid on a share system, indicate percentage of the net share (if applicable) that is applied to processing workers based on product value or net share.

(e) *Stationary floating crab processor (SFCP) historical EDR*—(1) *Requirement.* Any owner or leaseholder of an SFCP that processed CR crab in the calendar years 1998, 2001, or 2004 must submit to the DCA, at the address provided on the form, an EDR for historical data for each of the specified calendar years, if they:

(i) Received an allocation of QS, PQS, IFQ, or IPQ under this program;

(ii) Did not qualify for and receive QS, PQS, IFQ, or IPQ, but are participants at any time since January 23, 2004, in the BSAI crab fisheries.

(2) *Time limit.* Any owner or leaseholder of the SFCP described in paragraph (e)(4)(ii)(B) of this section must submit the historical EDR to the DCA by June 30, 2005, at the address provided on the form.

(3) *Instructions.* Instructions for submitting an SFCP historical EDR and certification page are specified in the following table:

If you were . . .	And . . .	You must complete and submit . . .
(i) The SFCP owner described in paragraph (e)(1) of this section.	(A) You processed BSAI crab in the SFCP described at paragraph (e)(4)(ii)(B) of this section during 1998, 2001, or 2004.	Entire EDR for each year that BSAI crab was processed.
	(B) No one processed BSAI crab in the SFCP described at paragraph (e)(4)(ii)(B) of this section during 1998, 2001, 2004.	EDR certification pages for each year that no one processed BSAI crab.
	(C) You leased your SFCP to another party, and processed no BSAI crab in the SFCP described at paragraph (e)(4)(ii)(B) of this section during 1998, 2001, or 2004.	(*1*) EDR certification pages.
		(*2*) Provide the name, address, and telephone number of the person to whom you leased the SFCP during 1998, 2001, or 2004.
	(D) You leased your SFCP a portion of the time to another party, but processed some BSAI crab in the SFCP described at paragraph (e)(4)(ii)(B) of this section during 1998, 2001, or 2004.	(*1*) Entire EDR for each year that BSAI crab was processed.
		(*2*) Provide the name, address, and telephone number of the person to whom you leased the SFCP during 1998, 2001, or 2004.
(ii) The leaseholder described in paragraph (e)(1) of this section.	You operated the SFCP described at paragraph (e)(4)(ii)(B) of this section and processed some BSAI crab during 1998, 2001, or 2004.	Entire EDR for each year that BSAI crab was processed.

(4) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* If the owner or leaseholder did not process BSAI crab in 1998, 2001, or 2004, he or she must submit the completed EDR certification pages only, and must attest that he or she meets the conditions exempting him or her from submitting the EDR, by signing and dating the certification pages, for each year of 1998, 2001, or 2004 that this applies.

(ii) The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar years corresponding to 1998, 2001, or 2004;

(B) *SFCP information.* SFCP name, USCG documentation number, ADF&G processor code, current estimated market value of vessel and equipment, and replacement value of vessel and equipment.

(C) *Owner information.* Name of company, partnership, or sole proprietorship and business telephone number, facsimile number, and e-mail address (if available).

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative, who is an individual for responding to questions on the EDR, and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing this report.* (1) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(*2*) If the owner is the person completing this report, check the correct box. If the name and address of the owner provided in paragraph (e)(4)(ii)(C) of this section are the same as the name and address of the person completing the EDR, the information does not need to be repeated here; and

(*3*) Name of person, title, business telephone number, facsimile number, and e-mail address (if available).

(5) *EDR.* The owner or leaseholder must record the following information on an EDR.

(i) *BSAI Crab activity chart.* Complete a crab activity chart by entering the following information: CR fishery code, number of crab processing days, dates covered (beginning and ending day, month and year), raw crab pounds purchased, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (Yes or No).

(ii) *Crab processing labor costs.* CR fishery code, average number of crab positions, total man-hours, and total labor payment.

(iii) *BSAI Crab crew residence.* For employees that participated in BSAI crab processing, record the locations where they reside and the number of employees that are from each residential location, as follows:

(A) If Alaska, enter primary city of residence.

(B) If state other than Alaska, enter primary state of residence.

(C) If country other than United States, enter primary country of residence.

(iv) *BSAI crab custom processing done for you.* CR fishery code, raw crab pounds supplied to custom processors, raw crab pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(v) *Raw crab purchases from delivering vessels.* CR fishery code, crab size, crab grade, raw crab pounds purchased, and gross payment.

(vi) *Annual BSAI crab sales.* Record the following information on crab sales to affiliated entities and to unaffiliated entities: species code, product code, process code, crab size, crab grade, box size, finished pounds, and FOB Alaska Revenues.

(vii) *BSAI crab-specific vessel data.* Total of fisheries taxes which include the Alaska fisheries business tax, SMAA taxes, and other local sales tax on raw fish; processing and packaging materials, equipment, and supplies; food and provisions; other costs for direct crab labor; insurance deductible fees; re-packing costs; broker fees and promotions for BSAI crab sales (by CR fishery code); observer costs (by CR fishery code); freight costs for supplies to the vessel; freight and handling costs for processed crab products from the vessel; product storage; and other crab-specific costs (specify).

(viii) *Vessel-specific costs.* Record the total annual costs for each category. If the reported total cost is not exclusively for BSAI crab operations, place an ''X'' in the COST RELATED TO MORE THAN JUST CRAB FISHING column. The agency or contracted analyst will prorate this amount over all fishing activities. Indicate capitalized expenditures for vessel, gear and equipment; R&M expenses for vessel, gear and equipment (city and state where repairs were made); number of employees and salaries for foremen, managers and other employees not included in direct labor costs; and other vessel-specific costs (specify).

(ix) *BSAI crab custom processing performed for others.* CR fishery code, product code, process code, whether OUR CRAB or THEIR CRAB, and processing revenue.

(x) *Annual totals for all fisheries.* For the calendar year, record the total processing days, gross revenue, finished pounds processed, and processing labor costs for your fishing activities in all fisheries in which you participated (crab, groundfish, etc.).

(f) *Stationary floating crab processor (SFCP) annual EDR*—(1) *Requirement.* On or before May 1 of each year, any owner or leaseholder of an SFCP that processed crab from a CR fishery must submit to the DCA, at the address provided on the form, an EDR for annual data for the previous calendar year. For the year 2005, the annual EDR is due on or before May 1, 2006.

(2) *Instructions.* Instructions for submitting an SFCP annual EDR and certification page are specified in the following table:

If you are . . .	And . . .	You must complete and submit . . .
(i) The SFCP owner	(A) You processed BSAI crab in the SFCP described at paragraph (f)(3)(ii)(B) of this section during this calendar year.	Entire EDR.
	(B) No one processed BSAI crab in the SFCP described at paragraph (f)(3)(ii)(B) of this section during this calendar year.	EDR certification pages.
	(C) You leased all of your IPQ to another party and processed no BSAI crab in the SFCP described at paragraph (f)(3)(ii)(B) of this section during this calendar year.	(*1*) EDR certification pages. (*2*) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year.
	(D) You leased a portion of your IPQ to another party, but processed some BSAI crab in the SFCP described at paragraph (f)(3)(ii)(B) of this section during this calendar year.	(*1*) Entire EDR. (2) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year.
(ii) The leaseholder described in paragraph (f)(1) of this section.	You operated the SFCP described at paragraph (f)(3)(ii)(B) of this section and processed some BSAI crab during this paragraph calendar year.	Entire EDR.

(3) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* The owner or leaseholder must submit the completed EDR certification pages only, and must attest that they meet the conditions exempting them from submitting the EDR, by signing and dating the certification pages (see paragraph (e)(2) of this section).

(ii) The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar year of the reporting year;

(B) *SFCP information.* SFCP name, USCG documentation number, ADF&G processor code, RCR permit number, current estimated market value of vessel and equipment, and replacement value of vessel and equipment.

(C) *Owner information.* Name of company, partnership, or sole proprietorship and business telephone number, facsimile number, and e-mail address (if available).

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing the report.* (*1*) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(*2*) If the owner is the person completing this report, check the correct box. If the name and address of the owner provided in paragraph (f)(3)(ii)(C) of this section are the same as the name and address of the person completing the EDR, the information does not need to be repeated here; and

(*3*) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(4) *EDR.* The owner or leaseholder must record the following information on an EDR.

(i) *BSAI Crab activity chart.* Complete a crab activity chart by entering the following information: CR fishery code, number of crab processing days, dates covered (beginning and ending day, month and year), raw crab pounds purchased, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (Yes or No).

(ii) *Crab processing labor costs.* CR fishery code, average number of crab processing positions, total man-hours, and total processing labor payment.

(iii) *BSAI Crab employee residence.* For employees that participated in BSAI crab processing, record the locations where they reside and the number of employees that are from each residential location, as follows:

(A) If Alaska, enter primary city of residence.

(B) If state other than Alaska, enter primary state of residence.

(C) If country other than United States, enter primary country of residence.

(iv) *BSAI crab custom processing done for you.* CR fishery code, species code, raw crab pounds supplied to custom processors, raw crab pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(v) *Raw crab purchases from delivering vessels.* CR fishery code, species code, crab size, crab grade, raw crab pounds purchased, and gross payment.

(vi) *Annual BSAI crab sales.* For affiliated entities and unaffiliated entities enter species code, product code, process code, crab size, crab grade, box size, finished pounds, and FOB Alaska Revenues.

(vii) *BSAI crab-specific vessel costs.* Total of fisheries taxes which includes the Alaska fisheries business tax, SMAA taxes, and other local sales tax on raw fish; processing and packaging materials, equipment and supplies by city and state; food and provisions; other costs for direct crab labor; insurance deductible fees; re-packing costs; broker fees and promotions for BSAI crab sales (by CR fishery code); observer costs (by CR fishery code); freight costs for supplies to the vessel; freight and handling costs for processed crab products from the vessel; product storage; and other crab-specific costs (specify).

(viii) *Vessel-specific costs.* Record the total annual costs for each category. If the reported total cost is not exclusively for BSAI crab operations, place an ''X'' in the COST RELATED TO MORE THAN JUST CRAB FISHING column. The agency or contracted analyst will prorate this amount over all fishing activities. Indicate fuel, electricity, lubrication and hydraulic fluids; capitalized expenditures for vessel, gear and equipment (city and state where purchased); R&M for vessel, gear and equipment (city and state where repairs were made); number of employees and salaries for foremen, managers and other employees not included in direct labor costs; and other vessel-specific costs (specify).

(ix) *BSAI crab custom processing performed for others.* CR fishery code, species code, product code, process code, whether OUR CRAB or THEIR CRAB, and processing revenue.

(x) *Annual totals for all fisheries.* For the calendar year, record the total processing days, gross revenue, finished pounds processed, and labor costs for your fishing activities in all fisheries in which you participated (crab, groundfish, etc.).

(g) *Shoreside processor historical EDR*—(1) *Requirement.* Any owner or leaseholder of a shoreside processor who processed CR crab in the calendar years 1998, 2001, or 2004 must submit to the DCA, at the address provided on the form, an EDR for historical data for each of the specified calendar years, if they:

(i) Received an allocation of QS, PQS, IFQ, or IPQ under this Program;

(ii) Did not qualify for and receive QS, PQS, IFQ, or IPQ, but are participants at any time since January 23, 2004, in the BSAI crab fisheries.

(2) *Time limit.* Any owner or leaseholder of the shoreside processor described in paragraph (g)(4)(ii)(B) of this section must submit the historical EDR to the DCA by June 30, 2005, at the address provided on the form.

(3) *Instructions.* Instructions for submitting a shoreside processor historical EDR and certification page are specified in the following table:

If you are . . .	And . . .	You must complete and submit . . .
(i) The shoreside processor owner described in paragraph (g)(1) of this section.	(A) You processed BSAI crab in the plant described at paragraph (g)(4)(ii)(B) of this section during 1998, 2001, or 2004.	Entire EDR for each year that BSAI crab was processed.

If you are . . .	And . . .	You must complete and submit . . .
	(B) No one processed BSAI crab in the plant described at paragraph (g)(4)(ii)(B) of this section during 1998, 2001, or 2004.	EDR certification pages for each year that no one processed BSAI crab.
	(C) You leased your shoreside processor to another party, and processed no BSAI crab in the plant described at paragraph (g)(4)(ii)(B) of this section during 1998, 2001, or 2004.	(*1*) EDR certification pages. (*2*) Provide the name, address, and telephone number of the person to whom you leased the shoreside processor during 1998, 2001, or 2004.
	(D) You leased your shoreside processor for a portion of the time to another party, but processed some BSAI crab in the plant described at paragraph (g)(4)(ii)(B) of this section during 1998, 2001, or 2004.	(*1*) Entire EDR for each year that BSAI crab was processed. (*2*) Provide the name, address, and telephone number of the person to whom you leased the shoreside processor during 1998, 2001, or 2004.
(ii) The leaseholder described in paragraph (g)(1) of this section.	You operated the plant described at (g)(4)(ii)(B) of this section and processed some BSAI crab during 1998, 2001, or 2004.	Entire EDR for each year that BSAI crab was processed.

(4) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* If the owner or leaseholder did not process BSAI crab in 1998, 2001, or 2004, he or she must submit the completed EDR certification pages only, and must attest that he or she meets the conditions exempting him or her from submitting the EDR, by signing and dating the certification pages for each year of 1998, 2001, or 2004 that this applies;

(ii) *Required information.* The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar years corresponding to 1998, 2001, or 2004;

(B) *Shoreside processor information.* Shoreside processor name, ADF&G processor code, physical location of land-based plant (street address, city, state, zip code), borough assessed value of plant and equipment, year assessed, and current estimated market value of plant and equipment;

(C) *Owner information.* Name of company, partnership, or sole proprietorship and business telephone number, facsimile number, and e-mail address (if available);

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing the report.* (1) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(*2*) If the owner is the person completing the report, check the correct box. If the name and address of the owner provided in paragraph (g)(4)(ii)(C) of this section are the same as the name and address of the person completing the EDR, the information does not need to be repeated here; and

(*3*) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(5) *EDR.* The owner or leaseholder must record the following information on an EDR.

(i) *BSAI crab activity chart.* Complete a crab activity chart by entering the following information: CR fishery code, number of crab processing days, dates covered (beginning and ending day, month and year), raw crab pounds purchased, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (Yes or No).

(ii) *Crab processing labor costs.* CR fishery code, average number of crab processing positions, total man-hours, and total processing labor payment.

(iii) *BSAI Crab crew residence.* For employees that participated in BSAI crab processing, record the locations where they reside and the number of employees that are from each residential location, as follows:

(A) If Alaska, enter primary city of residence.

(B) If state other than Alaska, enter primary state of residence.

(C) If country other than United States, enter primary country of residence.

(iv) *BSAI crab custom processing done for you.* CR fishery code, raw crab pounds supplied to custom processors, raw crab pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(v) *Raw crab purchases from delivering vessels.* CR fishery code, crab size, crab grade, raw crab pounds purchased, and gross payment.

(vi) *Annual BSAI crab sales.* For affiliated entities and unaffiliated entities enter species code, product code, process code, crab size, crab grade, box size, finished pounds, and FOB Alaska Revenues.

(vii) *BSAI crab-specific plant costs.* Total fisheries taxes which include the Alaska fisheries business tax, SMAA taxes, and other local sales tax on raw fish; processing and packaging materials, equipment and supplies; food and provisions; other costs for direct crab labor; insurance deductible fees; re-packing costs, broker fees and promotions for BSAI crab sales by CR fishery code; observer costs by CR fishery code; freight costs for supplies to the plant; freight and handling costs for

processed crab products from the plant; product storage; water, sewer, and waste disposal; and other crab specific costs (specify).

(viii) *Plant-specific costs.* Record the total annual costs for each category. If the reported total cost is not exclusively for BSAI crab operations, place an ''X'' in the COST RELATED TO MORE THAN JUST CRAB FISHING column. The agency or contracted analyst will prorate this amount over all vessel activities: fuel, electricity, lubrication, and hydraulic fluids; capitalized expenditures for plant, and equipment; R&M for existing plant and equipment; number of employees and salaries for foremen, managers and other employees not included in direct labor costs; and other plant-specific costs (specify).

(ix) *BSAI crab custom processing done for others.* CR fishery code, product code, process code, whether OUR CRAB or THEIR CRAB, and processing revenue.

(x) *Annual totals for all fisheries.* For the calendar year, record the total processing days, gross revenue, finished pounds processed, and labor costs for your fishing activities in all fisheries in which you participated (crab, groundfish, etc.).

(h) *Shoreside processor annual EDR*—(1) *Requirement.* On or before May 1 of each year, any owner or leaseholder of a shoreside processor that processed crab from a CR fishery must submit to the DCA, at the address provided on the form, an EDR for annual data for the previous year. For the year 2005, the annual EDR is due on or before May 1, 2006.

(2) *Instructions.* Instructions for submitting a shoreside processor annual EDR and certification page are specified in the following table:

If you are . . .	And . . .	You must complete and submit . . .
(i) The shoreside processor owner.	(A) You processed BSAI crab in the plant described at paragraph (h)(3)(ii)(B) of this section during this calendar year.	Entire EDR.
	(B) No one processed BSAI crab in the plant described at paragraph (h)(3)(ii)(B) of this section during this calendar year.	EDR certification pages.
	(C) You leased all of your IPQ to another party, and processed no BSAI crab in the plant described at paragraph (h)(3)(ii)(B) of this section during this calendar year.	(*1*) EDR certification pages. (*2*) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year.
	(D) You leased portions of your IPQ to another party, but processed some BSAI crab in the plant described at paragraph (h)(3)(ii)(B) of this section during this calendar year.	(*1*) Entire EDR. (*2*) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year.
(ii) The leaseholder described in paragraph (h)(1) of this section.	You operated the plant described at paragraph (h)(3)(ii)(B) of this section and processed some BSAI crab during this calendar year.	Entire EDR.

(3) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* The owner or leaseholder must submit the completed EDR certification pages only, and must attest that they meet the conditions exempting them from submitting the EDR, by signing and dating the certification pages.

(ii) The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar year for the reporting year;

(B) *Shoreside processor information.* Shoreside processor name, RCR permit number, ADF&G processor code, physical location of land-based plant (street address, city, state, zip code), borough assessed value of plant and equipment, current estimated market value of plant and equipment, and year assessed.

(C) *Owner information.* Name of company, partnership, or sole proprietorship and business telephone number, facsimile number, and e-mail address (if available);

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing the report.* (*1*) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(*2*) If the owner is the person completing this report, check the correct box. If the name and address of the owner provided in paragraph (h)(3)(ii)(C) of this section are the same as the name and address of the person completing the EDR, the information does not need to be repeated here; and

(*3*) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(4) *EDR.*The owner or leaseholder must record the following information on an EDR.

(i) *BSAI Crab activity chart.* Complete a crab activity chart by entering the following information: CR fishery code, number of crab processing days, dates covered (beginning and ending day, month and year), raw crab pounds purchased, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (Yes or No).

(ii) *Crab processing labor costs.* CR fishery code, average number of crab processing positions, total man-hours, and total processing labor payment.

(iii) *BSAI Crab employee residence.* For employees that participated in BSAI crab processing, record the locations

where they reside and the number of employees that are from each residential location, as follows:

(A) If Alaska, enter primary city of residence.

(B) If state other than Alaska, enter primary state of residence.

(C) If country other than United States, enter primary country of residence.

(iv) *BSAI crab custom processing done for you.* CR fishery code, species code, raw crab pounds supplied to custom processors, raw crab pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(v) *Raw crab purchases from delivering vessels.* CR fishery code, species code, crab size, crab grade, raw crab pounds purchased, and gross payment.

(vi) *Annual BSAI crab sales.* For affiliated entities and unaffiliated entities enter species code, product code, process code, crab size, crab grade, box size, finished pounds, and FOB Alaska Revenues.

(vii) *BSAI crab-specific plant costs.* Total of fisheries taxes which include the Alaska fisheries business tax, SMAA taxes, and other local sales tax on raw fish; processing and packaging materials, equipment and supplies by city and state; food and provisions; other costs for direct crab labor; insurance deductible fees; re-packing costs; broker fees and promotions for BSAI crab sales by CR fishery code; observer costs by CR fishery code; freight costs for supplies to the plant; freight and handling costs for processed crab products from the plant; product storage; water, sewer, and waste disposal; and other crab specific costs (specify).

(viii) *Plant-specific costs.* Record the total annual costs for each category. If the reported total cost is not exclusively for BSAI crab operations, place an ''X'' in the COST RELATED TO MORE THAN JUST CRAB FISHING column. The agency or contracted analyst will prorate this amount over all vessel activities: fuel, electricity, lubrication, and hydraulic fluids; capitalized expenditures for plant and equipment by city and state; R&M for existing plant and equipment by city and state; number of employees and salaries for foremen, managers and other employees not included in direct labor costs; and other plant-specific costs (specify).

(ix) *BSAI crab custom processing performed for others.* CR fishery code, species code, product code, process code, whether OUR CRAB or THEIR CRAB, and processing revenue.

(x) *Annual totals for all fisheries.* For the calendar year, record the total processing days, gross revenue, finished pounds processed, and labor costs for your fishing activities in all fisheries in which you participated (crab, groundfish, etc.).

(i) *Verification of data.* (1) The DCA shall conduct verification of information with the owner or leaseholder.

(2) The owner or leaseholder must respond to inquiries by the DCA within 20 days of the date of issuance of the inquiry.

(3) The owner or leaseholder must provide copies of additional data to facilitate verification by the DCA. The DCA auditor may review and request copies of additional data provided by the owner or leaseholder, including but not limited to: previously audited or reviewed financial statements, worksheets, tax returns, invoices, receipts, and other original documents substantiating the data.

(j) *DCA authorization.* The DCA is authorized to request voluntary submission of economic data specified in this section from persons who are not required to submit an EDR under this section.

§ 680.7 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(a) *Receiving and processing CR crab.* (1) Process any CR crab that has not been weighed by an RCR on:

(i) A scale approved by the State in which the RCR is located and that meets the requirements described in § 680.23(f); or

(ii) Onboard a catcher/processor RCR on a scale approved by NMFS as described in § 680.23(e).

(2) Receive CR crab harvested under an IFQ permit in any region other than the region for which the IFQ permit is designated.

(3) Use IPQ on board a vessel outside of the territorial sea or internal waters of the State of Alaska.

(4) Use IPQ in any region other than the region for which the IPQ is designated.

(5) Receive any crab harvested under a Class A IFQ permit in excess of the total amount of unused IPQ held by the RCR.

(6) Receive crab harvested under a Class B IFQ permit on a vessel if that vessel was used to harvest and process any crab in that crab QS fishery during the same crab fishing season.

(7) For an IPQ holder to use more IPQ crab than the maximum amount of IPQ that may be held by that person. Use of IPQ includes all IPQ held by that person and all IPQ crab that are received by any RCR at any shoreside crab processor or stationary floating crab processor in which that IPQ holder has a 10 percent or greater direct or indirect ownership interest.

(8) For a shoreside crab processor or stationary floating crab processor that does not have at least one owner with a 10 percent or greater direct or indirect ownership who also holds IPQ in that crab QS fishery, to be used to receive in excess of 30 percent of the IPQ issued for that crab fishery.

(b) *Landing CR crab.* (1) Remove retained and unprocessed CR crab from a vessel at any location other than to an RCR operating under an approved catch monitoring plan as described in § 680.23(g) unless that crab is accompanied by a signed landing receipt showing the crab was properly landed.

(2) Remove any CR crab processed at sea from any vessel before completing a landing report, as defined at § 680.5(c), for all such CR crab onboard.

(3) Resume fishing for CR crab or take CR crab on board a vessel once a landing has commenced and until all CR crab are landed.

(4) Fail to remove all processed crab harvested under a CPO or a CPC IFQ permit to an onshore location within the United States, accessible by road or regularly scheduled air service, and to weigh that crab product on a scale approved by the State in which the crab is weighed.

(5) Make an IFQ crab landing except by an individual who holds either a crab IFQ permit or a crab IFQ hired master permit issued under § 680.4 in his or her name.

(6) Make an IFQ crab landing without the following on board: a copy of the crab IFQ permit to be debited for the landing; and, if applicable, a copy of the crab IFQ hired master permit issued under § 680.4 in the name of the person making the landing.

(7) For a Crab IFQ hired master to make an IFQ crab landing on any vessel other than the vessel named on the Crab IFQ hired master permit.

(c) *Harvest crab.* (1) Harvest any BSAI crab with any vessel not named on a valid Federal crab vessel permit.

(2) Harvest IFQ crab with any vessel that does not use functioning VMS equipment as required by § 680.23.

(3) Harvest on any vessel more IFQ crab than are authorized under § 680.42.

(4) Harvest crab under a CVC or a CPC IFQ permit unless the person named on the IFQ permit is on board that vessel.

(5) Harvest crab under a CPO or CPC permit unless all scales used to weigh

crab, or used by an observer for sampling crab, have passed an inseason scale test according to § 680.23(e)(1).

(d) *Recordkeeping and reporting.* (1) Fail to submit information on any report, application, or statement required under this part.

(2) Submit false information on any report, application, or statement required under this part.

(e) *Permits.* (1) Retain IFQ crab without a valid crab IFQ permit for that fishery on board the vessel.

(2) Retain IFQ crab on a vessel in excess of the total amount of unharvested crab IFQ, for a crab QS fishery, that is currently held by all crab IFQ permit holders or Crab IFQ Hired Masters aboard that vessel.

(3) Receive Class B IFQ by transfer if a person holds PQS or IPQ.

(4) Receive Class B IFQ by transfer if you are affiliated with a person who holds PQS or IPQ.

(f) *IPQ.* Use IPQ as collateral or otherwise leverage IPQ to acquire an ownership interest in Class B IFQ.

(g) *General.* (1) Possess, buy, sell, or transport any crab harvested or landed in violation of any provision of this part.

(2) Violate any other provision under this part.

(h) *Inseason action.* Conduct any fishing contrary to notification of inseason action closure, or adjustment issued under § 680.22.

§ 680.8 Facilitation of enforcement.

See § 600.730 of this chapter.

§ 680.9 Penalties.

(a) Any person committing, or a fishing vessel used in the commission of, a violation of the Magnuson-Stevens Act, or any regulation issued under the Magnuson-Stevens Act, is subject to the civil and criminal penalty provisions, permit sanctions, and civil forfeiture provisions of the Magnuson-Stevens Act, to part 600 of this chapter, to 15 CFR part 904 (Civil Procedures), and to other applicable law. Penalties include but are not limited to permanent or temporary sanctions to PQS, QS, IPQ, IFQ, Crab IFQ hired master, Federal crab vessel permit, or RCR permits.

(b) In the event a holder of any IPQ is found by a court of competent jurisdiction, either in an original action in that court or in a proceeding to enforce or review the findings or orders of any Government agency having jurisdiction under the antitrust laws, to have violated any of the provisions of antitrust laws in the conduct of the licensed activity, the Secretary of Commerce may revoke all or a portion of such IPQ. The antitrust laws of the United States include, but are not limited to, the following Acts:

(1) The Sherman Act, 15 U.S.C. 1–7;

(2) The Wilson Tariff Act, 15 U.S.C. 8–11;

(3) The Clayton Act, 15 U.S.C. 12–27; and

(4) The Federal Trade Commission Act, 15 U.S.C. 12 and 45(a).

Subpart B—Management Measures

§ 680.20 Arbitration System.

(a) *Applicability*—(1) *Arbitration System.* All CVO QS, Arbitration IFQ, Class A IFQ holders, CVC QS holders after June 30, 2005, PQS and IPQ holders must enter the contracts as prescribed in this section that establish the Arbitration System. Certain parts of the Arbitration System are voluntary for some parties, as specified in this section. All contract provisions will be enforced by parties to those contracts.

(2) *Open negotiation.* Any holder of uncommitted IFQ may negotiate with any holder of uncommitted IPQ, the price and delivery terms for that season or for future seasons for any uncommitted IFQ and uncommitted IPQ. Uncommitted IFQ holders and uncommitted IPQ holders may freely contact each other and initiate open negotiations.

(b) *Eligibility for Arbitration System*—(1) *Arbitration Organization.* The following persons are the only persons eligible to join an Arbitration Organization:

(i) Holders of CVO and CVC QS,

(ii) Holders of PQS,

(iii) Holders of Arbitration IFQ,

(iv) Holders of Class A IFQ affiliated with a PQS or IPQ holder, and

(v) Holders of IPQ.

(2) *Persons eligible to use negotiation and Binding Arbitration procedures.* The following persons are the only persons eligible to enter contracts with a Contract Arbitrator to use the negotiation and Binding Arbitration procedures described in paragraph (h) of this section to resolve price and delivery disputes or negotiate remaining contract terms not previously agreed to by IFQ and IPQ holders under other negotiation approaches:

(i) Holders of Arbitration IFQ, and

(ii) Holders of IPQ.

(3) *Persons ineligible to use negotiation and Binding Arbitration procedures.* Holders of IFQ that are affiliated with holders of PQS or IPQ are ineligible to enter contracts with a Contract Arbitrator to use the negotiation and Binding Arbitration procedures described in paragraph (h) of this section to resolve price and delivery disputes or negotiate remaining contract terms not previously agreed to by IFQ and IPQ holders under other negotiation approaches.

(c) *Preseason requirements for joining an Arbitration Organization.* All holders of CVO QS, CVC QS after June 30, 2008, PQS, Arbitration IFQ, Class A IFQ affiliated with a PQS or IPQ holder, and IPQ must join and maintain a membership in an Arbitration Organization as specified in paragraph (d) of this section. All holders of QS, PQS, IFQ, or IPQ must join an Arbitration Organization at the following times:

(1) For QS holders and PQS holders except as provided for in paragraph (c)(3) of this section, not later than May 1 of each year for the crab fishing year that begins on July 1 of that year.

(2) For IFQ holders and IPQ holders, not later than 15 days after the issuance of IFQ and IPQ for that crab QS fishery if that IFQ or IPQ holder does not also hold QS or PQS.

(3) During 2005, QS and PQS holders must join an Arbitration Organization as described in paragraph (d) of this section not later than August 15, 2005.

(4) Persons receiving QS, PQS, IFQ, or IPQ by transfer after these dates must join an Arbitration Organization at the time of receiving the QS, PQS, IFQ, or IPQ by transfer.

(d) *Formation process for an Arbitration Organization.* (1) Arbitration Organizations must be formed to select and contract a Market Analyst, Formula Arbitrator, Contract Arbitrator(s), and establish the Arbitration System, including the payment of costs of arbitration, described in this section for each crab QS fishery. All persons defined in paragraph (a)(1) of this section must join an Arbitration Organization.

(i) *Arbitration QS/IFQ Arbitration Organization.* Holders of Arbitration QS and Arbitration IFQ must join an Arbitration QS/IFQ Arbitration Organization. This Arbitration Organization may not have members who are not holders of Arbitration QS or Arbitration IFQ. Arbitration QS holders and Arbitration IFQ holders may join separate Arbitration QS/IFQ Arbitration Organizations. The mechanism for forming an Arbitration Organization is determined by the members of the organization.

(ii) *PQS/IPQ Arbitration Organization.* Holders of PQS or IPQ must join a PQS/IPQ Arbitration Organization. This Arbitration Organization may not have members who are not holders of PQS or IPQ. PQS holders and IPQ holders may join separate PQS/IPQ Arbitration Organizations. The mechanism for forming an Arbitration Organization is determined by the members of the organization.

(iii) *Affiliated QS/IFQ Arbitration Organization.* Holders of CVO QS or Class A IFQ affiliated with a PQS or IPQ holder must join an Affiliated QS/IFQ Arbitration Organization. This Arbitration Organization may not have members who are not holders of QS or IFQ affiliated with a PQS or IPQ holder. CVO QS holders and Class A IFQ holders may join separate Affiliated QS/IFQ Arbitration Organizations. The mechanism for forming an Arbitration Organization is determined by the members of the organization.

(iv) *Limitation on joining an Arbitration Organization.* For a crab QS fishery during a crab fishing year, a person who holds:

(A) PQS/IPQ may join only one PQS/IPQ Arbitration Organization;

(B) Affiliated QS/IFQ may join only one Affiliated QS/IFQ Arbitration Organization; and

(C) Arbitration QS/IFQ may join only one Arbitration QS/IFQ Organization.

(2) Each Arbitration Organization must submit a complete Annual Arbitration Organization report to NMFS. A complete report must include:

(i) A copy of the business license of the Arbitration Organization;

(ii) A statement identifying the members of the organization and the amount of Arbitration QS and Arbitration IFQ, Non-Arbitration QS and Non-Arbitration IFQ, or PQS and IPQ held by each member and represented by that Arbitration Organization;

(iii) QS, PQS, IFQ, and IPQ ownership information on the members of the organization;

(iv) Management organization information, including:

(A) The bylaws of the Arbitration Organization;

(B) A list of key personnel of the management organization including, but not limited to, the board of directors, officers, representatives, and any managers;

(v) The name of the Arbitration Organization, permanent business mailing addresses, name of contact persons and additional contact information of the managing personnel for the Arbitration Organization, resumes of management personnel; and

(vi) A copy of all minutes of any meeting held by the Arbitration Organization or any members of the Arbitration Organization.

(3) An Arbitration Organization, with members who are QS or PQS holders, must submit a complete Annual Arbitration Organization Report to NMFS by electronic mail to the Regional Administrator, NMFS, or by mail addressed to the Regional Administrator, NMFS, Post Office Box 21668, Juneau, Alaska 99802 by:

(i) August 20, 2005 for the crab fishing year beginning on July 1, 2005.

(ii) May 1 of each subsequent year for the crab fishing year beginning on July 1 of that year.

(4) An Arbitration Organization, with members who are IFQ or IPQ holders, must submit a complete Annual Arbitration Organization Report to NMFS by electronic mail to the Regional Administrator, NMFS, or by mail addressed to the Regional Administrator, NMFS, Post Office Box 21668, Juneau, Alaska 99802 by not later than 15 days after the issuance of IFQ and IPQ for that crab QS fishery.

(e) *Role of Arbitration Organization(s) and annual requirements.* (1) *General.* The members of each Arbitration Organization must enter into a contract that specifies the terms and conditions of participation in the organization.

(i) The contract among members of an Arbitration QS/IFQ Arbitration Organization, or a PQS/IPQ Arbitration Organization shall include the terms, conditions, and provisions specified in paragraph (e)(2) of this section.

(ii) The contract among members of an Affiliated QS/IFQ Arbitration Organization shall include the terms, conditions, and provisions in paragraph (e)(3) of this section.

(2) *Provisions for Arbitration QS/IFQ Arbitration Organizations, and PQS/IPQ Arbitration Organizations*—(i) *Selection of Market Analyst, Formula Arbitrator, and Contract Arbitrator(s).* A provision authorizing the Arbitration Organization to act on behalf of its members in the selection of and contracting with the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) under paragraph (e)(4) of this section.

(ii) *Confidentiality of information.* A provision that a member that is a party to a Binding Arbitration proceeding shall sign a confidentiality agreement with the party with whom it is arbitrating stating they will not disclose at any time to any person any information received from the Contract Arbitrator or any other party in the course of the arbitration. That confidentiality agreement shall specify the potential sanctions for violating the agreement.

(iii) *Provision of information to members.* A provision requiring the Arbitration Organization to provide to its members:

(A) A copy of the contracts for the Market Analyst, Formula Arbitrator, and Contract Arbitrator for each fishery in which the member participates; and

(B) A copy of the Market Report and the Non-Binding Price Formula for each fishery in which the member participates within 5 days of its release.

(iv) *Information release.* (A) A provision requiring that the Arbitration Organization deliver to NMFS any data, information, and documents generated pursuant to this section.

(B) In the case of a PQS/IPQ Arbitration Organization(s):

(*1*) A provision that requires the PQS/IPQ Arbitration Organization to provide for the delivery of the names of and contact information for its members who hold uncommitted IPQ, and to identify the regional designations and amounts of such uncommitted IPQ, to Arbitration QS/IFQ Arbitration Organizations either directly or through a third-party data provider so the information may be provided to any persons that hold uncommitted Arbitration IFQ for purposes of Share Matching, Binding Arbitration, and Post Arbitration Opt-in;

(*2*) A provision that prohibits the disclosure of any information received under this provision to any person except those Arbitration QS/IFQ Arbitration Organizations, or their third-party data provider so that information may be provided to holders of uncommitted Arbitration IFQ. The provision will require that information concerning uncommitted IPQ be updated within 24 hours of a change of any such information, including any commitment of IPQ, and that information be provided to those persons that hold uncommitted Arbitration IFQ. This provision may include a mechanism to provide information to uncommitted Arbitration IFQ holders through a secure Web site, or through other electronic means;

(*3*) A provision that requires the PQS/IPQ Arbitration Organization to arrange for the delivery to all holders of uncommitted Arbitration IFQ through the Arbitration QS/IFQ Arbitration Organizations holders or their third-party data provider the terms of a decision of a Contract Arbitrator in a Binding Arbitration proceeding involving a member that holds uncommitted IPQ within 24 hours of notice of that decision. This provision may include a mechanism to provide information to uncommitted Arbitration IFQ holders through a secure Web site, or through other electronic means; and

(*4*) A provision that requires the holders of uncommitted IPQ to provide information concerning such uncommitted IPQ as necessary for the PQS/IPQ Arbitration Organization to comply with this paragraph and prohibits the disclosure of any such information by such holder to any

person, except as directed in this paragraph.

(C) In the case of a Arbitration QS/IFQ Organization(s):

(*1*) A provision that requires Arbitration QS/IFQ Arbitration Organizations holders, or their third-party data provider to provide information concerning uncommitted IPQ from PQS/IPQ Arbitration Organization(s) as necessary for the Arbitration IFQ holder to use that information in a timely manner.

(*2*) A provision that prohibits the disclosure of any such information concerning uncommitted IPQ from PQS/IPQ Arbitration Organization to any person, except as directed therein.

(D) Third-party Data Provider provision. Notwithstanding any provision in this section, an Arbitration Organization required to supply or receive information under this section must hire administrative personnel or may contract with a person who will arrange for the receipt and delivery of information as required. Any such third party that receives such information cannot be affiliated with or employed by or related to any QS, PQS, IFQ, or IPQ holder in any crab QS fishery and must enter a contract that:

(*1*) Prohibits such third person from releasing any information received to any person except as specifically provided by this section; and

(*2*) Prohibits such third person from entering taking any employment from or establishing any relationship, except under a contract meeting the requirements of this section for a period of 3 years after the termination of the contract.

(v) *Costs.* A provision that authorizes the Arbitration Organization to enter into a contract with all other Arbitration Organizations for the payment of the costs of arbitration as specified under this section.

(A) The Arbitration Organizations must establish a contract that requires the payment of all costs of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s), dissemination of information concerning uncommitted IPQ to holders of uncommitted Arbitration IFQ, and the costs of such persons associated with lengthy season approach, share matching approach, Binding Arbitration, quality and performance disputes, to be shared equally so that IPQ holders pay 50 percent of the costs and Arbitration IFQ holders and Class A IFQ holders pay 50 percent of the costs.

(B) Each person shall pay an amount of the cost based on the amount of IPQ or IFQ held by that person at the time of application to an Arbitration Organization.

(C) PQS holders shall advance all costs and shall collect the contribution of IFQ holders at landing subject to terms mutually agreed to by the Arbitration Organizations.

(vi) *Negotiation methods.* A provision that prohibits the Arbitration Organization from engaging in any contract negotiations on behalf of its members, except for those necessary to hire the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s).

(vii) *Enforcement of the contract.* Violations of the contract shall be enforced under civil law.

(3) *Provisions applying to Affiliated QS/IFQ Arbitration Organizations.* The provisions that allow for the provision of information to members, payment of costs, limits on the transfer of QS, PQS, IFQ, and IPQ, and enforcement of the contract as described under paragraphs (e)(2)(iv), (v), (vii), and (viii) will apply to the contract among members of an Affiliated QS/IFQ Arbitration Organization(s).

(4) *Process for selection of Market Analyst, Formula Arbitrator, and Contract Arbitrator(s).* (i) For each crab fishing year, QS holders who are members of Arbitration QS/IFQ Arbitration Organization(s) and PQS holders who are members of PQS/IPQ Arbitration Organization(s), by mutual agreement, will select one Market Analyst, one Formula Arbitrator, and Contract Arbitrator(s) for each crab QS fishery. The number of Contract Arbitrators selected for each fishery will be subject to the mutual agreement of those Arbitration Organizations. The selection of the Market Analyst and the Formula Arbitrator must occur in time to ensure the Market Report and non-binding price formula are produced within the time line established in paragraph (e)(4)(ii) of this section.

(ii) The Arbitration Organizations representing Arbitration QS holders and PQS holders in a crab fishery shall establish by mutual agreement the contractual obligations of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) for each fishery, which shall provide that the Market Report and Non-Binding Price Formula are produced not later than 50 days prior to the first crab fishing season for that crab QS fishery in that crab fishing year except as provided in paragraph (e)(6) of this section. The contractual obligations of the Market Analyst, the Formula Arbitrator and Contract Arbitrators will be enforced by the parties to the contract.

(iii) The same person may be chosen for the positions of Market Analyst and Formula Arbitrator for a fishery.

(iv) A person selected to be a Contract Arbitrator may not be the Market Analyst or Formula Arbitrator, and shall not be affiliated with, employed by, or otherwise associated with, the Market Analyst or Formula Arbitrator, for that fishery.

(5) *Notification to NMFS.* Not later than June 1 for that crab fishing year, except as provided in paragraph (e)(6) of this section, the Arbitration Organizations representing the holders of Arbitration QS and PQS in each fishery shall notify NMFS of the persons selected as the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) for the fishery by electronic mail addressed to the Regional Administrator, NMFS, or by mail addressed to the Regional Administrator, NMFS, Post Office Box 21668, Juneau, Alaska 99802. The Arbitration Organizations shall include a list of Arbitration Organizations that mutually agreed to the selection of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) and signatures of representatives of those Arbitration Organizations and a copy of the contract with Market Analyst, the Formula Arbitrator, and each Contract Arbitrator. The notification must include a curriculum vitae and other relevant biographical material for each of these individuals.

(6) *First-year implementation.* During 2005, the selection of and establishment of the contractual obligations of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) as required under this section shall occur not later than September 1, 2005.

(7) *IFQ and IPQ Issuance and Selection of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s).* NMFS will not issue CVO IFQ, CVC IFQ after July 1, 2008, and IPQ for a crab QS fishery until Arbitration Organizations establish by mutual agreement contracts with a Market Analyst, Formula Arbitrator, and Contract Arbitrators for that fishery and notify NMFS.

(f) *Roles and standards for the Market Analyst and process for producing the Market Report.* (1) For each crab QS fishery, the Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations shall establish a contract with the Market Analyst to produce a Market Report for the fishery. The terms of this contract must specify that the Market Analyst must produce a Market Report that shall provide an analysis of the market for products of that fishery.

(2) The contract with the Market Analyst must specify that:

(i) The Market Analyst shall base the Market Report on:

(A) A survey of the market for crab products produced by the fishery; and

(B) Information provided by the IPQ and IFQ holders regarding market conditions and expectations.

(ii) To the extent IPQ and IFQ holders provide information requested by the Market Analyst, they must provide such information directly to the Market Analyst and not to any other IPQ holder or IFQ holder, except that IFQ holders that are members of any single FCMA cooperative may share such information with other members of the same FCMA cooperative who are authorized to participate in the arbitration system.

(iii) The Market Analyst:

(A) May meet with IFQ holders who are members of any single FCMA cooperative collectively;

(B) Shall meet with IPQ holders individually;

(C) Shall meet with distinct crab FCMA cooperatives individually; and

(D) Shall meet with IFQ holders who are not members of the same FCMA cooperatives individually.

(iv) The information provided to the Market Analyst by IPQ and IFQ holders must be historical information based on activities occurring more than three months prior to the generation of the Market Report.

(v) The Market Analyst shall keep confidential the identity of the source of any particular information contained in the report. The Market Analyst may note generally the sources from which it gathered information. The report shall:

(A) Include only data that is based on information regarding activities occurring more than three months prior to the generation of the Market Report;

(B) Include only statistics for which there are at least five providers reporting data upon which each statistic is based and for which no single provider's data represents more than 25 percent of a weighted basis of that statistic; and

(C) Sufficiently aggregate any information disseminated in the report such that it would not identify specific price information by an individual provider of information.

(vi) The Market Report shall consider the following factors:

(A) Current ex-vessel prices, including ex-vessel prices received for crab harvested under Class A IFQ, Class B IFQ, and CVC IFQ permits;

(B) Consumer and wholesale product prices for the processing sector and the participants in the arbitration (recognizing the impact of sales to affiliates on wholesale pricing);

(C) Innovations and developments of the harvesting and processing sectors and the participants in the arbitration (including new product forms);

(D) Efficiency and productivity of the harvesting and processing sectors (recognizing the limitations on efficiency and productivity arising out of the management program structure);

(E) Quality (including quality standards of markets served by the fishery and recognizing the influence of harvest strategies on the quality of landings);

(F) The interest of maintaining financially healthy and stable harvesting and processing sectors;

(G) Safety and expenditures for ensuring adequate safety;

(H) Timing and location of deliveries; and

(I) The cost of harvesting and processing less than the full IFQ or IPQ allocation (underages) to avoid penalties for overharvesting IFQ and a mechanism for reasonably accounting for deadloss.

(vii) There shall only be one annual Market Report for each fishery.

(viii) The Market Analyst shall not issue interim or supplemental reports for each fishery.

(3) The Market Analyst shall not disclose any information to any person not required under this section.

(4) In 2005, the Market Report shall be produced not later than September 30, 2005 or 25 days prior to the first crab fishing season for that crab QS fishery whichever is later in that crab fishing year as required under this section.

(i) In all subsequent years, the Market Report shall be produced not later than 50 days prior to the first crab fishing season for that crab QS fishery.

(ii) The contract with the Market Analyst must specify that the Market Analyst will provide in that crab fishing year to:

(A) Each Arbitration Organization in that fishery;

(B) NMFS by electronic mail to the Regional Administrator, NMFS, or addressed to the Regional Administrator, NMFS, Post Office Box 21668, Juneau, Alaska 99802; and

(C) The Formula Arbitrator and any Contract Arbitrator(s) for the fishery.

(g) *Roles and standards for the Formula Arbitrator.* (1) For each crab QS fishery, the Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations shall establish a contract with the Formula Arbitrator to develop a Non-Binding Price Formula.

(2) The contract with the Formula Arbitrator must specify that:

(i) The Formula Arbitrator will conduct a single annual fleet-wide analysis of the markets for crab to establish a Non-Binding Price Formula under which a fraction of the weighted average first wholesale prices for crab products from the fishery may be used to set an ex-vessel price; and

(ii) The Non-Binding Price Formula shall:

(A) Be based on the historical distribution of first wholesale revenues between fishermen and processors in the aggregate based on arm's length first wholesale prices and ex-vessel prices, taking into consideration the size of the harvest in each year; and

(B) Establish a price that preserves the historical division of revenues in the fishery while considering the following:

(*1*) Current ex-vessel prices, including ex-vessel prices received for crab harvested under Class A, Class B, and CVC IFQ permits;

(*2*) Consumer and wholesale product prices for the processing sector and the participants in arbitrations (recognizing the impact of sales to affiliates on wholesale pricing);

(*3*) Innovations and developments of the harvesting and processing sectors and the participants in arbitrations (including new product forms);

(*4*) Efficiency and productivity of the harvesting and processing sectors (recognizing the limitations on efficiency and productivity arising out of the management program structure);

(*5*) Quality (including quality standards of markets served by the fishery and recognizing the influence of harvest strategies on the quality of landings);

(*6*) The interest of maintaining financially healthy and stable harvesting and processing sectors;

(*7*) Safety and expenditures for ensuring adequate safety;

(*8*) Timing and location of deliveries; and

(*9*) The cost of harvesting and processing less than the full IFQ or IPQ allocation (underages) to avoid penalties for overharvesting IFQ and a mechanism for reasonably accounting for deadloss.

(C) Include identification of various relevant factors such as product form, delivery time, and delivery location.

(D) Consider the ''highest arbitrated price'' for the fishery from the previous crab fishing season, where the ''highest arbitrated price'' means the highest arbitrated price for arbitrations of IPQ and Arbitration IFQ which represent a minimum of at least 7 percent of the IPQ resulting from the PQS in that fishery. For purposes of this process, the Formula Arbitrator may aggregate up to three arbitration findings to collectively equal a minimum of 7 percent of the IPQ. When arbitration findings are

aggregated with 2 or more entities, the lesser of the arbitrated prices of the arbitrated entities included to attain the 7 percent minimum be considered for the highest arbitrated price.

(iii) The Non-Binding Price Formula may rely on any relevant information available to the Formula Arbitrator, including, but not limited to,

(A) Information provided by the QS, PQS, IPQ and IFQ holders in the fishery, and

(B) The Market Report for the fishery.

(iv) The Formula Arbitrator:

(A) May meet with IFQ holders who are members of any single FCMA cooperative collectively;

(B) Shall meet with IPQ holders individually;

(C) Shall meet with distinct FCMA cooperatives individually; and

(D) Shall meet with IFQ holders who are not members of the same FCMA cooperative individually.

(v) The Formula Arbitrator may request any relevant information from QS, PQS, IPQ, and IFQ holders in the fishery, but the Formula Arbitrator shall not have subpoena power.

(vi) The Formula Arbitrator may obtain information from persons other than QS, PQS, IPQ, and IFQ holders in the fishery, if those persons agree to provide such data. Any information that is provided must be based on activities occurring more than three months prior to the date of submission to the Formula Arbitrator.

(vii) The Formula Arbitrator shall keep confidential the information that is not publicly available and not disclose the identity of the persons providing specific information.

(viii) (A) In 2005, the non-binding price formula shall be produced not later than September 30, 2005 or 25 days prior to the first crab fishing season for that crab QS fishery whichever is later in that crab fishing year as required under this section.

(B) In all subsequent years, the non-binding price formula shall be produced not later than 50 days prior to the first crab fishing season for that crab QS fishery.

(C) The contract with the Formula Arbitrator must specify that the Formula Arbitrator will provide the non-binding price formula in that crab fishing year to:

(*1*) Each Arbitration Organization in that fishery;

(*2*) NMFS by electronic mail to the Regional Administrator, NMFS, or addressed to the Regional Administrator, NMFS, Post Office Box 21668, Juneau, Alaska 99802; and

(*3*) The Market Analyst and all Contract Arbitrators in the fishery.

(ix) The Formula Arbitrator shall not disclose any information to any person not required under this section, except as permitted by paragraph (j) of this section.

(h) *Roles and standards for the Contract Arbitrator(s)*—(1) *General.* For each crab QS fishery, the Arbitration QS/IFQ Arbitration Organizations and PQS/IPQ Arbitration Organizations shall establish a contract with all Contract Arbitrators in that fishery that specifies that each Contract Arbitrator may be selected to resolve a dispute concerning the terms of delivery, price, or other factors in the fishery.

(2) *Selection of Contract Arbitrators.* The contract with the Contract Arbitrator shall specify the means by which the Contract Arbitrator will be selected to resolve specific disputes. This contract must specify that for any dispute for which the Contract Arbitrator is selected, the Contract Arbitrator will comply with the last best offer arbitration method as set forth in this section.

(3) *Negotiation and Binding Arbitration Procedure.* The contract with the Contract Arbitrator(s) shall specify the following approaches for negotiation and Binding Arbitration among members of the Arbitration Organizations:

(i) *Restrictions on collective negotiation.* An IFQ and an IPQ holder may negotiate individually. Groups of IFQ holders may negotiate collectively with an IPQ holder only under the following provisions:

(A) Members of an FCMA cooperatives may participate collectively with other members of the same FCMA cooperative in Binding Arbitration except as otherwise provided under this section.

(B) Members of different FCMA cooperatives shall not participate collectively in Binding Arbitration.

(C) IPQ holders shall not participate collectively. Only one IPQ holder shall enter into Binding Arbitration with any IFQ holder or IFQ holder(s).

(D) An Arbitration Organization must not negotiate on behalf of a member. This shall not prohibit the members of an Arbitration IFQ Arbitration Organization from negotiation if the Arbitration Organization qualifies as an FCMA cooperative.

(ii) *Open negotiations.* At any time prior to the date of the first crab fishing season of a crab fishing year for that crab QS fishery, any holder of uncommitted Arbitration IFQ may negotiate with any holder of uncommitted IPQ, the price and delivery terms for that season for any uncommitted IFQ and uncommitted IPQ.

(A) Uncommitted Arbitration IFQ holders and Uncommitted IPQ holders may freely contact each other and initiate open negotiations.

(B) If Arbitration IFQ holders and IPQ holders do not reach an agreement on price, delivery terms, or other terms after committing shares, an Arbitration IFQ holder may initiate Binding Arbitration in accordance with the procedures specified in this section in order to resolve disputes in those price, delivery terms, or other terms.

(C) Once IFQ or IPQ has been committed, the IFQ holder and IPQ holder cannot engage in open negotiation using those shares.

(iii) *Lengthy season approach.* (A) Prior to the date of the first crab fishing season for that crab QS fishery in that crab fishing year a committed IPQ holder and one or more committed Arbitration IFQ holders may choose to adopt a Lengthy Season approach. The Lengthy Season approach is an alternative method to the Binding Arbitration proceedings.

(B) A Lengthy Season approach allows a committed IPQ holder and a committed Arbitration IFQ holder to agree to postpone negotiation of specific contract terms until a time during the crab fishing year as agreed upon by the Arbitration IFQ holder and IPQ holder participating in the negotiation. The Lengthy Season approach allows the Arbitration IFQ holders and IPQ holder involved in the negotiation to postpone Binding Arbitration, if necessary, until a time during the crab fishing year. If the parties ready a final agreement on the contract terms, Binding Arbitration is not necessary.

(C) If a committed IPQ holder and one or more committed Arbitration IFQ holder(s) are unable to reach an agreement on whether to adopt a Lengthy Season approach, they may request mediation to assist the parties in determining whether to adopt a Lengthy Season approach. The parties may request a Contract Arbitrator to act as a mediator. If the mediation proves unsuccessful or is not selected, the Arbitration IFQ holder may initiate enter Binding Arbitration to determine whether to adopt a lengthy season approach.

(*1*) Binding Arbitration may begin immediately with the same Contract Arbitrator.

(*2*) If the Contract Arbitrator serves as a mediator in an unsuccessful mediation, either party may request another Contract Arbitrator for the Binding Arbitration.

(iv) *Share matching.* (A) At any time after the issuance of IFQ and IPQ for a crab QS fishery but not earlier than 25 days prior to the first crab fishing season for a crab QS fishery in the crab fishing year, holders of uncommitted Arbitration IFQ may choose to commit the delivery of harvests of crab to be made with that uncommitted Arbitration IFQ to an uncommitted IPQ holder.

(B) To commit Arbitration IFQ, the holder of uncommitted IFQ must offer an amount of Arbitration IFQ:

(*1*) Not less than 50 percent of the Arbitration IFQ holder's total uncommitted Arbitration IFQ, or an amount of uncommitted Arbitration IFQ equal to the total amount of uncommitted IPQ available, whichever is less, if the Arbitration IFQ holder is not an FCMA cooperative; and

(*2*) Not less than 25 percent of the Arbitration IFQ holder's total uncommitted Arbitration IFQ, or an amount of uncommitted Arbitration IFQ equal to the total amount of uncommitted IPQ available, whichever is less, if the Arbitration IFQ holder is an FCMA cooperative.

(C) Any holder of uncommitted IPQ must accept all proposed Arbitration IFQ commitments, up to the amount of its uncommitted IPQ. The commitment of IPQ will take place on receipt of notice from the holder of uncommitted Arbitration IFQ of the intention to commit that IFQ.

(D) After matching, an Arbitration IFQ holder and an IPQ holder may decide to enter mediation to reach agreement on contract terms. The Arbitration IFQ holder and IPQ holder may request a Contract Arbitrator to act as a mediator to facilitate an agreement.

(*1*) If the mediation proves unsuccessful, or if mediation is not selected, the Arbitration IFQ holder may initiate Binding Arbitration which may begin immediately with the same Contract Arbitrator.

(*2*) If the Contract Arbitrator serves as a mediator in an unsuccessful mediation, the Arbitration IFQ holder may request another Contract Arbitrator for the Binding Arbitration.

(v) *Initiation of Binding Arbitration.* If an Arbitration IFQ holder intends to initiate Binding Arbitration, the Arbitration IFQ holder must initiate the Binding Arbitration procedure between 25 days and 15 days prior to the date of the first crab fishing season for a crab QS fishery. Binding Arbitration is initiated after the committed Arbitration IFQ holder notifies a committed IPQ holder and selects a Contract Arbitrator. Binding Arbitration may be initiated to resolve price, terms of delivery, and other disputes. There will be only one Binding Arbitration Proceeding for an IPQ holder but multiple Arbitration IFQ holders may participate in this proceeding. This limitation on the timing of Binding Arbitration proceedings does not include proceedings that arise due to:

(A) The lengthy season approach;

(B) Performance disputes; and

(C) Quality disputes.

(vi) *Joining a Binding Arbitration proceeding.* Any uncommitted Arbitration IFQ holder may join a Binding Arbitration proceeding as a party by committing the shares to the arbitration and providing notice to the IPQ holder and the Contract Arbitrator(s). An Arbitration IFQ holder may join a Binding Arbitration proceeding only if uncommitted IPQ is available. Once shares are committed to a Binding Arbitration Proceeding they cannot be uncommitted. The contract with the Contract Arbitrator may specify the terms and timing of joining the proceedings.

(vii) *Arbitration schedule meeting.* The Contract Arbitrator shall meet with all parties to a Binding Arbitration proceeding as soon as possible once a Binding Arbitration proceeding has been initiated for the sole purpose of establishing a schedule for the Binding Arbitration. This schedule shall include the date by which the IPQ holder and Arbitration IFQ holder(s) must submit their last best offer and any supporting materials, and any additional meetings or mediation if agreed to by all parties. This meeting will discuss the schedule of the Binding Arbitration proceedings and not address terms of last best offers.

(viii) *Terms of last best offers.* The Contract Arbitrator will meet with the parties to the Binding Arbitration proceeding to determine the matters that must be included in the last best offer, which may include a fixed price or a price over a time period specified by the parties, a method for adjusting prices over a crab fishing year, or an advance price paid at the time of delivery.

(ix) *Submission of last best offers.* The parties to a Binding Arbitration proceeding shall each submit to the Contract Arbitrator(s) a last best offer defining all the terms specified for inclusion in a last best offer by the Contract Arbitrator. An Arbitration IFQ holder that is an FCMA cooperative may submit a last best offer that defines terms for the delivery of crab harvested by members of that FCMA cooperative with IFQ held by the cooperative. An Arbitration IFQ holder that is not an FCMA cooperative may submit a last best offer that defines the term of delivery of crab harvested with IFQ held by that person. The IPQ holder that is a party to the proceeding shall submit a single offer that defines terms for delivery of crab harvested with all IFQ that are subject to the proceedings.

(x) *Arbitration decisions.* The Contract Arbitrator(s) shall decide among each offer received from an Arbitration IFQ holder and the offer received from the IPQ holder. Each arbitration decision shall result in a binding contract between the IPQ holder and the Arbitration IFQ holder defined by the terms of the offer selected by Contract Arbitrator(s). An arbitration decision applies to all committed IFQ and committed IPQ in that arbitration.

(xi) *Announcement of decisions.* (A) If last best offers are submitted at least 15 days before the first crab fishing season for that crab fishing year for that crab QS fishery, arbitration decisions shall be issued no later than 10 days before the first crab fishing season for that crab fishing year for that crab QS fishery. Otherwise, the Contract Arbitrator will notify the parties of the arbitration decision within 5 days of the parties submitting their last best offers.

(B) The Contract Arbitrator will notify the parties by providing each Arbitration IFQ holder and IPQ holder that is a party to the Binding Arbitration proceeding, a copy of any decision. The decision is binding on the parties to the Binding Arbitration proceeding.

(4) *Basis for the Arbitration decision.* The contract with the Contract Arbitrator shall specify that the Contract Arbitrator will be subject to the following provisions when deciding which last best offer to select.

(i) The Contract Arbitrator's decision shall:

(A) Be based on the historical distribution of first wholesale revenues between fishermen and processors in the aggregate based on arm's length first wholesale prices and ex-vessel prices, taking into consideration the size of the harvest in each year; and

(B) Establish a price that preserves the historical division of revenues in the fishery while considering the following:

(*1*) Current ex-vessel prices, including ex-vessel prices received for crab harvested under Class A IFQ, Class B IFQ, and CVC IFQ permits;

(*2*) Consumer and wholesale product prices for the processing sector and the participants in the arbitration (recognizing the impact of sales to affiliates on wholesale pricing);

(*3*) Innovations and developments of the harvesting and processing sectors and the participants in the arbitration (including new product forms);

(*4*) Efficiency and productivity of the harvesting and processing sectors

(recognizing the limitations on efficiency and productivity arising out of the management program structure);

(*5*) Quality (including quality standards of markets served by the fishery and recognizing the influence of harvest strategies on the quality of landings);

(*6*) The interest of maintaining financially healthy and stable harvesting and processing sectors;

(*7*) Safety and expenditures for ensuring adequate safety;

(*8*) Timing and location of deliveries; and

(*9*) The cost of harvesting and processing less than the full IFQ or IPQ allocation (underages) to avoid penalties for overharvesting IFQ and a mechanism for reasonably accounting for deadloss.

(C) Consider the Non-Binding Price Formula established in the fishery by the Formula Arbitrator.

(ii) The Contract Arbitrator's decision may rely on any relevant information available to the Contract Arbitrator, including, but not limited to:

(A) Information provided by the QS, PQS, IPQ and IFQ holders in the fishery regarding the factors identified in paragraph (h)(4)(i) of this section; and

(B) The Market Report for the fishery.

(iii) Each of the Arbitration IFQ holders and the IPQ holders that is party to the proceeding may provide the Contract Arbitrator with additional information to support its last best offer. The Contract Arbitrator must receive and consider all data submitted by the parties.

(iv) The Contract Arbitrator may request specific information from the Arbitration IFQ holder(s) and IPQ holder that would be useful in reaching a final decision. The Contract Arbitrator will not have subpoena power and it is in the sole discretion of the person from whom information is requested as to whether to provide the requested information.

(5) *Limits on the release of data.* The parties to a Binding Arbitration proceeding shall be precluded from full access to the information provided to the Contract Arbitrator.

(i) Arbitration IFQ holders that are party to an arbitration proceeding shall have access only to information provided directly by the IPQ holder to the Contract Arbitrator for that Binding Arbitration proceeding.

(ii) IPQ holders that are party to an arbitration proceeding shall have access only to information provided directly by an Arbitration IFQ holder to the Contract Arbitrator for that Binding Arbitration proceeding.

(iii) The Contract Arbitrator shall keep confidential the information provided by any QS, PQS, IFQ, or IPQ holders in the fishery and not disclose the identity of the persons providing specific information except as provided in paragraph (h)(6) of this section.

(iv) The Arbitration IFQ holders and IPQ holders shall not release information received in a Binding Arbitration proceeding to persons who were not party to that Binding Arbitration proceeding other than the final result of that arbitration proceeding as provided for in paragraph (h)(6) of this section.

(6) *Information provided to NMFS.* The Contract Arbitrator must provide any information, documents, or data required under this paragraph to NMFS via mail to the Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, or electronically not later than 30 days prior to the end of the crab fishing year for which the open negotiation or arbitration applied. The contract with the Contract Arbitrator must specify that the Contract Arbitrator provide NMFS with:

(i) A copy of any minutes from any meeting attended by that Contract Arbitrator between or among any PQS or IPQ holders concerning any negotiations under this section;

(ii) Any last-best offers made during the Binding Arbitration process, including all contract details, the names of other participants in the arbitration, and whether the bid was accepted by the Contract Arbitrator; and

(iii) A copy of any information, data, or documents given by the Contract Arbitrator to any person who is not a party to the particular arbitration for which that information was provided. The Contract Arbitrator must identify the arbitration to which the information, data, or documents apply, and the person to whom those information, data, or documents were provided.

(7) *Enforcement of Binding Arbitration decisions.* The decision of the Contract Arbitrator for Binding Arbitration shall be enforced among the parties to that arbitration.

(8) *Failure of Contract Arbitrator(s).* Except as provided for in paragraph (h)(6) of this section, the failure of a Contract Arbitrator to perform shall be enforced by the Arbitration Organizations.

(9) *Post Binding Arbitration opt-in.* (i) An Arbitration IFQ holder with uncommitted IFQ, may opt-in to any contract that results from a completed a Binding Arbitration procedure with any IPQ holder that has uncommitted IPQ.

(A) All the terms from the arbitrated contract will apply. The Contract Arbitrator may determine fees and a time frame by which a Post Binding Arbitration opt-in may occur if those terms are not specified in the arbitrated contract.

(B) Once exercised, the opt-in results in a contract that is binding on both the Arbitration IFQ and IPQ holder.

(ii) To initiate the opt-in process, the holder of uncommitted Arbitration IFQ will notify the holder of uncommitted IPQ in writing of its intent to opt-in.

(iii) Holders of uncommitted Arbitration IFQ may opt-in to a contract resulting from a completed Binding Arbitration procedure with a person that holds uncommitted IPQ for that fishery.

(iv) If the IPQ holder and the Arbitration IFQ holder are unable to resolve a dispute regarding whether the opt-in offer is consistent with the original contract from the completed Binding Arbitration procedure, the dispute may be decided by the Contract Arbitrator to the original arbitration that resulted in the contract to which the Arbitration IFQ holder is seeking to opt-in. The Contract Arbitrator will decide only whether the proposed opt-in terms are consistent with the original contract.

(10) *Performance disputes.* If an IPQ holder and an Arbitration IFQ holder are unable to resolve disputes regarding the obligations to perform specific contract provisions after substantial negotiations or when time is of the essence, the issues of that dispute shall be submitted for Binding Arbitration before a Contract Arbitrator for that fishery.

(i) Binding Arbitration resulting from a performance dispute can occur at any point during or after the crab fishing year. The dispute must be raised by the IPQ holder or the Arbitration IFQ holder. Arbitration of that performance dispute must be initiated prior to the date of the first crab fishing season for the following crab fishing year in that crab QS fishery.

(ii) Performance dispute arbitration shall follow the applicable procedures described for a Binding Arbitration in paragraph (h)(3) of this section, except that the time frame for the procedure applicable to a performance dispute will be determined by the Contract Arbitrator once the dispute has been raised.

(iii) If a party fails to abide by the arbitration decision, a party may pursue available contract remedies.

(iv) The costs of arbitrating performance disputes shall be provided from the general fees collected by the Arbitration Organizations pursuant to paragraph (e) of this section.

(v) The Contract Arbitrator may assign fees to any party bringing frivolous complaints. Any such fees shall be paid by the party and not from the fees

collected under paragraph (e)(2)(vi) of this section.

(11) *Quality disputes.* When disputes regarding the quality of the harvested crab arise within the context of an existing contract, the parties may settle the disputes within the context of the arbitration system according to the following:

(i) In cases where the IPQ holder and Arbitration IFQ holder(s) have agreed to a formula-based price for crab but where they cannot reach an agreement on the quality and price of the crab, the IPQ holder and Arbitration IFQ holder(s) will receive their share of the value of the amount of crab delivered based on the provisions of the contract.

(ii) In quality disputes where the Arbitration IFQ holders prefer to use actual ex-vessel price and not a formula-based price and a dispute arises regarding crab quality and price, the dispute should be referred to a mutually agreeable independent quality specialist firm. This independent quality specialist firm will determine the quality of the crab. This information will be used as the basis for subsequent price determinations. The IPQ holder and Arbitration IFQ holder(s) with this quality dispute shall share the cost of hiring the specialist firm and agree to abide by its findings according to the terms of their agreement.

§ 680.21 Crab harvesting cooperatives.

This section governs the formation and operation of crab harvesting cooperatives. The regulations in this section apply only to crab harvesting cooperatives that have formed for the purpose of applying for and fishing under a crab harvesting cooperative IFQ permit issued by NMFS. Members of crab harvesting cooperatives that are not FCMA cooperatives should consult counsel before commencing any activity if the members are uncertain about the legality under the antitrust laws of the crab harvesting cooperative's proposed conduct.

(a) *Formation of crab harvesting cooperatives.* The following requirements apply to the formation of crab harvesting cooperatives.

(1) *Membership requirements.* A crab harvesting cooperative is limited to QS holders that hold any amount of CPO, CVO, CPC, or CVC QS, and that NMFS has determined are eligible to receive crab IFQ.

(i) *Minimum number of members.* Each crab harvesting cooperative must include at least four unique QS holding entities. A unique QS holding entity is a QS holder or group of affiliated QS holders that are not affiliated with any other QS holders or QS holding entities in the crab harvesting cooperative. For the purpose of this paragraph, the term ''affiliation'' is defined at § 680.2.

(ii) *Voluntary nature of membership.* Membership in a crab harvesting cooperative is voluntary. No person may be required to join a crab harvesting cooperative, and no crab harvesting cooperative may be required to accept a member who the crab harvesting cooperative chooses not to accept.

(iii) *Membership in more than one crab harvesting cooperative.* (A) A QS holder may join one crab harvesting cooperative per CR fishery.

(B) Upon joining a crab harvesting cooperative for a CR fishery, NMFS will convert all of a QS holder's QS holdings for that CR fishery to crab harvesting cooperative IFQ, except that after June 30, 2008, a CVC QS holder that joins a crab harvesting cooperative may retain his or her Class B IFQ from use by the crab harvesting cooperative.

(2) *Legal and organizational requirements.* A crab harvesting cooperative must meet the following legal and organizational requirements before it is eligible to apply for a crab harvesting cooperative IFQ permit:

(i) *Registered business entity.* Each crab harvesting cooperative must be formed as a partnership, corporation, or other legal business entity that is registered under the laws of one of the 50 states or the District of Columbia.

(ii) *Appointment of a designated representative.* Each crab harvesting cooperative must appoint an individual as designated representative to act on the crab harvesting cooperative's behalf and serve as contact point for NMFS for questions regarding the operation of the crab harvesting cooperative. The designated representative may be a member of the crab harvesting cooperative or some other individual authorized by the crab harvesting cooperative to act on its behalf.

(b) *Application for annual crab harvesting cooperative IFQ permits.* A crab harvesting cooperative IFQ permit is an annual permit issued to a crab harvesting cooperative that establishes an annual catch limit of crab that is based on the collective QS holdings of the members of the crab harvesting cooperative that have been contributed by the members. A crab harvesting cooperative IFQ permit will list the IFQ amount, by fishery, held by the crab harvesting cooperative and identify the members of the crab harvesting cooperative. Each crab harvesting cooperative will be issued a separate IFQ permit for each type of QS held by a member (or members) of the crab harvesting cooperative.

(1) *August 1 application deadline.* A completed application for an annual crab harvesting cooperative IFQ permit must be submitted annually by each crab harvesting cooperative and received by NMFS no later than August 1, together with the signed annual application for crab IFQ/IPQ permit forms of all the members of the crab harvesting cooperative.

(2) *Contents of application for annual crab harvesting cooperative IFQ permit.* A completed application also must contain the following information:

(i) *Cooperative identification.* Enter the crab harvesting cooperative's legal name; type of business entity under which the crab harvesting cooperative is organized; state in which the crab harvesting cooperative is legally registered as a business entity; printed name of the crab harvesting cooperative's designated representative; the permanent business address, telephone number, facsimile number, and e-mail address (if available) of the crab harvesting cooperative or its designated representative; and the signature of the crab harvesting cooperative's designated representative and date signed.

(ii) *Members of the cooperative.* Full name and NMFS Person ID of each member of the crab harvesting cooperative.

(iii) *Additional documentation.* For the application to be considered complete, the following documents must be attached to the application: the completed and signed annual application for crab IFQ/IPQ permit for all members of the crab harvesting cooperative, a copy of the business license issued by the state in which the crab harvesting cooperative is registered as a business entity, a copy of the articles of incorporation or partnership agreement of the crab harvesting cooperative, and a copy of the crab harvesting cooperative agreement signed by the members of the crab harvesting cooperative (if different from the articles of incorporation or partnership agreement of the crab harvesting cooperative).

(3) *Issuance of crab harvesting cooperative IFQ permits.* Upon receipt of a completed application for an annual crab harvesting cooperative IFQ permit that is subsequently approved, NMFS will issue one-year crab harvesting cooperative IFQ permits to the crab harvesting cooperative. The crab harvesting cooperative IFQ permits will list the crab IFQ amounts that are generated by the aggregate QS holdings of all members of the crab harvesting cooperative for each fishery, region, sector, and Class A/B IFQ categories.

Issuance by NMFS of a crab harvesting cooperative IFQ permit is not a determination that the crab harvesting cooperative is formed or is operating in compliance with antitrust law.

(4) *Appeals.* A crab harvesting cooperative or person that is adversely affected by an initial administrative determination (IAD) that is associated with the issuance of a crab harvesting cooperative IFQ permit may appeal the IAD using the appeals procedures described in § 680.43.

(c) *Restrictions on fishing under a crab harvesting cooperative IFQ permit.* The following restrictions govern fishing for IFQ crab under a crab harvesting cooperative IFQ permit:

(1) *Maintenance of permit on board.* A copy of a crab harvesting cooperative IFQ permit must be maintained on board any vessel that is being used to harvest crab under the permit.

(2) *Persons eligible to harvest crab under a crab harvesting cooperative IFQ permit.* The only person eligible to harvest crab under a crab harvesting cooperative IFQ permit is the crab IFQ hired master under § 680.4(g) who is operating a vessel in which at least a 10 percent ownership share is held by a member of the crab harvesting cooperative to whom the IFQ permit is issued.

(3) *Liability.* Each member of a crab harvesting cooperative is responsible for ensuring that members of the crab harvesting cooperative and crab IFQ hired masters of the crab harvesting cooperative comply with all regulations applicable to fishing for CR crab.

(d) *Transfers by members of a crab harvesting cooperative.* The following requirements address transfers of QS and IFQ by members of a crab harvesting cooperative.

(1) *Transfer of QS.* A member of a crab harvesting cooperative may acquire or divest QS at any time using the transfer procedures described in § 680.41. However, transfers of QS that occur after the August 1 deadline for crab harvesting cooperative IFQ permit applications will not be reflected in the type or amount of IFQ permit issued to the crab harvesting cooperative for the subsequent fishing season.

(2) *Transfer of individually held IFQ.* A member of a crab harvesting cooperative may acquire or divest individually held IFQ using the transfer procedures described in § 680.41. However, any vessel used to harvest IFQ not held by a crab harvesting cooperative loses the vessel use cap exemption.

(3) *Transfer of crab harvesting cooperative IFQ prohibited.* A member of a crab harvesting cooperative may not acquire or divest crab harvesting cooperative IFQ. Crab harvesting cooperative IFQ may only be transferred between two crab harvesting cooperatives.

(e) *Transfers by crab harvesting cooperatives.* The following requirements address transfers of QS, IFQ, PQS, and IPQ by crab harvesting cooperatives that have been issued crab harvesting cooperative IFQ permits.

(1) *Acquisition of QS, PQS, and IPQ prohibited.* A crab harvesting cooperative that has been issued a crab harvesting cooperative IFQ permit is prohibited from acquiring any amount of QS, PQS, or IPQ for the valid duration of the crab harvesting cooperative IFQ permit. A crab harvesting cooperative that acquires any amount of QS, PQS, or IPQ becomes ineligible to receive a crab harvesting cooperative IFQ permit.

(2) *Transfer of crab harvesting cooperative IFQ.* A crab harvesting cooperative may transfer its IFQ only to another crab harvesting cooperative. Crab harvesting cooperatives wishing to engage in an inter-cooperative transfer must complete an application for inter-cooperative transfer to transfer crab IFQ between crab harvesting cooperatives. A crab harvesting cooperative is prohibited from transferring any amount of crab harvesting cooperative IFQ to any entity that is not a crab harvesting cooperative operating under a crab harvesting cooperative IFQ permit.

(3) *Use caps.* Inter-cooperative transfers of IFQ will apply to the individual use caps of crab harvesting cooperative members through the designation of the crab harvesting cooperative members conducting the transfer.

(f) *Application for inter-cooperative transfer.* An application for inter-cooperative transfer is to be used only to apply for a transfer of crab harvesting cooperative IFQ from one crab harvesting cooperative to another crab harvesting cooperative. A complete application must also contain the following information:

(1) Identification of transferor. Enter the name; NMFS Person ID; date of incorporation; Tax ID number; name of crab harvesting cooperative's designated representative; permanent business mailing address; and business telephone number, facsimile number, and e-mail address (if available) of the crab harvesting cooperative transferor. A temporary mailing address for each transaction may also be provided in addition to the permanent business mailing address.

(2) *Identification of crab harvesting cooperative member.* Enter the name and NMFS Person ID of the member to whose use cap the crab harvesting cooperative IFQ will be applied.

(3) *Identification of transferee.* Enter the name; NMFS Person ID; date of incorporation; Tax ID number; name of crab harvesting cooperative's designated representative; permanent business mailing address; and business telephone number, facsimile number, and e-mail address (if available) of the crab harvesting cooperative transferee. A temporary mailing address for each transaction may also be provided in addition to the permanent business mailing address.

(4) *Identification of crab harvesting cooperative member.* Enter the name and NMFS person ID of the member from whose use cap the crab harvesting cooperative IFQ will be removed.

(5) *Crab harvesting cooperative IFQ to be transferred.* Identify the crab harvesting cooperative IFQ being transferred, including the type of crab harvesting cooperative IFQ being transferred, crab harvesting cooperative permit number and year that permit was issued. Indicate (YES or NO) whether all remaining pounds for the current fishing year are to be transferred; if NO, specify number of pounds to be transferred.

(6) *Transferor information.* Indicate (YES or NO) whether a broker is being used for this transaction. If YES, indicate the dollar amount to be paid in brokerage fees or percentage of total price. Enter the total amount being paid for the IFQ in this transaction, including all fees, and the price per pound of IFQ.

(7) *Certification of transferor.* The crab harvesting cooperative transferor's designated representative must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. Only an application with an original, notarized signature will be accepted. Also enter the printed name of the crab harvesting cooperative transferor's representative or authorized representative. If the application is completed by an authorized representative, proof of authorization to act on behalf of the transferor must accompany the application. A Notary Public must sign the application, enter the date commission expires, and affix notary stamp or seal.

(8) *Certification of transferee.* The crab harvesting cooperative transferee's representative must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. Only an application with an original, notarized

signature will be accepted. Also enter the printed name of the crab harvesting cooperative transferee's representative or authorized representative. If the application is completed by an authorized representative, proof of authorization to act on behalf of the transferee must accompany the application. A Notary Public must sign the application, enter the date commission expires, and affix notary stamp or seal.

(g) *Inseason changes to crab harvesting cooperative membership.* The following requirements address inseason changes to crab harvesting cooperative membership.

(1) *Eligible membership changes.* A crab harvesting cooperative may add a new member if that person becomes eligible to join the crab harvesting cooperative through the acquisition of any amount of the QS upon which the crab harvesting cooperative's annual IFQ permit was based, provided that the person acquiring the QS in question has been determined by NMFS to be eligible to hold IFQ. Likewise, a crab harvesting cooperative may remove a member if that person no longer holds any of the QS upon which the crab harvesting cooperative's annual IFQ permit was based.

(2) *Inseason membership changes are voluntary.* A crab harvesting cooperative is not required to add or remove members during the fishing season to reflect inseason transfers of QS. Each crab harvesting cooperative is free to establish its own process for deciding whether or not to admit new members or to remove existing members during the fishing season to reflect changes in the QS holdings. No crab harvesting cooperative is required to admit a new QS holder that the crab harvesting cooperative chooses not to admit, regardless of whether the person in question has acquired any amount of QS upon which the crab harvesting cooperative's annual IFQ is based. If a crab harvesting cooperative chooses to make inseason membership changes, then it must comply with paragraph (g)(3) of this section.

(3) *Application for an inseason change in cooperative membership.* To change crab harvesting cooperative membership, a crab harvesting cooperative must submit to NMFS a revised application for an annual crab harvesting cooperative IFQ permit together with any revised supporting documents that are required to be submitted with the application. The revised application for an annual crab harvesting cooperative IFQ permit must be accompanied by a cover letter that indicates the revisions that have been made. Upon approval of the membership change, NMFS will issue a revised crab harvesting cooperative IFQ permit that reflects the change. A new member may not fish on behalf of a cooperative except as a crab IFQ hired master until NMFS issues a revised crab harvesting cooperative IFQ permit that reflects the change in membership.

(4) *Successors-in-interest.* If a member of a crab harvesting cooperative dies (in the case of an individual) or dissolves (in the case of a business entity), the QS held by that person will be transferred to the legal successor-in-interest. However, the crab harvesting cooperative IFQs generated by that person's QS holdings remain under the control of the crab harvesting cooperative for the valid duration of the crab harvesting cooperative IFQ permit. Each crab harvesting cooperative is free to establish its own internal procedures for admitting a successor-in-interest during the fishing season to reflect the transfer of QS due to the death or dissolution of a QS holder. The regulations in this section do not require any crab harvesting cooperative to admit a successor-in-interest that the cooperative chooses not to admit. If a crab harvesting cooperative chooses to admit the successor-in-interest for membership, then the crab harvesting cooperative must comply with paragraph (g)(3) of this section.

§ 680.22 Sideboard protections for GOA groundfish fisheries.

The regulations in this section restrict the owners of vessels with a history of participation in the Bering Sea snow crab fishery from using the increased flexibility provided by the CR Program to expand their level of participation in GOA groundfish fisheries. These restrictions are commonly known as ''sideboards.''

(a) *Vessels and LLP licenses subject to sideboard restrictions.* The sideboard fishing restrictions described in this section are based on a vessel's fishing history and apply both to the fishing vessel itself and to any LLP license generated by that vessel's fishing history. The criteria used to determine which vessels and LLP licenses are subject to GOA groundfish sideboard fishing restrictions are as follows:

(1) *Vessels subject to GOA groundfish sideboard directed fishing closures.* Any vessel that NMFS has determined meets one or both of the following criteria is subject to GOA groundfish sideboard directed fishing closures issued under paragraph (e) of this section.

(i) Any non-AFA vessel that made a legal landing of Bering Sea snow crab between January 1, 1996, and December 31, 2000, that had landings of Bering Sea snow crab during the QS qualifying period in Table 7 of this part, or

(ii) Any vessel named on an LLP license that was generated in whole or in part by the fishing history of a vessel meeting the criteria in paragraph (a)(1)(i) of this section.

(2) *Vessels prohibited from directed fishing for Pacific cod in the GOA.* Any vessel that NMFS has determined meets either of the following two criteria is prohibited from directed fishing for Pacific cod in the GOA:

(i) Any vessel subject to GOA groundfish sideboard closures under paragraph (a)(1)(i) of this section that landed less than 50 mt (110,231 lb), in round weight equivalents, of groundfish harvested from the GOA between January 1, 1996, and December 31, 2000, or

(ii) Any vessel named on an LLP license that was generated in whole or in part by the fishing history of a vessel meeting the criteria in paragraph (a)(2)(i) of this section.

(3) *Vessels exempt from Pacific cod sideboard closures in the GOA.* Any vessel that NMFS has determined meets one or both of the following criteria is exempt from sideboard directed fishing closures for Pacific cod in the GOA:

(i) Any vessel subject to GOA groundfish closures under paragraph (a)(1)(i) of this section that landed less than 100,000 lb (45,359 kg), in raw weight equivalents, of Bering Sea snow crab and more than 500 mt (1,102,311 lb), in round weight equivalents, of Pacific cod from the GOA between January 1, 1996, and December 31, 2000; and

(ii) Any vessel named on an LLP license that was generated in whole or in part by the fishing history of a vessel meeting the criteria in paragraph (a)(3)(i) of this section.

(b) *Notification of affected vessel owners and LLP license holders.* After NMFS determines which vessels and LLP licenses meet the criteria described in paragraph (a) of this section, NMFS will inform each vessel owner and LLP license holder in writing of the type of sideboard restriction and issue a revised Federal Fisheries Permit and/or LLP license that displays the restriction on the face of the permit or license.

(c) *Appeals.* A vessel owner or LLP license holder who believes that NMFS has incorrectly identified his or her vessel or LLP license as meeting the criteria for a GOA groundfish sideboard restriction may request reconsideration. All requests for reconsideration must be submitted in writing to the RAM Division, Alaska Region, NMFS, together with any documentation or

evidence supporting the request. If the request for reconsideration is denied, affected persons may appeal using the procedures described at § 680.43.

(d) *Determination of GOA groundfish sideboard ratios.* Sideboard ratios for each GOA groundfish species other than fixed-gear sablefish, species group, season, and area for which annual specifications are made, are established according to the following formulas:

(1) *Pacific cod.* The sideboard ratios for Pacific cod are calculated by dividing the aggregate retained catch of Pacific cod by vessels that are subject to sideboard directed fishing closures under paragraph (a)(1) of this section and that do not meet the criteria in paragraphs (a)(2) or (a)(3) of this section by the total retained catch of Pacific cod by all groundfish vessels between 1996 and 2000.

(2) *Groundfish other than Pacific cod.* The sideboard ratios for groundfish species and species groups other than Pacific cod and fixed-gear sablefish are calculated by dividing the aggregate landed catch by vessels subject to sideboard directed fishing closures under paragraph (a)(1) of this section by the total landed catch of that species by all groundfish vessels between 1996 and 2000.

(e) *Conversion of sideboard ratios into annual harvest limits.* NMFS will convert sideboard ratios into annual harvest limits according to the following procedures.

(1) *Annual harvest limits.* Annual harvest limits for each groundfish species, except fixed-gear sablefish, will be established by multiplying the sideboard ratios calculated under paragraph (d) of this section by the interim and final TACs in each area for which a TAC is specified. If a TAC is further apportioned by season, the sideboard harvest limit also will be apportioned by season in the same ratio as the overall TAC. The resulting harvest limits expressed in metric tons will be published in the annual GOA groundfish harvest specification notices.

(2) *Sideboard directed fishing allowance.* (i) If the Regional Administrator determines that a harvest limit for a species or species group has been or will be reached, the Regional Administrator may establish a sideboard directed fishing allowance for the species or species group applicable only to the group of crab vessels to which the sideboard limit applies.

(ii) If the Regional Administrator determines that a harvest limit is insufficient to support a directed fishery for that species or species group, then the Regional Administrator may set the sideboard directed fishing allowance at zero for that species or species group.

(3) *Directed fishing closures.* Upon attainment of a sideboard directed fishing allowance, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for the species or species group in the specified subarea, regulatory area, or district. A directed fishing closure is effective for the duration of the fishing year or season.

§ 680.23 Equipment and operational requirements.

(a) *Catcher vessel requirements.* A catcher vessel used to harvest CR crab must:

(1) Carry and use a VMS as described in paragraph (d) of this section;

(2) Land all retained crab to an RCR operating under an approved catch monitoring plan as described in paragraph (g) of this section;

(b) *Catcher/processor requirements.* A catcher/processor used to harvest CR crab must:

(1) Carry and use a VMS as described in paragraph (d) of this section;

(2) Weigh all retained crab to be processed on board, in its raw form, on a scale approved by NMFS as described in paragraph (e) of this section;

(3) Land all retained crab not processed on board at an RCR;

(4) Land all product processed on board at a shoreside location in the United States accessible by road or regularly scheduled air service and weigh that product on a scale approved by the State in which the product is landed; and

(5) Provide an approved observer platform scale and test weights that meet the requirements in paragraph (e) of this section.

(c) *RCR requirements.* An RCR must:

(1) Ensure that all CR crab landings are weighed on a scale approved by the State in which the landing takes place.

(2) Ensure that all crab landing and weighing be conducted as specified in an approved crab monitoring plan as described in paragraph (g) of this section, and that a copy of the crab monitoring plan is made available to NMFS personnel or authorized officer upon demand.

(d) *Vessel Monitoring System (VMS) requirements*—(1) *General requirements.* General VMS requirements concerning the approval and installation of VMS components and the responsibilities of vessel owners and operators are detailed at § 679.28(f)(1) through (5).

(2) *VMS transmission requirements.* A vessel's transmitter must be transmitting if:

(i) The vessel is operating in any reporting area (see definitions at § 679.2) off Alaska;

(ii) The vessel has crab pots or crab pot hauling equipment, or a crab pot launcher onboard; and

(iii) The vessel has or is required to have a Federal crab vessel permit for that crab fishing year.

(e) *Scales approved by NMFS.* To be approved by NMFS, a scale used to weigh crab at sea must meet the type evaluation and initial inspection requirements set forth in § 679.28(b)(1) and (2). Once a scale is installed on a vessel and approved by NMFS for use, it must be reinspected annually as described in § 679.28(b) by requesting a scale inspection from NMFS. Each scale must be tested daily and meet the maximum permissible error (MPE) requirements described in paragraph (e)(1) of this section.

(1) *At-sea scale tests.* To verify that the scale meets the MPEs specified in this paragraph, the vessel operator must test each scale or scale system used to weigh CR crab one time during each 24-hour period when use of the scale is required. The vessel owner must ensure that these tests are performed in an accurate and timely manner.

(i) *Belt scales.* The MPE for the daily at-sea scale tests is plus or minus 3 percent of the known weight of the test material. The scale must be tested by weighing at least 400 kg (882 lb) of crab or an alternative material supplied by the scale manufacturer on the scale under test. The known weight of the test material must be determined by weighing it on a platform scale approved for use under § 679.28 (b)(7).

(ii) *Automatic hopper scales.* An automatic hopper scale must be tested at its minimum and maximum capacity with approved test weights. Test weights must be placed in the bottom of the hopper unless an alternative testing method is approved by NMFS. The MPE for the daily at-sea scale tests is plus or minus 2 percent of the weight of the approved test weights.

(iii) *Platform scales used for observer sampling.* A platform scale used for observer sampling must be tested at 10, 25, and 50 kg (or 20, 50, and 100 lb if the scale is denominated in pounds) using approved test weights. The MPE for the daily at-sea scale test is plus or minus 0.5 percent if the scale is used to determine the known weight of test material for the purpose of testing a belt scale. If the scale is not used for that purpose, the MPE for the daily at-sea scale test is plus or minus 1 percent.

(iv) *Approved test weights.* Each test weight must have its weight stamped on or otherwise permanently affixed to it.

The weight of each test weight must be annually certified by a National Institute of Standards and Technology approved metrology laboratory or approved for continued use by the NMFS authorized inspector at the time of the annual scale inspection.

(v) *Requirements for all scale tests.* (A) Notify the observer at least 15 minutes before the time that the test will be conducted, and conduct the test while the observer is present.

(B) Conduct the scale test and record the following information on the at-sea scale test report form:

(*1*) Vessel name;

(*2*) Month, day, and year of test;

(*3*) Time test started to the nearest minute;

(*4*) Known weight of test weights;

(*5*) Weight of test weights recorded by scale;

(*6*) Percent error as determined by subtracting the known weight of the test weights from the weight recorded on the scale, dividing that amount by the known weight of the test weights, and multiplying by 100; and

(*7*) Sea conditions at the time of the scale test.

(C) Maintain the test report form on board the vessel until the end of the crab fishing year during which the tests were conducted, and make the report forms available to observers, NMFS personnel, or an authorized officer. In addition, the vessel owner must retain the scale test report forms for 3 years after the end of the crab fishing year during which the tests were performed. All scale test report forms must be signed by the vessel operator.

(2) *Scale maintenance.* The vessel owner must ensure that the vessel operator maintains the scale in proper operating condition throughout its use, that adjustments made to the scale are made so as to bring the performance errors as close as practicable to a zero value, and that no adjustment is made that will cause the scale to weigh inaccurately.

(3) *Printed reports from the scale.* The vessel owner must ensure that the printed reports are provided as required by this paragraph. Printed reports from the scale must be maintained on board the vessel until the end of the year during which the reports were made and be made available to NMFS or NMFS authorized personnel. In addition, the vessel owner must retain printed reports for 3 years after the end of the year during which the printouts were made.

(i) *Reports of catch weight and cumulative weight.* Reports must be printed at least once every 24 hours prior to submitting a CR crab landing report as described in § 680.5. Reports must also be printed before any information stored in the scale computer memory is replaced. Scale weights must not be adjusted by the scale operator to account for the perceived weight of water, mud, debris, or other materials. Scale printouts must show:

(A) The vessel name and Federal crab vessel permit number;

(B) The weight of each load in the weighing cycle (hopper scales only);

(C) The date and time the information was printed;

(D) The total amount weighed since the last printout was made; and

(E) The total cumulative weight of all crab or other material weighed on the scale.

(ii) *Printed report from the audit trail.* The printed report must include the information specified in sections 2.3.1.8, 3.3.1.7, and 4.3.1.8 of appendix A to 50 CFR part 679. The printed report must be provided to the authorized scale inspector at each scale inspection and must also be printed at any time upon request of NMFS staff or other NMFS-authorized personnel.

(iii) *Platform scales used for observer sampling.* A platform scale used for observer sampling is not required to produce a printed record unless that scale is also used to obtain raw weight for a CR crab landing report.

(4) *Scale installation requirements.* Unless otherwise approved by NMFS, a scale used to obtain raw weight for a CR crab landing report must be installed such that:

(i) From the location where the observer samples unsorted crab, the observer can ensure that all crab are being weighed;

(ii) The scale may not be installed in a manner that facilitates bypassing. It must not be possible for the scale inspector and an assistant to bypass the scale with 100 kg (220 lb) of test material in less than 20 seconds.

(f) *Scales approved by the state.* Scale requirements in this paragraph are in addition to those requirements set forth by the State in which the scale is approved, and nothing in this paragraph may be construed to reduce or supersede the authority of the State to regulate, test, or approve scales within the State. Scales used to weigh CR crab that are also required to be approved by the State must meet the following requirements:

(1) *Verification of approval.* The scale must display a valid State sticker indicating that the scale was inspected and approved within the previous 12 months.

(2) *Visibility.* An RCR must ensure that the scale and scale display are visible simultaneously. NMFS personnel or NMFS authorized personnel, including observers, must be allowed to observe the weighing of crab on the scale and be allowed to read the scale display at all times.

(3) *Printed scale weights.* (i) An RCR must ensure that printouts of the scale weight of each delivery or offload are made available to NMFS personnel or to NMFS authorized personnel, including observers, at the time printouts are generated. An RCR must maintain printouts on site until the end of the fishing year during which the printouts were made and make them available upon request by an authorized officer for 3 years after the end of the fishing year during which the printout was made.

(ii) A scale used to weigh any portion of a landing of CR crab or an offload of CR crab product must produce a printed record for each landing, or portion of each landing, weighed on that scale. The printed record must include:

(A) The RCR's name;

(B) The weight of each load in the weighing cycle;

(C) The total weight of crab in each landing, or portion of the landing that was weighed on that scale;

(D) The date and time the information is printed; and

(E) The name and ADF&G vessel registration number of the vessel making the delivery. The scale operator may write this information on the scale printout in ink at the time of landing.

(4) *Inseason scale testing.* Scales used to weigh CR crab must be tested by RCR personnel when testing is requested by NMFS-staff or by NMFS-authorized personnel.

(i) *Inseason testing criteria.* To pass an inseason test, NMFS staff or NMFS-authorized personnel will verify that the scale display and printed information are clear and easily read under all conditions of normal operation, that weight values are visible on the display until the value is printed, and that the scale does not exceed the maximum permissible errors specified in the following table:

Test load in scale divisions	Maximum error in scale divisions
(A) 0–500	1
(B) 501–2,000	2
(C) 2,001–4,000	3
(D) > 4,000	4

(ii) *Test weight requirements.* Scales must be tested with the amount and type of weight specified for each scale

type in the following tables under paragraphs (f)(4)(ii)(A) through (f)(4)(ii)(D) of this section:

(A) Automatic hopper 0 to 150 kg (0 to 300 lb) capacity.

Certified test weights	Other test material
(*1*) Minimum weighment or 10 kg (20 lb), whichever is greater.	Minimum.
(*2*) Maximum	Maximum.

(B) Automatic hopper > 150 kg (300 lb) capacity.

Certified test weights	Other test material
(*1*) Minimum weighment or 10 kg (20 lb), whichever is greater.	Minimum.
(*2*) 25 percent of maximum of 150 kg (300 lb), whichever is greater.	Maximum.

(C) Platform, flatbed or hanging scales less than 150 kg (300 lb) capacity.

Certified test weights	Other test material
(*1*) 10 kg (20 lb)	Not Acceptable.
(*2*) Midpoint	Not Acceptable.
(*3*) Maximum	Not Acceptable.

(D) Platform, flatbed or hanging scales > 150 kg (300 lb) capacity.

Certified test weights	Other test material
(*1*) 10 kg (20 lb)	Not Acceptable.
(*2*) 12.5 percent of maximum or 75 kg (150 lb), whichever is greater.	50 percent of maximum or 75 kg (150 lb), whichever is greater.
(*3*) 25 percent of maximum or 150 kg (300 lb), whichever is greater.	75 percent of maximum or 150 kg (300 lb), whichever is greater.

(iii) *Certified test weights.* An RCR must ensure that there are sufficient test weights on-site to test each scale used to weigh CR crab. Each test weight used for inseason scale testing must have its weight stamped on or otherwise permanently affixed to it. The weight of each test weight must be certified by a National Institute of Standards and Technology approved metrology laboratory every 2 years.

(iv) *Other test material.* When permitted in paragraph (f)(4)(ii) of this section, a scale may be tested with test material other than certified test weights.

(g) *Crab Monitoring Plans (CMP).* A CMP is a plan submitted by an RCR for each location or processing vessel where the RCR wishes to take deliveries of CR crab. The CMP must detail how the RCR will meet the catch monitoring standards detailed in paragraph (g)(5) of this section. An RCR that processes only CR crab harvested under a CPO or CPC IFQ permit is not required to prepare a CMP.

(1) *CMP Approval.* NMFS will approve a CMP if it meets all the performance standards specified in paragraph (g)(5) of this section. The location or vessel identified in the CMP may be inspected by NMFS prior to approval of the CMP to ensure that the location conforms to the elements addressed in the CMP. If NMFS disapproves a CMP, the plant owner or manager may resubmit a revised CMP or file an administrative appeal as set forth under the administrative appeals procedures described in § 679.43.

(2) *Inspection scheduling.* The time and place of a CMP inspection may be arranged by submitting a written request for an inspection to NMFS, Alaska Region. An inspection must be requested no less than 10 working days before the requested inspection date. NMFS staff will conduct CMP inspections in any port located in the United States that can be reached by regularly scheduled commercial air service. The inspection request must include:

(i) Name and signature of the person submitting the application and the date of the application;

(ii) Address, telephone number, facsimile number, and e-mail address (if available) of the person submitting the application; and

(iii) A proposed CMP detailing how the RCR will meet each of the standards in paragraph (g)(5) of this section.

(3) *Approval period.* NMFS will approve a CMP for 1 year if it meets the performance standards specified in paragraph (e)(2) of this section. An owner or manager must notify NMFS in writing if changes are made in plant operations or layout that do not conform to the CMP.

(4) *Changing an approved CMP.* An RCR may change an approved CMP by submitting a CMP addendum to NMFS. Depending on the nature and magnitude of the change requested, NMFS may require a CMP inspection as described in paragraph (g)(2) of this section. A CMP addendum must contain:

(i) Name and signature of the person submitting the addendum;

(ii) Address, telephone number, facsimile number and e-mail address (if available) of the person submitting the addendum; and

(iii) A complete description of the proposed CMP change.

(5) *CMP standards*—(i) *Crab sorting and weighing requirements.* All crab, including crab parts and crab that are dead or otherwise unmarketable, delivered to the RCR must be sorted and weighed by species. The CMP must detail how and where crab are sorted and weighed.

(ii) *Scales used for weighing crab.* The CMP must identify by serial number each scale used to weigh crab and describe the rationale for its use.

(iii) *Scale testing procedures.* Scales identified in the CMP must be accurate within the limits specified in paragraph (f)(4)(i) of this section. For each scale identified in the CMP a testing plan must be developed that:

(A) Describes the procedure the plant will use to test the scale;

(B) Lists the test weights and equipment required to test the scale;

(C) Lists where the test weights and equipment will be stored; and

(D) Lists the names of the personnel responsible for conducting the scale testing.

(iv) *Printed record.* An RCR must ensure that the scale produces a complete and accurate printed record of the weight of each species in a landing. All of the crab in a delivery must be weighed on a scale capable of producing a complete printed record as described in paragraph (e)(3) of this section. A printed record of each landing must be printed before the RCR submits a CR crab landing report.

(v) *Observation area.* Each CMP must designate an observation area. The observation area is a location designated on the CMP where an individual may monitor the offloading and weighing of crab. The observation area must meet the following standards:

(A) *Access to the observation area.* The observation area must be freely accessible to observer, NMFS staff or enforcement aides at any time during the effective period of the CMP.

(B) *Monitoring the offloading and weighing of crab.* From the observation area, an individual must have an unobstructed view or otherwise be able to monitor the entire offload of crab between the first location where crab are removed from the boat and a location where all sorting has taken place and each species has been weighed.

(C) *Other requirements.* The observation area must be sheltered from the weather and not exposed to unreasonable safety hazards.

(vi) *Plant liaison.* The CMP must designate a plant liaison. The plant liaison is responsible for:

(A) Orienting new observers, NMFS staff and enforcement aides to the plant;

(B) Assisting in the resolution of observer concerns; and

(C) Informing NMFS if changes must be made to the CMP.

(vii) *Drawing to scale of delivery location.* The CMP must be accompanied by a drawing to scale of the delivery location or vessel showing:

(A) Where and how crab are removed from the delivering vessel;

(B) The observation area;

(C) The location of each scale used to weigh crab; and

(D) Each location where crab is sorted.

(viii) *Single geographic location.* All offload and weighing locations detailed in a CMP must be located on the same vessel or in the same geographic location. If a CMP describes facilities for the offloading of vessels at more than one location, it must be possible to see all locations simultaneously.

§ 680.30 [Reserved]

Subpart C—Quota Management Measures

§ 680.40 Quota Share (QS), Processor QS (PQS), Individual Fishing Quota (IFQ), and Individual Processor Quota (IPQ) issuance.

(a) *Crab QS and Crab QS fisheries.* The Regional Administrator will issue crab QS for the crab QS fisheries defined in paragraph (a)(1) of this section. The Regional Administrator will annually issue IFQ based on the amount of QS a person holds. Crab harvested and retained in each crab QS fishery may be harvested and retained only by persons holding the appropriate crab IFQ for that crab QS fishery.

(1) *Allocations.* With the exception of the WAI golden king crab fishery, the Regional Administrator shall annually apportion 10 percent of the TAC specified by the State of Alaska for each of the fisheries described in Table 1 to this part to the Western Alaska CDQ program. Ten percent of the TAC in the Western Aleutian Islands golden king crab fishery will be allocated to the Adak community entity. The remaining TACs for the crab QS fisheries will be apportioned for use by QS holders in each fishery.

(2) *Official crab rationalization record.* The official crab rationalization record will be used to determine the amount of QS that is to be allocated for each crab QS fishery. The official crab rationalization record is presumed to be correct. An applicant for QS has the burden to prove otherwise. For the purposes of creating the official crab rationalization record the Regional Administrator will presume the following:

(i) An LLP license is presumed to have been used onboard the same vessel from which that LLP is derived, unless documentation is provided establishing otherwise.

(ii) If more than one person is claiming the same legal landings or legal processing activities, then each person eligible to receive QS or PQS based on those activities will receive an equal share of any resulting QS or PQS unless the applicants can provide written documentation establishing an alternative means for distributing the QS or PQS.

(iii) For the purposes of determining eligibility for CPO QS, a person is presumed to have processed BSAI crab in 1998 or 1999 if the vessel on which the applicant's LLP license is based processed such crab in those years.

(b) *QS sectors and regional designations*—(1) *General.* The Regional Administrator shall initially assign to qualified persons, crab QS that are specific to the crab QS fisheries defined in paragraph (a)(1) of this section. The crab QS amount issued will be based on legal landings made on vessels authorized to participate in those fisheries in four QS sectors:

(i) *Catcher Vessel Owner (CVO) QS* shall be initially issued to qualified persons defined in paragraph (b)(3) of this section based on legal landings of unprocessed crab.

(ii) *Catcher Vessel Crew (CVC) QS* shall be initially issued to qualified persons defined in paragraph (b)(3) of this section based on legal landings of unprocessed crab. After July 1, 2008, CVC QS shall yield an annual IFQ of CVC Class A or CVC Class B as defined under paragraph (h)(2) of this section.

(iii) *Catcher/Processor Owner (CPO) QS* shall be initially issued to qualified persons defined in paragraph (b)(3) of this section based on legal landings of crab that were harvested and processed on the same vessel.

(iv) *Catcher/Processor Crew (CPC) QS* shall be initially issued to qualified persons defined in paragraph (b)(3) of this section based on legal landings of crab that were harvested and processed on the same vessel.

(2) *Regional designations.* (i) Regional designations apply to:

(A) *North QS* if the legal landings that gave rise to the QS for a crab QS fishery were landed in the Bering Sea subarea north of 56°20′ N. lat.; or

(B) *South QS* if the legal landings that gave rise to the QS for a crab QS fishery were not landed in the North Region;

(*1*) CVO QS allocated to the WAI crab QS fishery; and

(*2*) CVC QS for the WAI crab QS fishery on and after July 1, 2008.

(C) *West QS* for a portion of the QS allocated to the WAG crab QS fishery subject to the provisions under § 680.40(c)(4).

(ii) Regional designations do not apply (Undesignated QS) to:

(A) Crab QS for the BST crab QS fishery;

(B) Crab QS for that portion of the WAG QS fishery not regionally designated for the West region;

(C) CVC QS prior to July 1, 2008;

(D) CPO QS unless that QS is transferred to the CVO QS sector, in which case the regional designation is made by the recipient of the resulting CVO QS at the time of transfer; and

(E) CPC QS.

(iii) The regional designations that apply to each of the crab QS fisheries are specified in the following table:

Crab QS fishery	North region	South region	West region	Undesignated region
(A) EAG	X	X		
(B) WAG			X	X
(C) BST				X
(D) BSS	X	X		
(E) BBR	X	X		
(F) PIK	X	X		
(G) SMB	X	X		
(H) WAI		X		

(iv) The regional designation ratios applied to QS and PQS for each crab QS fishery will be established based on the regional designations determined on August 1, 2005. QS or PQS issued after

this date will be issued in the same ratio.

(3) *Qualified person* means, for the purposes of QS issuance, a person, as defined in § 679.2, who at the time of application for QS meets the following criteria for each of the QS sectors:

(i) *CVO QS.* Holds one or more permanent, fully transferable crab LLP licenses and is a citizen of the United States;

(ii) *CPO QS.* (A) Holds one or more permanent, fully transferable crab LLP licenses with a Catcher/Processor designation and is a citizen of the United States; and

(B) Harvested and processed at sea any crab species in any BSAI crab fishery during the years 1998 or 1999.

(iii) *CVC QS and CPC QS.* (A) Is an individual who is a citizen of the United States, or his or her successor-in-interest if that individual is deceased;

(B) Has historical participation in the fishery demonstrated by being the individual named on a State of Alaska Interim Use Permit for a QS crab fishery and made at least one legal landing per year for any 3 eligibility years under that permit based on data from fish tickets maintained by the State of Alaska. The qualifying years are described in Column C of Table 7 to this part.

(C) Has recent participation in the fishery demonstrated by being the individual named on a State of Alaska Interim Use Permit for a QS crab fishery and made at least one legal landing under that permit in any 2 of 3 seasons based on data from fish tickets maintained by the State of Alaska. Those seasons are defined in Column D of Table 7 to this part; except that the requirement for recent participation does not apply if:

(*1*) The legal landings that qualify the individual for QS in the PIK crab QS fishery were made from a vessel that was less than 60 feet length overall; or

(*2*) If the individual who is otherwise eligible to receive an initial issuance of QS died while working as part of a harvesting crew in any U.S. commercial fishery.

(4) *Qualification for initial allocation of QS*—(i) *Qualifying year.* The qualifying years for each crab QS fishery are described in Column B of Table 7 to this part.

(ii) *Legal landing of crab* means, for the purpose of initial allocation of QS, crab harvested during the qualifying years specified in Column B of Table 7 to this part and landed in compliance with state and Federal permitting, landing, and reporting regulations in effect at the time of the landing.

(A) Legal landings exclude any deadloss, test fishing, fishing conducted under an experimental, exploratory, or scientific activity permit, or the fishery conducted under the Western Alaska CDQ Program.

(B) Landings made onboard a vessel that gave rise to a crab LLP license or made under the authority of an LLP license are non-severable from the crab LLP license until QS has been issued for those legal landings, except as provided for in paragraph (c)(2)(vii) of this section.

(C) Landings may only be used once for each QS sector for the purposes of allocating QS.

(D) Landings made from vessels which are used for purposes of receiving compensation through the BSAI Crab Capacity Reduction Program may not be used for the allocation of CVO QS or CPO QS.

(E) Legal landings for purposes of allocating QS for a crab QS fishery only include those landings that resulted in the issuance of an LLP license endorsed for that crab QS fishery, or landings that were made in that crab QS fishery under the authority of an LLP license endorsed for that crab QS fishery, except as provided for in paragraph (c)(2)(vii) of this section.

(iii) *Documentation.* Evidence of legal landings shall be limited to State of Alaska fish tickets.

(c) *Calculation of QS allocation*—(1) *General.* (i) For each permanent, fully transferable crab LLP license under which an applicant applies, CVO and CPO QS will be based on legal landings that resulted in the issuance of that license or from legal landings that were made under the authority of that license.

(ii) For each State of Alaska Interim Use Permit under which an applicant applies for CVC QS or CPC QS, the initial allocation of QS will be based on the legal landings that were made under the authority of that permit.

(2) *Computation for initial issuance of QS.* (i) Based on the official crab rationalization record the Regional Administrator shall derive the annual harvest denominator (AHD) that represents the amount of legally landed crab in each crab QS fishery in each qualifying year as established in Column B of Table 7 to this part.

(ii) The initial QS pool is described in Table 8 to this part.

(iii) A person's initial allocation of QS shall be based on a percentage of the legal landings for the applicable sector in each crab QS fishery:

(A) Associated with crab LLP licenses held by the applicant for CVO or CPO QS; or

(B) Authorized under a State of Alaska Interim Use Permit held by the applicant for CVC or CPC QS.

(iv) The Regional Administrator shall calculate the allocation of CVO and CPO QS for each crab QS fishery ''f'' based on each fully transferable LLP license ''l'' held by a qualified person by the following formulas:

(A) Sum legal landings for each qualifying year, as described in Column B of Table 7 to this part, and divide that amount by the AHD for that year as follows:

$(\sigma \text{ legal landings}_{lf}/\text{AHD}_f) \times 100 = \text{Percentage of the AHD}_{lf}$

(B) In those fisheries where only a subset of the qualifying years are applied, the Regional Administrator will use the years that yield the highest percentages of each AHD as calculated in paragraph (c)(2)(iv)(A) of this section.

(C) Sum the highest percentages of the AHD's for that license as calculated under paragraph (c)(2)(iv)(B) of this section and divide by the number in Column E of Table 7 to this part (Subset of Qualifying Years). This yields the Average Percentage as presented in the following equation:

$\sigma \text{ Percentages of the AHD}_{lf}/\text{Subset of Qualifying Years}_f = \text{Average Percentage}_{lf}$

(D) Divide the Average percentage in paragraph (c)(2)(iv)(C) of this section for a license and fishery by the Sum of all Average Percentages for all licenses for that fishery as presented in the following equation:

$\text{Average Percentage}_{lf}/\sigma \text{ Average Percentage}_{sf} = \text{Percentage of the Total Percentages}_{lf}$

(E) Multiply the Percentage of the Total Percentages in paragraph (c)(2)(iv)(D) of this section by the Initial QS Pool as described in Table 8 to this part. This yields the unadjusted number of QS units derived from a license for a fishery.

(F) Multiply the unadjusted number of QS units in paragraph (c)(2)(iv)(E) of this section by 97 percent. This yields the number of QS units to be allocated.

(G) Determine the percentage of legal landings in the subset of qualifying years associated with a LLP license with a catcher/processor designation that were processed on that vessel and multiply the amount calculated in paragraph (c)(2)(iv)(F) of this section by this percentage. This yields the amount of CPO QS to be allocated.

(H) Determine the percentage of legal landings in the subset of qualifying years associated with a LLP license that were not processed on that vessel and multiply the amount calculated in

paragraph (c)(2)(iv)(F) of this section by this percentage. This yields the amount of CVO QS to be allocated.

(I) Determine the percentage of legal landings associated with an LLP license in the subset of qualifying years that were delivered in each region as defined in paragraph (b)(2) of this section. The amount calculated in paragraph (c)(2)(iv)(H) of this section is multiplied by the percentage for each region.

(J) The percentage calculated in paragraph (c)(2)(iv)(I) of this section may be adjusted according to the provisions at paragraphs (c)(3) and (c)(4) of this section.

(v) As shown in the formulas under this paragraph (c)(2)(v), the allocation of CVC and CPC QS for each crab QS fishery ''f'' based on each State of Alaska Interim Use Permit ''i'' held by each qualified person shall be calculated by the Regional Administrator as follows:

(A) Sum legal landings for each qualifying year as described in Column B of Table 7 to this part and divide that amount by the AHD for that year using the following equation:

$(\sigma \text{ legal landings}_{if}/\text{AHD}_f) \times 100 = \text{Percentage of the AHD}_{if}$

(B) In those fisheries where only a subset of the qualifying years are applied, the Regional Administrator will use the years that yield the highest percentages of the AHD as calculated in paragraph (c)(2)(v)(A) of this section.

(C) Sum the highest percentages of the AHDs for that license calculated under paragraph (c)(2)(v)(B) of this section and divide by the number in Column E of Table 7 to this part (Subset of Qualifying Years). This yields the Average Percentage as presented in the following equation:

$\sigma \text{ Percentages of the AHD}_{lf}/\text{Subset of Qualifying Years}_f = \text{Average Percentage}_{if}$

(D) Divide the Average Percentage in paragraph (c)(2)(v)(C) of this section for a permit and fishery by the Sum of all Average Percentages for all permits for that fishery as presented in the following equation:

$\text{Average Percentage}_{if}/\sigma \text{ Average Percentage}_{sf} = \text{Percentage of the Total Percentages}_{if}$

(E) Multiply the Percentage of the Total Percentages in paragraph (c)(2)(v)(E) of this section by the Initial QS Pool as described in Table 8 to this part. This yields the unadjusted number of QS units derived from a permit for a fishery.

(F) Multiply the unadjusted number of QS units in paragraph (c)(2)(v)(E) of this section by 3 percent. This yields the number of QS units to be allocated.

(G) Determine the percentage of legal landings in the subset of qualifying years associated with a permit that were processed on that vessel and multiply the amount calculated in paragraph (c)(2)(v)(F) of this section by this percentage. This yields the amount of CPC QS to be allocated.

(H) Determine the percentage of legal landings in the subset of qualifying years associated with a permit that were not processed on that vessel and multiply the amount calculated in paragraph (c)(2)(v)(F) of this section by this percentage. This yields the amount of CVC QS to be allocated.

(I) Determine the percentage of legal landings associated with a permit in the subset of qualifying years that were delivered in each region as defined in paragraph (b)(2) of this section. The amount calculated in paragraph (c)(2)(v)(H) of this section is multiplied by the percentage for each region.

(J) The percentage calculated in paragraph (c)(2)(v)(I) of this section may be adjusted according to the provisions at paragraphs (c)(3) and (c)(4) of this section. The amount calculated in paragraph (c)(2)(v)(H) of this section is multiplied by the percentage for each region. These regional QS designations do not apply in the CVC QS sector until July 1, 2008.

(vi) *Sunken vessel provisions.* (A) If a person applies for CVO QS or CPO QS based, in whole or in part, on the activities of a vessel that sank, the Regional Administrator shall presume landings for that vessel for the crab fishing years between the time of vessel loss and the replacement of the vessel under § 679.40(k)(5)(v). These presumed landings shall be equivalent to 50 percent of the average legal landings for the qualifying years established in Column B of Table 7 to this part unaffected by the sinking. If the vessel sank during a qualifying year, the legal landings for that year will not be used as the basis for presumed landings;

(B) If a person applies for CVO QS or CPO QS based, in whole or in part, on the activities of a vessel that sank and:

(*1*) The person who owned the vessel that sank would have been denied eligibility to replace a sunken vessel under the provisions of Public Law 106–554; and

(*2*) The vessel that sank was replaced with a newly constructed vessel, with that vessel under construction no later than June 10, 2002. For purposes of this section a vessel is considered under construction once the keel for that vessel has been laid; and

(*3*) The newly constructed vessel participated in any Bering Sea crab fishery no later than October 31, 2002;

(*4*) Then the Regional Administrator shall presume landings for that vessel for the crab fishing years between the time of vessel loss and the replacement of the vessel. These presumed landings shall be equivalent to 50 percent of the average legal landings for the qualifying years established in Column B of Table 7 to this part unaffected by the sinking. If the vessel sank during a qualifying year, the legal landings for that year will not be used as the basis for presumed landings.

(vii) *LLP license history exemption.* An applicant for CVO or CPO QS who:

(A) Deployed a vessel in a crab QS fishery under the authority of an interim or permanent fully transferable LLP license; and

(B) Prior to January 1, 2002, received by transfer, as authorized by NMFS, a permanent fully transferable LLP license for use in that crab QS fishery to insure that a vessel would remain authorized to participate in the fishery, may choose to use as the legal landings which are the basis for QS allocation on his or her application for crab QS or PQS either:

(*1*) The legal landings made on that vessel for that crab QS fishery prior to the transfer of the permanent fully transferable LLP license for use on that vessel; or

(*2*) The legal landings made on the vessel that gave rise to the permanent fully transferable LLP license and the legal landings made under the authority of that same LLP license in that crab QS fishery prior to January 1, 2002.

(C) If the history described in paragraph (c)(2)(vii)(B)(*1*) of this section is being used by another person for an allocation with an LLP license, then the allocation in paragraph (c)(2)(vii) will be based on the legal landings as described under paragraph (c)(2)(vii)(B)(*2*) of this section.

(3) *Adjustment of CVO and CVC QS allocation for North and South regional designation.* The Regional Administrator may adjust the regional designation of QS to ensure that it is initially allocated in the same proportion as the regional designation of PQS for that crab QS fishery. A person who would receive QS based on the legal landings in only one region, will receive QS with only that regional designation. A person who would receive QS with more than one regional designation for that crab QS fishery would have his or her QS holdings regionally adjusted on a pro rata basis as follows:

(i) Determine the ratio of the Initial PQS pool in the North and South regions.

(ii) Multiply the Initial QS pool by the ratio of North and South PQS. This will yield the target QS pool for each region.

(iii) Sum the QS for all persons who are eligible to receive North QS yielding the unadjusted North QS pool, and sum the QS for all persons who are eligible to receive South QS yielding the unadjusted South QS pool.

(iv) To calculate the amount of QS available for adjustment, subtract the amount of QS for persons receiving North only QS from the unadjusted North QS pool and subtract the amount of QS for persons receiving South only QS from the unadjusted South QS pool, as presented in the following equations:

(A) Unadj. North QS − North QS only = North QS for [North & South] QS holders.

(B) Unadj. South QS − South QS only = South QS for [North & South] QS holders.

(v) Determine which region becomes the gaining region if the target QS pool is greater than the unadjusted QS pool.

(vi) Subtract the gaining region unadjusted QS pool from the gaining region target QS pool to calculate the number of QS units that need to be applied to the gaining region. This amount is the Adjustment Amount as presented in the following equation:

Unadj. gaining region QS − Target gaining region QS pool = Adjustment Amount

(vii) Divide the Adjustment Amount by the unadjusted losing region QS pool for North and South QS holders. This yields the regional adjustment factor (RAF) for each person as presented in the following equation:

Adj. Amount/unadjusted losing region QS pool for [North & South] QS holders = RAF

(viii) For each person (p) who holds both North and South Region QS, the QS adjustment (QS Adj. (p)) to that person's Unadjusted losing region QS is expressed in the following equation as:

QS adj. p = Unadjusted losing region QS p × RAF

(ix) The QS adjustment for person (p) is made by subtracting the QS adjustment from that person's unadjusted losing region QS amount and added to that person's unadjusted gaining region QS. These adjustments will yield the regional adjustment QS amounts for that person.

(4) *Regional designation of Western Aleutian Islands golden king crab.* Fifty percent of the CVO and CVC QS that is issued in the WAG crab QS fishery will be initially issued with a West regional designation. The West regional designation applies to QS for delivery West of 174° W. longitude. The remaining 50 percent of the CVO and CVC QS initially issued for this fishery is not subject to regional designation (Undesignated QS). A person (p) who would receive QS based on the legal landings in only one region, will receive QS with only that regional designation. A person who would receive QS with more than one regional designation for that crab QS fishery would have his or her QS holdings regionally adjusted on a pro rata basis as follows:

(i) The West QS pool is equal to 50 percent of the initial QS pool.

(ii) The Undesignated QS pool is equal to 50 percent of the initial QS pool.

(iii) Sum the QS for all persons who are eligible to receive West QS yielding the unadjusted West QS pool, and sum the QS for all persons who are eligible to receive undesignated QS yielding the unadjusted undesignated QS pool.

(iv) To calculate the amount of QS available for adjustment, subtract the amount of QS for persons receiving West only QS from the unadjusted West QS pool and subtract the amount of QS for persons receiving undesignated only QS from the unadjusted undesignated QS pool, as presented in the following equation:

(A) Unadj. West QS − West QS only = West QS for [West & Undesignated] QS holders.

(B) Unadj. Undesignated QS − Undesignated QS only = Undesignated QS for [West & Undesignated] QS holders.

(v) Subtract the gaining region Unadjusted QS pool from the gaining region Target QS pool to calculate the number of QS units that will need to be applied to the gaining region. This amount is the Adjustment Amount as presented in the following equation:

Target gaining region QS pool − unadjusted region QS = Adjustment Amount

(vi) Divide the Adjustment Amount by the unadjusted losing region QS pool for West and Undesignated QS holders. This yields the regional adjustment factor (RAF) for each person as presented in the following equation:

Adj. Factor/unadjusted losing region QS pool for West & Undesignated QS holders = RAF

(vii) For each person (p) who holds both unadjusted West and Undesignated Region QS, the QS adjustment (QS Adj. p) to that person's Unadjusted West QS is expressed in the following equation as:

QS adj. p = Unadjusted West QS p × RAF

(viii) The QS adjustment for person (p) is made by subtracting the QS adjustment for that person's unadjusted losing region QS amount and subtracted from that person's unadjusted gaining region QS. These adjustments will yield the regional adjustment QS amounts for that person.

(d) *Crab PQS and Crab PQS Fisheries*—(1) *General.* The Regional Administrator shall initially assign to qualified persons defined in paragraph (d)(3) of this section crab PQS specific to crab QS fisheries defined in paragraph (a)(1) of this section. The crab PQS amount issued will be based on total legal processing of crab made in those crab QS fisheries. PQS shall yield annual IPQ as defined under paragraph (j) of this section.

(2) *Regional designations.* For each crab QS fishery, PQS shall be initially regionally designated based on the legal processing that gave rise to the PQS as follows:

(i) *North PQS* if the processing that gave rise to the PQS for a crab QS fishery occurred in the Bering Sea subarea north of 56°20′ N. lat.; or

(ii) *South PQS* if the processing that gave rise the PQS for a crab QS fishery did not occur in the North Region, and PQS allocated to the WAI crab QS fishery; or

(iii) *West PQS* for a portion of the PQS allocated to the WAG crab QS fishery subject to the provisions under paragraph (e)(2) of this section; or

(iv) *Undesignated.* Regional designations do not apply to:

(A) That portion of the WAG crab QS fishery that is not regionally designated as West Region PQS; and

(B) The BST crab QS fishery.

(v) The specific regional designations that apply to PQS in each of the crab QS fisheries are described in paragraph (b)(2)(iii) of this section.

(3) *Qualified person,* for the purposes of PQS issuance, means a person, as defined at § 679.2, who at the time of application for PQS is a U.S. citizen, or a U.S. corporation, partnership, association, or other entity, and who:

(i) Legally processed any crab QS species established in paragraph (a)(1) of this section during 1998 or 1999 as demonstrated on the official crab rationalization record; or

(ii) Did not legally process any crab QS species during 1998 or 1999 according to the official crab rationalization record, but who:

(A) Processed BSS crab QS species in each crab season for that fishery during the period from 1988 through 1997; and

(B) From January 1, 1996, through June 10, 2002, invested in a processing facility, processing equipment, or a

vessel for use in processing operations, including any improvements made to existing facilities with a total expenditure in excess of $1,000,000; or

(C) Is the person to whom the history of legal processing of crab has been transferred by the express terms of a written contract that clearly and unambiguously provides that such legal processing of crab has been transferred. This provision would apply only if that applicant for PQS:

(*1*) Legally processed any crab QS species established in paragraph (a)(1) of this section during 1998 or 1999, as demonstrated on the official crab rationalization record; or

(*2*) Received history of crab processing that was legally processed during 1998 or 1999, as demonstrated on the official crab rationalization record.

(iii) Qualified persons, or their successors-in-interest, must exist at the time of application for PQS.

(iv) A former partner of a dissolved partnership or a former shareholder of a dissolved corporation who would otherwise be a qualified person may apply for PQS in proportion to his or her ownership interest in the dissolved partnership or corporation.

(v) A person who has acquired a processing corporation, partnership, or other entity that has a history of legal processing of crab is presumed to have received by transfer all of that history of legal processing of crab unless a clear and unambiguous written contract establishes otherwise.

(4) *Qualification for initial allocation of PQS*—(i) *Years.* The qualifying years for each crab QS fishery are designated in Table 9 to this part.

(ii) *Ownership interest.* Documentation of ownership interest in a dissolved partnership or corporation, association, or other entity shall be limited to corporate documents (*e.g.*, articles of incorporation) or notarized statements signed by each former partner, shareholder or director, and specifying their proportions of interest.

(iii) *Legal processing of crab* means, for the purpose of initial allocation of PQS, raw crab pounds processed in the crab QS fisheries designated under paragraph (a)(1) of this section in compliance with state and Federal permitting, landing, and reporting regulations in effect at the time of the landing. Legal processing excludes any deadloss, processing of crab harvested in a test fishery or under a scientific, education, exploratory, or experimental permit, or under the Western Alaska CDQ Program.

(iv) *Documentation.* Evidence of legal processing shall be limited to State of Alaska fish tickets, except that:

(A) NMFS may use information from a State of Alaska Commercial Operators Annual Report, State of Alaska fishery tax records, or evidence of direct payment from a receiver of crab to a harvester if that information indicates that the buyer of crab differs from the receiver indicated on State of Alaska fish ticket records; however:

(B) Information on State of Alaska fish tickets shall be presumed to be correct for the purpose of determining evidence of legal processing of crab. An applicant will have the burden of proving the validity of information submitted in an application that is inconsistent with the information on the State of Alaska fish ticket.

(e) *Calculation of PQS allocation*—(1) *Computation for initial issuance of PQS.* (i) The Regional Administrator shall establish the Total Processing Denominator (TPD) which represents the amount of legally processed raw crab pounds in each crab QS fishery in all qualifying years.

(ii) For each crab QS fishery, the percentage of the initial PQS pool that will be distributed to each qualified person shall be based on their percentage of the TPD according to the following procedure:

(A) Sum the raw crab pounds purchased for each person for all qualifying years.

(B) Divide the sum calculated in paragraph (e)(1)(ii)(A) of this section by the TPD. Multiply by 100. This yields a person's percentage of the TPD.

(C) Sum the TPD percentages of all persons.

(D) Divide the percentage for a person calculated in paragraph (e)(1)(ii)(B) of this section by the sum calculated in paragraph (e)(1)(ii)(C) of this section for all persons. This yields a person's percentage of the TPD.

(E) Multiply the amount calculated in paragraph (e)(1)(ii)(D) of this section by the PQS pool for that crab QS fishery as that amount is defined in Table 8 to this part.

(F) Determine the percentages of legally processed crab that were processed in each region. The percentages calculated in paragraph (e)(1)(ii)(E) of this section are multiplied by the amount determined within each regional designation. Regional designations will apply to that PQS according to the provisions established in paragraphs (d)(2) and (e)(2) of this section.

(2) *Regional designation of Western Aleutian Islands golden king crab.* (i) Fifty percent of the PQS that is issued in the WAG crab QS fishery will be issued with a West regional designation. The West regional designation applies to PQS for processing west of 174° N. long. The remaining 50 percent of the PQS issued for this fishery is Undesignated region PQS.

(ii) A person will receive only West PQS if, at the time of application, that person owns a crab processing facility that is located in the West region. A person will receive West region and Undesignated Region PQS if, at the time of application, that person does not own a crab processing facility located in the West region. Expressed algebraically, for any person (p) allocated both West region PQS and undesignated region PQS the formula is as follows:

(A) $PQS_{West} = PQS \times 0.50$

(B) $PQS_{Und.} = PQS \times 0.50$

(C) PQS_{West} for $PQS_{West\ \&\ Und.}$ holders = $PQS_{West} - PQS_{West\ only}$

(D) PQS_{West} for $Person_{p\ West\ \&\ Und.}$ = $PQS_p \times PQS_{West}$ for $PQS_{West\ \&\ Und.}$ holders/(PQS_{West} for $PQS_{West\ \&\ Und.}$ holders + $PQS_{Und.}$)

(E) $PQS_{Und.}$ for $Person_p = PQS_p - PQS_{West}$ for $Person_p$

(iii) For purposes of the allocation of PQS in the WAG crab fishery:

(A) Ownership of a processing facility is defined as:

(*1*) A sole proprietor; or

(*2*) A relationship between two or more entities in which a person directly or indirectly owns a 10 percent or greater interest in another, or a third entity directly or indirectly owns a 10 percent or greater interest in both.

(B) A processing facility is a shoreside crab processor or a stationary floating crab processor.

(f) *Application for crab QS or PQS process*—(1) *General.* The Regional Administrator will issue QS and/or PQS to an applicant if a complete application for crab QS or PQS is submitted by or on behalf of the applicant during the specified application period, and if the applicant meets all criteria for eligibility as specified at paragraphs (b)(3) and (d)(3) of this section.

(i) The Regional Administrator will send application materials to the person identified by NMFS as an eligible applicant based on the official crab rationalization record. An application form may also be obtained from the Internet or requested from the Regional Administrator.

(ii) An application for crab QS or PQS may be submitted by mail to NMFS, Alaska Region, Restricted Access Management, P.O. Box 21668, Juneau, AK 99802, by facsimile (907–586–7354), or by hand delivery to the NMFS, 709 West 9th Street, room 713, Juneau, AK.

(iii) An application that is postmarked, faxed, or hand delivered after the ending date for the application period for the Crab QS Program specified in the **Federal Register** will be denied.

(2) *Contents of application.* A complete application for crab QS or PQS must be signed by the applicant, or the individual representing the applicant, and include the following, as applicable:

(i) *Type of QS or PQS for which the person is applying.* Select the type of QS or PQS for which the applicant is applying.

(A) If applying for CVO QS or CPO QS, submit information required in paragraphs (f)(2)(ii) through (f)(2)(iv) of this section;

(B) If applying for CVC QS or CPC QS, submit information required in paragraphs (f)(2)(ii), (f)(2)(iii) and (f)(2)(v) of this section;

(C) If applying for PQS, submit information required in paragraphs (f)(2)(ii), (f)(2)(iii) and (f)(2)(vi) of this section.

(ii) *Applicant information.* (A) Enter the applicant's name, NMFS person ID (if applicable), tax ID or social security number (required), permanent business mailing address, business telephone number, facsimile number, and e-mail (if available);

(B) Indicate (YES or NO) whether applicant is a U.S. citizen; if YES, enter his or her date of birth. You must be a U.S. citizen or U.S. corporation, partnership, or other business entity to obtain CVO, CPO, CVC, or CPC QS.

(C) Indicate (YES or NO) whether applicant is a U.S. corporation, partnership, association, or other business entity; if YES, enter the date of incorporation;

(D) Indicate (YES or NO) whether applicant is deceased; if YES, enter date of death. A copy of the death certificate must be attached to the application;

(E) Indicate (YES or NO) whether applicant described in paragraph (f)(2)(ii)(C) of this section is no longer in existence; if YES, enter date of dissolution and attach evidence of dissolution to the application;

(iii) *Fishery and QS/PQS type.* Indicate the crab QS fishery and type of QS/PQS for which applying.

(iv) *CVO or CPO QS.* (A) For vessels whose catch histories are being claimed for purposes of the crab QS program, enter the following information: name of the vessel, ADF&G vessel registration number, USCG documentation number, moratorium crab permit number(s), and crab LLP license number(s) held by the applicant and used on that vessel, qualifying years or seasons fished by fishery, and dates during which those permits were used on that vessel.

(B) Indicate (YES or NO) whether applicant is applying for QS for any crab QS fishery for which the applicant purchased an LLP license prior to January 1, 2002, in order to remain in that fishery. If YES, include LLP crab license number, and the vessel's name, ADF&G vessel registration number, and USCG documentation number.

(C) Indicate (YES or NO) whether QS is being claimed based on the fishing history of a a vessel that was lost or destroyed. If YES, include the name, ADF&G registration number, and USCG documentation number of the lost or destroyed vessel, the date the vessel was lost or destroyed, and evidence of the loss or destruction.

(D) Indicate (YES or NO) whether the lost or destroyed vessel described in paragraph (f)(2)(iv)(C) of this section was replaced with a newly constructed vessel. If YES, include the name, ADF&G vessel registration number, and USCG documentation number of the replacement vessel, date of vessel construction, and date vessel entered fishery(ies). Indicate (YES or NO) if the replacement vessel participated in a Bering Sea crab fishery by October 31, 2002. If YES, provide documentation of the replacement vessel's participation by October 31, 2002, in a Bering Sea crab fishery.

(E) If the applicant is applying for CPO QS, indicate (YES or NO) whether the applicant processed crab from any of the crab QS fisheries listed on Table 1 to this part on board a vessel authorized by one of the LLP licenses listed in paragraph (f)(2)(iv)(A) of this section in 1998 or 1999. If YES, enter information for the processed crab, including harvest area, date of landing, and crab species.

(v) *CVC or CPC QS.* (A) Indicate (YES or NO) whether applicant had at least one landing in three of the qualifying years for each crab species for which the applicant is applying for QS (see Table 7 to this part).

(B) Indicate (YES or NO) whether applicant has recent participation in a crab QS fishery as defined in Table 7 to this part.

(C) If the answer to paragraph (f)(2)(v)(A) or paragraph (f)(2)(v)(B) of this section is YES, enter State of Alaska Interim Use Permit number and the name, ADF&G vessel registration number, and USCG documentation number of vessel on which harvesting occurred. Select the qualifying years or seasons fished by QS fishery, and the dates during which those permits were used on that vessel;

(D) Indicate (YES or NO) whether a person is applying as the successor-in-interest to an eligible applicant. If YES, attach to the application documentation proving the person's status as a successor-in-interest and evidence of the death of the eligible applicant.

(vi) *Processor QS.* (A) Indicate (YES or NO) whether applicant processed any of the crab species included in the Crab QS program (see Table 1 to this part) in 1998 or 1999.

(B) If answer to paragraph (f)(2)(vi)(A) of this section is YES, enter the facility name and ADF&G processor code for each processing facility where crab, from any of the crab QS fisheries listed in Table 1 of this part, were processed and the qualifying years or seasons by fishery for which applicant is claiming eligibility for PQS.

(C) If answer to paragraph (f)(2)(vi)(A) of this section is NO, indicate (YES or NO) whether applicant is claiming eligibility under hardship provisions;

(D) If answer to paragraph (f)(2)(vi)(C) of this section is YES, both of the following provisions must apply to a processor to obtain hardship provisions. Attach documentation of the following circumstances:

(*1*) Applicant processed QS crab during 1998 or 1999, or processed BSS crab in each season between 1988 and 1997; and

(*2*) Applicant invested a total expenditure in excess of $1,000,000 for any processing facility, processing equipment, or a vessel for use in processing operations, including any improvements made to existing facilities from January 1, 1996, to June 10, 2002;

(E) Indicate (YES or NO) whether applicant has entered into a Community Right of First Refusal (ROFR) contract consistent with paragraph (f)(3) of this section pertaining to the transfer of any PQS and/or IPQ subject to ROFR and issued as a result of this application.

(F) Contract that the legal processing history and rights to apply for and receive PQS based on that legal processing history have been transferred or retained; and

(G) Any other information deemed necessary by the Regional Administrator.

(H) If applicant is applying to receive PQS for the WAG crab QS fishery, indicate (YES or NO) whether applicant owns a crab processing facility in the West region (*see* paragraph (b)(2) (iii) of this section).

(vii) *Applicant signature and certification.* The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. If the application is completed by an authorized

representative, then authorization must accompany the application.

(3) *Notice and contract provisions for community right of first refusal (ROFR) for initial issuance of PQS.* (i) To be complete, an application for PQS from a person based on legal processing that occurred in an ECC, other than Adak, must also include an affidavit signed by the applicant stating that notice has been provided to the ECC of the applicant's intent to apply for PQS 60 days prior to the end of the application period. If the ECC designates an entity to represent it in the exercise of ROFR under § 680.41(l), then the application also must include an affidavit of completion of a contract for ROFR that includes the terms enacted under section 313(j) of the Magnuson-Stevens Act. The affidavit must be signed by the applicant for initial allocation of PQS and the ECC entity designated under § 680.41(l)(2). A list of contract terms is available from the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov.* A copy of these contract terms also will be made available by mail or facsimile by contacting the Regional Administrator at 907–586–7221.

(ii) To be complete, an application for crab QS or PQS from a person based on legal processing that occurred in the GOA north of a line at 56°20′ N. lat. must also include an affidavit signed by the applicant stating that notice has been provided to the City of Kodiak and Kodiak Island Borough of the applicant's intent to apply for PQS 60 days prior to the end of the application period. If the City of Kodiak and Kodiak Island Borough designate an entity to represent it in the exercise of ROFR under § 680.41(l), then the application also must include an affidavit of completion of a contract for ROFR that includes the terms enacted under the Consolidated Appropriations Act of 2004 (Pub. L. 108–199) and that is signed by the applicant for initial allocation of PQS and the ECC entity designated by the City of Kodiak and Kodiak Island Borough under § 680.41(l)(2). A list of contract terms is available from the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov.* A copy of these contract terms also will be made available by mail or facsimile by contacting the Regional Administrator at (907) 586–7221.

(4) *Application evaluation.* The Regional Administrator will evaluate Applications for Crab QS or PQS submitted during the specified application period and compare all claims in an application with the information in the official crab rationalization record. Claims in an application that are consistent with information in the official crab rationalization record will be accepted by the Regional Administrator. Inconsistent claims in the Applications for Crab QS or PQS, unless verified by documentation, will not be accepted. An applicant who submits inconsistent claims, or an applicant who fails to submit the information specified in paragraph (f)(2) of this section, will be provided a single 30-day evidentiary period as provided in paragraph (f)(5) of this section to submit the specified information, submit evidence to verify his or her inconsistent claims, or submit a revised application with claims consistent with information in the official crab rationalization record. An applicant who submits claims that are inconsistent with information in the official crab rationalization record has the burden of proving that the submitted claims are correct.

(5) *Additional information or evidence.* The Regional Administrator will evaluate additional information or evidence to support an applicant's inconsistent claims submitted prior to or within the 30-day evidentiary period. If the Regional Administrator determines that the additional information or evidence meets the applicant's burden of proving that the inconsistent claims in his or her application are correct, the official crab rationalization record will be amended and the information will be used in determining whether the applicant is eligible for QS or PQS. However, if the Regional Administrator determines that the additional information or evidence does not meet the applicant's burden of proving that the inconsistent claims in his or her application are correct, the applicant will be notified by an IAD, that the applicant did not meet the burden of proof to change the information in the official crab rationalization record.

(6) *30-day evidentiary period.* The Regional Administrator will specify by letter a single 30-day evidentiary period during which an applicant may provide additional information or evidence to support the claims made in his or her application, or to submit a revised application with claims consistent with information in the official crab rationalization record, if the Regional Administrator determines that the applicant did not meet the burden of proving that the information on the application is correct through evidence provided with the application. Also, an applicant who fails to submit information as specified in paragraphs (b)(3)(iii) and (b)(3)(iv) of this section will have 30 days to provide that information. An applicant will be limited to one 30-day evidentiary period per application. Additional information or evidence, or a revised application, received after the 30-day evidentiary period specified in the letter has expired will not be considered for purposes of the IAD.

(7) *Right of First Refusal (ROFR) contract provisions.* If an ECC designates an entity to represent it in the exercise of ROFR under § 680.41(l), then the Regional Administrator will not prepare an IAD on unverified claims or issue PQS until an affidavit is received from the applicant confirming the completion of a civil contract for ROFR as required under section 313(j) of the Magnuson-Stevens Act.

(8) *Initial administrative determinations (IAD).* The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 30-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the applicant fails to support the applicant's claims and is insufficient to rebut the presumption that the official crab rationalization record is correct, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 30-day evidentiary period. The IAD will indicate the deficiencies in the application, including any deficiencies with the information, the evidence submitted in support of the information, or the revised application. The IAD will also indicate which claims cannot be approved based on the available information or evidence. An applicant who receives an IAD may appeal pursuant to § 679.43. An applicant who avails himself or herself of the opportunity to appeal an IAD will not receive crab QS or PQS until after the final resolution of that appeal in the applicant's favor.

(g) *Annual allocation of IFQ.* IFQ is assigned based on the underlying QS. The Regional Administrator shall assign crab IFQs to each person who holds QS and submits a complete annual application for crab IFQ/IPQ permit as described under § 680.4. IFQ will be assigned to a crab QS fishery with the appropriate regional designation, QS sector, and IFQ class. This amount will represent the maximum amount of crab that may be harvested from the specified crab QS fishery by the person to whom it is assigned during the specified crab fishing year, unless the IFQ assignment is changed by the Regional Administrator because of an approved transfer, revoked, suspended, or modified under 15 CFR part 904.

(h) *Calculation of annual IFQ allocation*—(1) *General.* The annual allocation of IFQ to any person (p) in any crab QS fishery (f) will be based on the TAC of crab for that crab QS fishery less the allocation to the Western Alaska CDQ Program (''CDQ Reserve'') and Western Aleutian Islands golden king crab fishery. Expressed algebraically, the annual IFQ allocation formula is as follows:

(i) IFQ $TAC_f = TAC_f - (CDQ\ reserve_f +$ Allocation for the Western Aleutian Island golden king crab fishery)

(ii) $IFQ_{pf} = IFQ\ TAC_f \times (QS_{pf}/QS\ pool_f)$.

(2) *Class A/B IFQ.* (i) QS shall yield Class A or Class B IFQ if:

(A) Initially assigned to the CVO QS sector;

(B) Transferred to the CVO QS sector from the CPO QS sector; or

(C) After July 1, 2008, if initially issued to the CVC QS sector.

(ii) The Class A/B IFQ TAC is the portion of the TAC assigned as Class A/B IFQ under paragraphs (h)(2)(i)(A) through (C) of this section.

(3) *Class A/B IFQ issuance ratio.* (i) Class A and Class B IFQ shall be assigned on an annual basis such that the total amount of Class A and B IFQ assigned in a crab fishing year in each crab QS fishery for each region will be in a ratio of 90 percent Class A IFQ and 10 percent Class B IFQ.

(ii) The Regional Administrator will determine the amount of Class A and Class B IFQ that is assigned to each QS holder. The Class A IFQ is calculated by allocating 90 percent of the Class A/B IFQ TAC (TAC a) to Class A IFQ. A portion of the IFQ TAC a is allocated to persons eligible to hold only Class A IFQ (TAC a only), the remaining IFQ TAC (TAC r) is allocated for harvest by a person (p) eligible to receive both Class A IFQ and Class B IFQ. Expressed algebraically, for an individual person (p) eligible to hold both Class A and Class B IFQ the annual allocation formula is as follows:

(A) TAC_a = Class A/B IFQ TAC $\times 0.90$

(B) $TAC_r = TAC_a - TAC_{a\ only}$

(C) $IFQ_{ap} = TAC_r/(\text{Class A/B IFQ TAC} - TAC_{a\ only}) \times IFQ_p$

(D) $IFQ_{bp} = IFQ_p - IFQ_{ap}$

(4) *Class A IFQ and Class B IFQ issuance to IPQ holders.* If a person holds IPQ and IFQ, than that person will be issued Class A IFQ only for the amount of IFQ equal to the amount of IPQ held by that person. Any remaining IFQ held by that person would be issued as Class A and Class B IFQ in a ratio so that the total Class A and Class B IFQ issued in that crab QS fishery is issued as 90 percent Class A IFQ and 10 percent Class B IFQ;

(5) *Class A IFQ and Class B IFQ issuance to persons affiliated with IPQ holders.* If an IPQ holder holds IPQ in excess of the amount of IFQ held by that person, all IFQ holders affiliated with that IPQ holder will receive only Class A IFQ in proportion to the amount of IFQ held by those affiliated persons relative to that amount of IPQ held by that IPQ holder. Any remaining IFQ held by persons affiliated with the IPQ holder would be issued as Class A and Class B IFQ in a ratio so that the total Class A and Class B IFQ issued in that fishery is issued as 90 percent Class A IFQ and 10 percent Class B IFQ.

(6) *CVC IFQ.* (i) QS that is initially allocated to the CVC QS sector shall yield CVC IFQ.

(ii) After July 1, 2008, CVC IFQ will be assigned as CVC Class A and CVC Class B IFQ under the provisions established in paragraph (h)(5)(ii) of this section.

(7) *CPO IFQ.* (i) QS that is initially allocated to the CPO QS sector shall yield CPO IFQ.

(ii) CPO IFQ is not subject to regional designation.

(8) *CPC IFQ.* (i) QS that is initially allocated to the CPC QS sector shall yield CPC IFQ.

(ii) CPC IFQ is not subject to regional designation.

(9) *QS amounts for IFQ calculation.* For purposes of calculating IFQ for any crab fishing year, the amount of a person's QS and the amount of the QS pool for any crab QS fishery will be the amounts on record with the Alaska Region, NMFS, at the time of calculation.

(10) *Class A IFQ.* (i)The amount of Class A IFQ issued in excess of the IPQ issuance limits for the BSS or BBR crab QS fisheries, as described in paragraph (j)(3) of this section, will be issued to all Class A IFQ recipients on a pro rata basis in proportion to the amount of Class A IFQ held by each person.

(ii) Any amount of Class A IFQ that is issued in excess of the IPQ issuance limits for the BSS or BBR crab QS fisheries, as described in paragraph (j)(3) of this section, is not required to be delivered to an RCR with unused IPQ.

(i) *Annual allocation of IPQ.* IPQ is assigned based on the underlying PQS. The Regional Administrator shall assign crab IPQs to each person who submits a complete annual application for crab IFQ/IPQ permit as described under § 680.4. Each assigned IPQ will be specific to a crab QS fishery with the appropriate regional designation. This amount will represent the maximum amount of crab that may be received from the specified crab QS fishery by the person to whom it is assigned during the specified crab fishing year, unless the IPQ assignment is changed by the Regional Administrator because of an approved transfer, revoked, suspended, or modified under 15 CFR part 904.

(j) *Calculation of annual IPQ allocation*—(1) *General.* The annual allocation of TAC to PQS and the resulting IPQ in any crab QS fishery (f) is the Class A IFQ TAC (TAC_a). A person's annual IPQ is based on the amount of PQS held by a person (PQS p) divided by the PQS pool for that crab QS fishery for all PQS holders (PQS pool f). Expressed algebraically, the annual IPQ allocation formula is as follows:

$IPQ_{pf} = TAC_{af} \times PQS_{pf}/PQS\ pool_f$.

(2) *PQS amounts for IPQ calculation.* For purposes of calculating IPQs for any crab fishing year, the amount of a person's PQS and the amount of the PQS pool for any crab PQS fishery will be the amounts on record with the Alaska Region, NMFS, at the time of calculation.

(3) *IPQ issuance limits.* The amount of IPQ issued in any crab fishing year shall not exceed:

(i) 175,000,000 raw crab pounds (79,378.6 mt) in the BSS crab QS fishery; and

(ii) 20,000,000 raw crab pounds (9,071.8 mt) in the BBR crab QS fishery.

(k) *Timing for issuance of IFQ or IPQ.* IFQ and IPQ will be issued once the TAC for that crab QS fishery in that crab fishing year has been specified by the State of Alaska. All IFQ and IPQ for all persons will be issued once for a crab fishing year for a crab QS fishery. QS issued after NMFS has issued annual IFQ for a crab QS fishery for a crab fishing year will not result in IFQ for that crab QS fishery for that crab fishing year.

(l) *Harvesting and processing privilege.* QS and PQS allocated or permits issued pursuant to this part do not represent either an absolute right to the resource or any interest that is subject to the ''takings'' provision of the Fifth Amendment of the U.S. Constitution. Rather, such QS, PQS, or permits represent only a harvesting or processing privilege that may be revoked or amended pursuant to the Magnuson-Stevens Act and other applicable law. IPQs do not create a right, title, or interest in any crab until that crab is purchased from a fisherman.

§ 680.41 Transfer of QS, PQS, IFQ and IPQ.

(a) *General.* (1) Transfer of crab QS, PQS, IFQ, or IPQ means any transaction, approved by NMFS, requiring QS or PQS, or the use thereof in the form of

IFQ or IPQ, to pass from one person to another, permanently or for a fixed period of time, except that:

(2) A crab IFQ hired master permit issued by NMFS, as described in § 680.4, is not a transfer of crab QS or IFQ; and

(3) The use of IFQ assigned to a crab harvesting cooperative and used within that cooperative is not a transfer of IFQ.

(b) *Transfer applications.* An application is required to transfer any amount of QS, PQS, IFQ, or IPQ. The Regional Administrator shall provide applications to any person on request or on the Internet at *http://www.fakr.noaa.gov/.* Any transfer application will not be approved until the necessary eligibility application in paragraph (c) of this section has been submitted and approved by NMFS.

(1) *Application for transfer of crab QS/IFQ or PQS/IPQ.* This application, as described in paragraph (h) of this section, is required to transfer any amount of QS, PQS, IFQ, or IPQ from an entity that is not an ECCO or a crab harvesting cooperative.

(2) *Application for transfer of crab QS/IFQ to or from an ECCO.* This application, as described in paragraph (k) of this section, is required to transfer any amount of QS or IFQ to or from an entity that is an ECCO.

(3) *Application for inter-cooperative transfer.* This application, as described in § 680.21, is required to transfer any amount of IFQ from an entity that is a crab harvesting cooperative to another crab harvesting cooperative.

(4) *Application deadline.* The Regional Administrator will not approve any transfers of QS, PQS, IFQ, or IPQ in any crab QS fishery from August 1 until the date of the issuance of IFQ or IPQ for that crab QS fishery.

(5) *Notification of approval or disapproval of applications.* (i) Applicants submitting any application under this section will be notified by mail of the Regional Administrator's approval of an application. The Regional Administrator will notify applicants if an application submitted under this section is disapproved. This notification of disapproval will include an explanation why the application was not approved.

(ii) *Reasons for disapproval.* Reasons for disapproval of an application include, but are not limited to:

(A) Lack of U.S. citizenship, where U.S. citizenship is required.;

(B) Failure to meet minimum requirements for sea time as a member of a harvesting crew;

(C) An incomplete application, including fees and an EDR, if required;

(D) An untimely application; or

(E) Fines, civil penalties, or other payments due and owing, or outstanding permit sanctions resulting from Federal fishery violations.

(6) *QS, PQS, IFQ, or IPQ accounts.* QS, PQS, IFQ, or IPQ accounts affected by a transfer approved by the Regional Administrator will change on the date of approval. Any necessary IFQ or IPQ permits will be sent with the notification of approval if the receiver of the IFQ or IPQ permit has completed an annual application for crab IFQ/IPQ permit for the current fishing year as required under § 680.4.

(c) *Eligibility to receive QS, PQS, IFQ, or IPQ by transfer.* Persons, other than persons initially issued QS or PQS, must establish eligibility to receive QS, PQS, IFQ, or IPQ by transfer.

(1) To be eligible to receive QS, PQS, IFQ, or IPQ by transfer, a person must first meet the requirements specified in the following table:

Quota type	Eligible person	Eligibility requirements
(i) PQS	Any person	None.
(ii) IPQ	Any person	None.
(iii) CVO or CPO QS	(A) A person initially issued QS	No other eligibility requirements.
	(B) An individual	who is a U.S. citizen with at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery.
	(C) A corporation, partnership, or other entity.	with at least one individual member who is a U.S. citizen and who: (*1*) owns at least 20 percent of the corporation, partnership, or other entity; and (*2*) has at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery.
	(D) An ECCO	that meets the eligibility requirements described under paragraph (j) of this section.
	(E) A CDQ group	No other eligibility requirements.
(iv) CVO or CPO IFQ	All eligible persons for CVO or CPO QS.	according to the requirements in paragraph (c)(1)(iii) of this section.
(v) CVC or CPC QS	An individual	who is a U.S. citizen with: (A) at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery; and (B) recent participation in a CR crab fishery in the 365 days prior to submission of the application for eligibility.
(vi) CVC or CPC IFQ	All eligible persons for CVC or CPC QS.	according to the requirements in paragraph (c)(1)(v) of this section.

(2) *Application for eligibility to receive QS/IFQ and PQS/IPQ by transfer.* (i) This application is required to establish a person's eligibility to receive QS, PQS, IFQ, or IPQ by transfer, if the person is not an ECCO. See paragraph (j) of this section for eligibility to transfer of QS/IFQ to or from an ECCO. The Regional Administrator shall provide an application to any person on request or on the Internet at *http://www.fakr.noaa.gov/.*

(ii) *Contents.* A complete Application for Eligibility to Receive QS/IFQ or PQS/IPQ by Transfer must include the following:

(A) Type of QS, IFQ, PQS, or IPQ for which the applicant is seeking eligibility. Indicate type of QS, IFQ, PQS, IPQ for which applicant is seeking eligibility.

(*1*) If seeking CVO or CPO QS/IFQ, complete paragraphs (c)(2)(ii)(B), (c)(2)(ii)(D) if applicable, (c)(2)(ii)(E), and (c)(2)(ii)(F) of this section;

(*2*) If seeking CVC or CPC QS/IFQ, complete paragraphs (c)(2)(ii)(B), (c)(2)(ii)(C), (c)(2)(ii)(E), and (c)(2)(ii)(F) of this section;

(*3*) If seeking PQS/IPQ, complete paragraphs (c)(2)(ii)(B) and (c)(2)(ii)(F) of this section;

(B) *Applicant information.* (*1*) Enter applicant's name and NMFS Person ID, applicant's date of birth or, if not an individual, date of incorporation; applicant's social security number or tax ID number; applicant's permanent business mailing address and any temporary business mailing address the applicant wishes to use, and the applicant's business telephone number, business facsimile number, and e-mail address (if available).

(*2*) Indicate (YES or NO) whether the applicant is a U.S. citizen or U.S. corporation, partnership or other business entity. Applicants for CVO, CPO, CVC or CPC QS (and associated IFQ) must be U.S. Citizens or U.S. Corporations, Partnerships or Other Business Entity. Applicants for PQS (and associated IPQ) are not required to be U.S. Citizens.

(C) *Eligibility for CVC or CPC QS/IFQ.* Indicate (YES or NO) whether this application is intended for a person who wishes to buy CVC or CPC QS/IFQ. If YES, provide evidence of at least one delivery of a crab species in any CR crab fishery in the 365 days prior to submission of this application. Acceptable evidence of such delivery shall be limited to an ADF&G fish ticket imprinted with applicant's State of Alaska permit card and signed by the applicant, an affidavit from the vessel owner, or a signed receipt for an IFQ crab landing on which applicant was acting as the permit holder's crab IFQ hired master.

(D) *U.S. Corporations, partnerships, or business entities.* (*1*) Indicate (YES or NO) whether this application is submitted by a CDQ Group. If YES, complete paragraph (c)(2)(ii)(F) of this section;

(*2*) Indicate (YES or NO) whether this application is submitted on behalf of a corporation, partnership or other business entity (not including CDQ groups). If YES: At least one member of the corporation, partnership or other business entity must submit documentation showing at least 20 percent interest in the corporation, partnership, or other entity and must provide evidence of at least 150 days as part of a harvesting crew in any U.S. commercial fishery. Identify the individual member and provide this individual's commercial fishing experience, name, NMFS person ID, and social security number, and business mailing address, business telephone number, and business facsimile number.

(E) *Commercial fishing experience.* (*1*) Species; enter any targeted species in a U.S. commercial fishery;

(*2*) Gear Type; enter any gear type used to legally harvest in a U.S. commercial fishery;

(*3*) Location; enter actual regulatory, statistical, or geographic harvesting location;

(*4*) Starting date and ending date of claimed fishing period (MMYY);

(*5*) Number of actual days spent harvesting;

(*6*) Duties performed while directly involved in the harvesting of (be specific):

(*7*) Name and ADF&G vessel registration number or USCG documentation number of the vessel upon which above duties were performed;

(*8*) Name of vessel owner;

(*9*) Name of vessel operator;

(*10*) Reference name. Enter the name of a person (other than applicant) who is able to verify the above experience;

(*11*) Reference's relationship to applicant;

(*12*) Reference's business mailing address and telephone number.

(F) *Applicant certification.* (*1*) Printed name and signature of applicant and date signed;

(*2*) Notary Public signature, date commission expires, and notary stamp or seal.

(G) Verification that the applicant applying for eligibility to receive crab QS/IFQ or PQS/IPQ by transfer has submitted an EDR, if required to do so under § 680.6;

(H) A non-profit entity seeking approval to receive crab QS or IFQ by transfer on behalf of a ECC must first complete an Application to Become an ECCO under paragraph (j) of this section.

(d) *Transfer of CVO, CPO, CVC, CPC QS or PQS*—(1) *General.* PQS or QS may be transferred, with approval of the Regional Administrator, to persons qualified to receive PQS or QS by transfer. However, the Regional Administrator will not approve a transfer of any type of PQS or QS that would cause a person to exceed the maximum amount of PQS or QS allowable under the use limits provided for in § 680.42, except as provided for under paragraph (f) of this section.

(2) *CVO QS.* CVO QS may be transferred to any person eligible to receive CVO or CPO QS as defined under paragraph (c) of this section.

(3) *CPO QS.* Persons holding CPO QS may transfer CPO QS as CVO QS and PQS to eligible recipients under the following provisions:

(i) Each unit of CPO QS shall yield 1 unit of CVO QS, and 0.9 units of PQS; and

(ii) The CVO QS and PQS derived from the transfer of CPO QS may be transferred separately, except that these shares must receive the same regional designation. The regional designation shall be determined at the time of transfer by the person receiving the CVO QS.

(4) *CVC or CPC QS.* CVC or CPC QS may be transferred to any person eligible to receive CVC or CPC QS as defined under paragraph (c) of this section. CVC and CPC QS may only be used in the sector for which it is originally designated.

(e) *Transfer of IFQ or IPQ by Lease*—(1) *IFQ derived from CVO or CPO QS.* IFQ derived from CVO or CPO QS may be transferred by lease until June 30, 2010. IFQ derived from CVO or CPO QS must be leased:

(i) If the IFQ will be used on a vessel on which the QS holder has less than a 10 percent ownership interest; or

(ii) If the IFQ will be used on a vessel on which the QS holder or the holder of a crab IFQ hired master permit, under § 680.4, is not present.

(2) Ownership of a vessel, for the purposes of this section, means:

(i) A sole proprietor; or

(ii) A relationship between 2 or more entities in which one directly or indirectly owns a 10 percent or greater interest in a vessel.

(3) *IFQ derived from CVC QS or CPC QS.* (i) IFQ derived from CVC or CPC QS may be transferred by lease only until June 30, 2008, unless the IFQ permit holder demonstrates a hardship.

(ii) In the event of a hardship, as described at paragraph (e)(2)(iii) in this section, a holder of CVC or CPC QS may lease the IFQ derived from this QS for the term of the hardship. However, the holder of CVC or CPC QS may not lease the IFQ under this provision for more than 2 crab fishing years total in any 10 crab fishing year period. Such transfers are valid only during the crab fishing year for which the IFQ permit is issued and the QS holder must re-apply for any subsequent transfers.

(iii) NMFS will not approve transfers of IFQ under this provision unless the QS holder can demonstrate a hardship by an inability to participate in the crab QS fisheries because:

(A) Of a medical condition of the QS holder. The QS holder is required to provide documentation of the medical condition from a licensed medical doctor who verifies that the QS holder cannot participate in the fishery because of the medical condition.

(B) Of a medical condition involving an individual who requires the QS holder's care. The QS holder is required to provide documentation of the individual's medical condition from a licensed medical doctor. The QS holder

must verify that he or she provides care for that individual and that the QS holder cannot participate in the fishery because of the medical condition of that individual.

(C) Of the total or constructive physical loss of a vessel. The QS holder must provide evidence that the vessel was lost and could not be replaced in time to participate in the fishery for which the person is claiming a hardship.

(4) *IPQ derived from PQS.* IPQ derived from PQS may be leased.

(f) *Transfer of QS, PQS, IFQ or IPQ with restrictions.* If QS, PQS, IFQ or IPQ must be transferred as a result of a court order, operation of law, or as part of a security agreement, but the person receiving the QS, PQS, IFQ or IPQ by transfer does not meet the eligibility requirements of this section, the Regional Administrator will approve, with restrictions, an Application for transfer of crab QS/IFQ or PQS/IPQ. The Regional Administrator will not assign IFQ or IPQ resulting from the restricted QS or PQS to any person. IFQ or IPQ with restrictions may not be used for harvesting or processing species covered under the CR program. The QS, PQS, IFQ or IPQ will remain restricted until:

(1) The person who received the QS, PQS, IFQ or IPQ with restrictions meets the eligibility requirements of this section and the Regional Administrator approves an application for eligibility for that person; or

(2) The Regional Administrator approves the application for transfer from the person who received the QS, PQS, IFQ or IPQ with restrictions to a person who meets the eligibility requirements of this section.

(g) *Survivorship transfer privileges.* (1) On the death of an individual who holds QS or PQS, the surviving spouse or, in the absence of a surviving spouse, a beneficiary designated pursuant to paragraph (g)(3) of this section, receives all QS, PQS and IFQ or IPQ held by the decedent by right of survivorship, unless a contrary intent was expressed by the decedent in a will. The Regional Administrator will approve an application for transfer to the surviving spouse or designated beneficiary when sufficient evidence has been provided to verify the death of the individual.

(2) A QS or PQS holder may provide the Regional Administrator with the name of the designated beneficiary from the QS or PQS holder's immediate family to receive survivorship transfer privileges in the event of the QS or PQS holders death and in the absence of a surviving spouse.

(3) The Regional Administrator will approve, for 3 calendar years following the date of the death of an individual, an Application for transfer of crab QS/IFQ or PQS/IPQ from the surviving spouse or, in the absence of a surviving spouse, a beneficiary from the QS or PQS holder's immediate family designated pursuant to this section, to a person eligible to receive IFQ or IPQ under the provisions of this section, notwithstanding the limitations on transfers of IFQ and IPQ in this section and the use limitations under § 680.42.

(h) *Application for transfer of crab QS/IFQ or PQS/IPQ*—(1) *General.* (i) An Application for transfer of crab QS/IFQ or PQS/IPQ must be approved by the Regional Administrator before the transferee may use the IFQ or IPQ to harvest or process crab QS species.

(ii) Persons who submit an Application for transfer of crab QS/IFQ or PQS/IPQ for approval will receive notification of the Regional Administrator's decision to approve or disapprove the application, and if applicable, the reason(s) for disapproval, by mail, unless another communication mode is requested on the application.

(2) *Contents.* A complete Application for transfer of crab QS/IFQ or PQS/IPQ must include the following information:

(i) *Type of transfer.* (A) Indicate type of transfer requesting.

(B) Indicate (YES or NO) whether this is a transfer of IFQ or IPQ only due to a hardship (medical emergency, etc.). If YES, provide documentation supporting the need for such transfer (doctor's statement, etc.).

(C) If requesting transfer of PQS/IPQ for use outside an ECC that has designated an entity to represent it in exercise of ROFR under paragraph (l), the application must include an affidavit signed by the applicant stating that notice of the desired transfer has been provided to the ECC entity under civil contract terms referenced under § 680.40(f)(3) for the transfer of any PQS or IPQ subject to ROFR.

(ii) *Transferor information.* (A) The transferor is the person currently holding the QS, PQS, IFQ, or IPQ.

(B) Enter the transferor's name and NMFS Person ID, social security number or tax ID number, transferor's permanent business mailing address and any temporary mailing address the transferor wishes to use, business telephone, business facsimile, and business e-mail address (if available).

(iii) *Transferee information.* (A) The transferee is person receiving QS, PQS or IFQ, IPQ by transfer.

(B) Enter the transferee's name and NMFS Person ID, social security number or tax ID number, transferee's permanent business mailing address and any temporary mailing address the transferee wishes to use, business telephone, business facsimile, and business e-mail address (if available);

(iv) *Transfer of QS or PQS and IFQ or IPQ.* Complete the following information if QS or PQS and IFQ or IPQ are to be transferred together or if transferring only QS or PQS:

(A) QS species;

(B) QS type;

(C) Range of serial numbers to be transferred (shown on QS certificate) numbered to and from;

(D) Number of QS units to be transferred;

(E) Transferor (seller) IFQ or IPQ permit number;

(F) Indicate (YES or NO) whether remaining IFQ or IPQ pounds for the current fishing year should be transferred; if NO, specify the number of pounds to be transferred;

(G) If this is a transfer of CPO QS, indicate whether being transferred as CPO QS or CVO QS and PQS;

(H) If CPO QS is being transferred as both CVO QS and PQS, specify number of units of each; and

(I) If CPO QS is being transferred as CVO QS, select region for which the QS is designated.

(v) *Transfer of IFQ or IPQ only.* Complete the following information if transferring IFQ or IPQ only:

(A) QS species;

(B) IFQ/IPQ type;

(C) Range of serial numbers shown on QS certificate, numbered to and from;

(D) Number of IFQ or IPQ pounds to be transferred;

(E) Transferor (seller) IFQ or IPQ permit number; and

(F) Crab fishing year of the transfer.

(vi) *Price paid for the QS, PQS and/or IFQ, IPQ.* The transferor must provide the following information.

(A) Indicate whether (YES or NO) a broker was used for this transaction; If YES, provide dollar amount paid in brokerage fees or percentage of total price.

(B) Provide the total amount paid for the QS/IFQ or PQS/IPQ in this transaction, including all fees.

(C) Provide the price per unit of QS (price divided by QS units) and the price per pound (price divided by IFQ or IPQ pounds) of IFQ or IPQ.

(D) Indicate all reasons that apply for transferring the QS/IFQ or PQS/IPQ.

(vii) *Method of financing for the QS, PQS and/or IFQ, IPQ.* The transferee must provide the following information.

(A) Indicate (YES or NO) whether QS/IFQ or PQS/IPQ purchase will have a lien attached; if YES, provide the name of lien holder.

(B) Indicate one primary source of financing for this transfer.

(C) Indicate the sources used to locate the QS, PQS and/or IFQ, IPQ being transferred.

(D) Indicate the relationship, if any, between the transferor and the transferee.

(E) Indicate (YES or NO) whether an agreement exists to return the QS/IFQ or PQS/IPQ to the transferor or any other person, or with a condition placed on resale; If YES, provide written explanation.

(F) Attach a copy of the terms of agreement for the transfer, the bill of sale for QS or PQS, or lease agreement for IFQ or IPQ.

(G) Indicate whether an EDR was submitted, if required by § 680.6, and whether all fees have been paid, as required under § 680.44.

(viii) *Notary information*—(A) *Certification of transferor.* (*1*) Printed name and signature of transferor or authorized agent and date signed. If authorized agent, proof of authorization to act on behalf of the transferor must be provided with the application; and

(*2*) Notary Public signature, date commission expires, and notary stamp or seal

(B) *Certification of transferee.* (*1*) Printed name and signature of transferee or authorized agent and date signed. If authorized agent, proof of authorization to act on behalf of the transferee must be provided with the application; and

(*2*) Notary Public signature, date commission expires, and notary stamp or seal.

(ix) *Attachments to the application and other conditions to be met.* (A) Indicate whether the person applying to make or receive the QS, PQS, IFQ or IPQ transfer has submitted an EDR, if required to do so under § 680.6, and has paid all fees, as required by § 680.44; and

(B) All individuals applying to receive CVC QS or IFQ or CPC QS or IFQ by transfer must submit proof of at least one delivery of a crab species in any CR crab fishery in the 365 days prior to submission to NMFS of the Application for Transfer of QS/IFQ or PQS/IPQ. Proof of this landing is:

(*1*) Signature of the applicant on an ADF&G Fish Ticket; or

(*2*) An affidavit from the vessel owner attesting to that individual's participation as a member of a fish harvesting crew on board a vessel during a landing of a crab QS species within the 365 days prior to submission of an Application for transfer of crab QS/IFQ or PQS/IPQ.

(i) *Approval criteria for an Application for transfer of crab QS/IFQ or PQS/IPQ.* Except as provided in paragraph (f) of this section, an application for transfer of QS/IFQ or PQS/IPQ will not be approved until the Regional Administrator has determined that:

(1) The person applying to receive the QS, PQS, IFQ or IPQ meets the requirements of eligibility in paragraph (c) of this section;

(2) The person applying for transfer and the person applying to receive QS or IFQ/IPQ have their original notarized signatures on the application;

(3) No fines, civil penalties, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations involving either party exist;

(4) The person applying to receive QS, PQS, IFQ or IPQ currently exists;

(5) The transfer would not cause the person applying to receive the QS, PQS, IFQ or IPQ to exceed the use limits in § 680.42;

(6) The person applying to make or receive the QS, PQS, IFQ or IPQ transfer has paid all IFQ or IPQ fees described under § 680.44; or has timely appealed the IAD of underpayment as described under § 680.44;

(7) The person applying to make or receive the QS, PQS, IFQ or IPQ transfer has submitted an EDR, if required to do so under § 680.6;

(8) In the case of an application for transfer of PQS or IPQ for use outside an ECC that has designated an entity to represent it in exercise of ROFR under paragraph (l), the Regional Administrator will not act upon the application for a period of 10 days. At the end of that time period, the application will be approved pending meeting the criteria set forth in this paragraph (i).

(9) In the case of an application for transfer of PQS for use within an ECC that has designated an entity to represent it in exercise of ROFR under paragraph (l), The Regional Administrator will not approve the application unless either the ECC entity provides an affidavit to the Regional Administrator that the ECC wishes to permanently waive ROFR for the PQS or the proposed recipient of the PQS provides an affidavit affirming the completion of a contract for ROFR that includes the terms enacted under section 313(j) of the Magnuson-Stevens Act and referenced under § 680.40(f)(3).

(10) Other pertinent information requested on the application for transfer has been supplied to the satisfaction of the Regional Administrator.

(j) *Transfer of crab QS/IFQ to or from and ECCO*—(1) *Designation of an ECCO.* (i) The appropriate governing body of each ECC may designate a non-profit organization to serve as the ECCO for that ECC. To transfer and hold QS on the behalf of that ECC, this designation must be submitted by the non-profit organization in its Application to Become an ECCO.

(ii) If the non-profit entity is approved by NMFS to serve as the ECCO, then the appropriate governing body of the ECC must authorize the transfer of any QS from the ECCO.

(iii) The appropriate governing body for purposes of designating a non-profit organization for the Application to Become an ECCO, or acknowledging the transfer of any QS from an ECCO in each ECC is as follows:

(A) If the ECC is also a community eligible to participate in the Western Alaska CDQ Program, then the CDQ group is the appropriate governing body;

(B) If the ECC is not a CDQ community and is incorporated as a municipality and is not within an incorporated borough, then the municipal government is the appropriate governing body;

(C) If the ECC is not a CDQ community and is incorporated as a municipality and also within an incorporated borough, then the municipality and borough jointly serve as the appropriate governing body and both must agree to designate the same non-profit organization to serve as the ECCO or acknowledge the transfer of QS from the ECCO; and

(D) If the ECC is not a CDQ community and is not incorporated as a municipality and is in a borough, then the borough in which the ECC is located is the appropriate governing body.

(iv) The appropriate governing body in each ECC may designate only one non-profit organization to serve as the ECCO for that community at any one time.

(2) *Application to become an ECCO.* Prior to initially receiving QS or IFQ by transfer on behalf of a specific ECC, a non-profit organization that intends to represent that ECC as a ECCO must submit an application to become an ECCO and have that application approved by the Regional Administrator. The Regional Administrator shall provide an application to become an ECCO to any person on request or on the Internet at *http://www.fakr.noaa.gov/.*

(i) *Contents of application*—(A) *Applicant identification.* (*1*) Enter the name of the non-profit organization, taxpayer ID number, and NMFS Person ID, applicant's permanent business mailing address and any temporary business mailing address the applicant wishes to use, and the name of contact person, business telephone number,

business facsimile number, and e-mail address (if available);

(*2*) Name of community or communities represented by the non-profit organization; and

(*3*) Name of contact person for the governing body of each community represented.

(B) Required attachments to the application. (*1*) The articles of incorporation under the laws of the State of Alaska for that non-profit organization;

(*2*) A statement indicating the ECC(s) represented by that non-profit organization for purposes of holding QS;

(*3*) The bylaws of the non-profit organization;

(*4*) A list of key personnel of the management organization including, but not limited to, the board of directors, officers, representatives, and any managers;

(*5*) Additional contact information of the managing personnel for the non-profit organization and resumes of management personnel;

(*6*) A description of how the non-profit organization is qualified to manage QS on behalf of the ECC it is designated to represent, and a demonstration that the non-profit organization has the management skills and technical expertise to manage QS and IFQ; and

(*7*) A statement describing the procedures that will be used to determine the distribution of IFQ to residents of the ECC represented by that non-profit organization, including procedures used to solicit requests from residents to lease IFQ and criteria used to determine the distribution of IFQ leases among qualified community residents and the relative weighting of those criteria.

(C) *Applicant certification.* (*1*) Printed name of applicant or authorized agent, notarized signature, and date signed. If authorized agent, proof of authorization to act on behalf of the applicant must be provided with the application.

(*2*) Notary Public signature and date when commission expires, and notary seal or stamp.

(ii) [Reserved].

(k) *Application for transfer of crab QS/IFQ to or from an ECCO.* (1) An application for transfer of crab QS/IFQ to or from an ECCO must be approved by the Regional Administrator before the transferee may use the IFQ to harvest crab QS species.

(2) An application for transfer of crab QS/IFQ to or from an ECCO will not be approved until the Regional Administrator has reviewed and approved the transfer agreement signed by the parties to the transaction. Persons who submit an application for transfer of crab QS/IFQ to or from an ECCO for approval will receive notification of the Regional Administrator's decision to approve or disapprove the application, and if applicable, the reason(s) for disapproval, by mail, unless another communication mode is requested on the application.

(3) *Contents.* A complete application for transfer of crab QS/IFQ to or from an ECCO includes the following:

(i) *General requirements.* (A) This form may only be used if an ECCO is the proposed transferor or the proposed transferee of the QS or IFQ.

(B) The party to whom an ECCO is seeking to transfer the QS/IFQ must be eligible to receive QS/IFQ by transfer.

(C) If the ECCO is applying to permanently transfer QS, a representative of the community on whose behalf the QS is held must sign the application.

(D) If authorized representative represents either the transferor or transferee, proof of authorization to act on behalf of transferor or transferee must be attached to the application.

(ii) *Transferor information.* Enter the transferor's (person currently holding the QS or IFQ) name, NMFS Person ID, social security number or Tax ID, permanent business mailing address, business telephone, business facsimile, and business e-mail address. If transferor is an ECCO, enter the name of ECC represented by the ECCO. The transferor may also provide a temporary address for each transaction in addition to the permanent business mailing address.

(iii) *Transferee information.* Enter the transferee's (person receiving QS or IFQ by transfer) name, NMFS Person ID, social security number or Tax ID, permanent business mailing address, business telephone, business facsimile, and business e-mail. If transferee is an ECCO, name of the community (ECC) represented by the ECCO. The transferee may also provide a temporary address for each transaction in addition to the permanent business mailing address.

(iv) *Identification* of QS/IFQ to be transferred. Complete the following information if QS and IFQ are to be transferred together or if transferring only QS:

(A) QS species;

(B) QS type;

(C) Number of QS or IFQ units to be transferred;

(D) Total QS units;

(E) Number of IFQ pounds;

(F) Range of serial numbers to be transferred (shown on QS certificate) numbered to and from;

(G) Name of community to which QS are currently assigned; and

(H) Indicate (YES or NO) whether remaining IFQ pounds for the current fishing year should be transferred; if NO, specify the number of pounds to be transferred.

(v) *Transfer of IFQ only.* (A) IFQ permit number and year of permit, and

(B) Actual number of IFQ pounds to be transferred.

(vi) *Transferor Information, if an ECCO.* Reason(s) for transfer:

(A) ECCO management and administration;

(B) Fund additional QS purchase;

(C) Participation by community residents;

(D) Dissolution of ECCO; and

(E) Other (specify).

(vii) *Price paid for QS, PQS, and/or IFQ, IPQ (Transferor).* The transferor must provide the following information:

(A) Whether (YES or NO) a broker was used for this transaction; If YES, provide dollar amount paid in brokerage fees or percentage of total price;

(B) Provide the total amount paid for the QS/IFQ in this transaction, including all fees;

(C) Provide the price per unit of QS (price divided by QS units) and the price per pound (price divided by IFQ) of IFQ; and

(D) Indicate all reasons that apply for transferring the QS/IFQ.

(viii) *Price paid for QS, PQS, and/or IFQ, IPQ (Transferee).* The transferee must provide the following information:

(A) Indicate (YES or NO) whether QS/IFQ purchase will have a lien attached; if YES, provide the name of lien holder;

(B) Indicate one primary source of financing for this transfer;

(C) Indicate the sources used to locate the QS or IFQ being transferred;

(D) Indicate the relationship, if any, between the transferor and the transferee;

(E) Indicate (YES or NO) whether an agreement exists to return the QS or IFQ to the transferor or any other person, or with a condition placed on resale; If YES, explain; and

(F) Attach a copy of the terms of agreement for the transfer, the bill of sale for QS, or lease agreement for IFQ.

(ix) *Notary information*—(A) *Certification of transferor.* (*1*) Printed name and signature of transferor or authorized agent and date signed. If authorized agent, proof of authorization to act on behalf of the transferor must be provided with the application.

(*2*) Notary Public signature, date commission expires, and notary stamp or seal.

(B) *Certification of transferee.* (*1*) Printed name and signature of transferor

or authorized agent and date signed. If authorized agent, proof of authorization to act on behalf of the transferee must be provided with the application.

(*2*) Notary Public signature, date commission expires, and notary stamp or seal.

(C) *Certification of authorized representative of community.* (*1*) Printed name, title and signature of authorized community representative, date signed, and printed name of community.

(*2*) Notary Public signature, date commission expires, and notary stamp or seal;

(4) *Attachments to the application and other conditions to be met.* (i) Indicate whether the person applying to make or receive the QS, PQS, IFQ or IPQ transfer has submitted an EDR, if required to do so under § 680.6, and paid all fees, as required by § 680.44.

(ii) A copy of the terms of agreement for the transfer, the bill of sale for QS or PQS, or lease agreement for IFQ or IPQ.

(iii) An affirmation that the individual receiving IFQ from an ECCO has been a permanent resident in the ECC for a period of 12 months prior to the submission of the Application for Transfer QS/IFQ to or from an ECCO on whose behalf the ECCO holds QS.

(5) *Approval criteria for an application for transfer of crab QS/IFQ to or from an ECCO.* In addition to the criteria required for approval under paragraph (i) of this section, the following criteria are also required:

(i) The ECCO applying to receive or transfer crab QS has submitted a complete annual report(s) required by § 680.5;

(ii) The ECCO applying to transfer crab QS has provided information on the reasons for the transfer as described in paragraph (e) of this section; and

(iii) An individual applying to receive IFQ from an ECCO is a permanent resident of the ECC in whose name the ECCO is holding QS.

(l) *Eligible crab community right of first refusal (ROFR)*—(1) *Applicability*—(i) *Exempt Fisheries.* PQS and IPQ issued for the BST, WAG, or WAI crab QS fisheries are exempt from ROFR provisions.

(ii) *Eligible Crab Communities (ECCs).* The ROFR extends to the ECCs, other than Adak, and their associated governing bodies. The ROFR may be exercised by the ECC entity representing that ECC.

(2) *Community representation*—(i) *CDQ Communities.* ECC entity for purposes of exercise of ROFR for any ECC that is also a CDQ community shall be the CDQ group to which the ECC is a member.

(ii) *Non-CDQ communities.* (A) Any ECC, other than Adak, that is a non-CDQ community may designate an ECC entity that will represent the community in the exercise of ROFR at least 30 days prior to the ending date for the initial application period for the crab QS program specified in the **Federal Register**.

(B) The ECC entity eligible to exercise the right of first refusal on behalf of an ECC will be identified by the governing body(s) of the ECC. If the ECC is incorporated under the laws of the State of Alaska, and not within an incorporated borough, then the municipality is the governing body; if the ECC is incorporated and within an incorporated borough, then the municipality and borough are the governing bodies and must agree to designate the same ECC entity; if the ECC is not incorporated and in an incorporated borough, then the borough is the governing body.

(C) Each ECC may designate only one ECC entity to represent that community in the exercise of ROFR at any one time through a statement of support from the governing body of the ECC. That statement of support identifying the ECC entity must be submitted to the Regional Administrator, NMFS, Post Office Box 21668, Juneau, Alaska 99802, at least 30 days prior to the ending date of the initial application period for the crab QS program under § 680.40.

(D) The ECC ROFR is not assignable by the ECC entity.

(3) *Restrictions on transfer of PQS or IPQ out of North Gulf of Alaska communities*—(i) *Applicability.* Any community in the Gulf of Alaska north of a line at 56°20′ N. lat.

(ii) *Notification of PQS or IPQ transfer.* A PQS holder submitting an application to transfer PQS or IPQ for use in processing outside any community identified under paragraph (l)(3)(i) must notify the ECC entity designated by the City of Kodiak and Kodiak Island Borough under paragraph (l)(2) of this section 10 days prior to the intended transfer of PQS or IPQ for use outside the community. At the end of that time period, the application will be approved pending meeting the criteria set forth in paragraph (i) of this section.

§ 680.42 Limitations on use of QS, PQS, IFQ, and IPQ.

(a) *QS and IFQ use caps*—(1) *General.* Separate and distinct QS and IFQ use caps apply to all QS and IFQ categories pertaining to a given crab QS fishery with the following provisions:

(i) A person who receives an initial allocation of QS that exceeds the use cap listed in paragraph (a)(2) of this section may not receive QS by transfer unless and until that person's holdings are reduced to an amount below the use cap.

(ii) A person will not be issued QS in excess of the use cap established in this section based on QS derived from landings attributed to an LLP license obtained via transfer after June 10, 2002 unless;

(A) The person applies to receive QS based on an LLP transferred after June 10, 2002 but prior to November 24, 2004, and

(B) The person will receive the amount of QS associated with that transferred LLP in excess of the use cap established in this section for a crab QS fishery solely because of the adjustment to legal landings available for QS allocation resulting from the BSAI Crab Capacity Reduction Program.

(iii) QS and IFQ use caps shall be based on the initial QS pools used to determine initial allocations of QS.

(2) Except for non-individual persons who hold PQS, as provided for in paragraph (b)(1)(ii) of this section, or a CDQ group, as provided for in paragraph (b)(3) of this section, a person, individually or collectively, may not:

(i) Hold QS in amounts in excess of the amounts specified in the following table, unless that person's QS was received in the initial allocation:

Fishery	CVO/CPO use cap in QS units	CVC/CPC use cap in QS units
(A) Percent of the initial QS pool for BBR	1.0% = 3,880,000	2.0% = 240,00
(B) Percent of the initial QS pool for BSS	1.0% = 9,700,000	2.0% = 600,00
(C) Percent of the initial QS pool for BST	1.0% = 1,940,000	2.0% = 120,00
(D) Percent of the initial QS pool for PIK	2.0% = 582,000	4.0% = 36,000
(E) Percent of the initial QS pool for SMB	2.0% = 582,000	4.0% = 36,000
(F) Percent of the initial QS pool for EAG	10.0% = 970,000	20.0% = 60,000
(G) Percent of the initial QS pool for WAG	10.0% = 3,880,000	20.0% = 240,000

Fishery	CVO/CPO use cap in QS units	CVC/CPC use cap in QS units
(H) Percent of the initial QS pool for WAI	10.0% = 5,820,000	20.0% = 360,000

(ii) Use IFQ in excess of the amount of IFQ that results from the QS caps in paragraph (a)(2)(i) of this section, unless that IFQ results from QS that was received by that person in the initial allocation of QS for that crab QS fishery.

(3) A CDQ Group, individually or collectively, may not:

(i) Hold QS in excess of more than the amounts of QS specified in the following table:

Fishery	CDQ CVO/CPO use cap in QS units
(A) 5.0 percent of the initial QS pool for BBR	19,400,000
(B) 5.0 percent of the initial QS pool for BSS	48,500,000
(C) 5.0 percent of the initial QS pool for BST	9,700,000
(D) 10.0 percent of the initial QS pool for PIK	2,910,000
(E) 10.0 percent of the initial QS pool for SMB	2,910,000
(F) 20.0 percent of the initial QS pool for EAG	1,940,000
(G) 20.0 percent of the initial QS pool for WAG	7,760,000
(H) 20.0 percent of the initial QS pool for WAI	11,640,000

(ii) Use IFQ in excess of the amount of IFQ that results from the QS caps in paragraph (a)(2)(i) of this section, unless that IFQ results from QS that was received by that person in the initial allocation of QS for that crab QS fishery.

(4) A person who is not an individual and who holds PQS may not:

(i) Hold QS in excess of the amounts specified in the following table:

Fishery	CVO/CPO use cap in QS units
(A) 5.0 percent of the initial QS pool for BBR	19,400,000
(B) 5.0 percent of the initial QS pool for BSS	48,500,000
(C) 5.0 percent of the initial QS pool for BST	9,700,000
(D) 5.0 percent of the initial QS pool for PIK	1,455,000
(E) 5.0 percent of the initial QS pool for SMB	1,455,000
(F) 5.0 percent of the initial QS pool for EAG	485,000
(G) 5.0 percent of the initial QS pool for WAG	1,940,000
(H) 5.0 percent of the initial QS pool for WAI	2,910,000

(ii) Use IFQ in excess of the amount of IFQ that results from the QS caps in paragraph (a)(2)(i) of this section, unless that IFQ results from QS that was received by that person in the initial allocation of QS for that crab QS fishery.

(iii) A non-individual person that holds PQS would be limited to a QS and IFQ cap that would be calculated based on the sum of all QS or IFQ held by that PQS holder and all QS or IFQ held by any entity in which that PQS holder has a 10 percent or greater direct or indirect ownership interest.

(5) IFQ that is used by a crab harvesting cooperative is not subject to the use caps in paragraph (b) of this section.

(6) Non-individual persons holding QS will be required to provide, on an annual basis, a list of persons with an ownership interest in the non-individual QS holder. This list of owners shall be provided to the individual level and will include the percentage of ownership held by each individual. This annual submission of information must be submitted as part of the complete annual application for crab IFQ/IPQ permit.

(b) *PQS and IPQ Use Caps.* (1) A person may not:

(i) Hold more than 30 percent of the initial PQS pool in any crab QS fishery unless that person received an initial allocation of PQS in excess of this limit. A person will not be issued PQS in excess of the use caps established in this section based on PQS derived from the transfer of legal processing history after June 10, 2002.

(ii) Use IPQ in excess of the amount of IPQ that results from the PQS caps in paragraph (b)(1)(i) of this section unless that IPQ is yielded from PQS that was received by that person in the initial allocation of PQS for that crab QS fishery.

(2) A person may not use more than 60 percent of the IPQ issued in the BSS crab QS fishery with a North region designation during a crab fishing year.

(3) Non-individual persons holding PQS will be required to provide, on an annual basis, a list of persons with an ownership interest in the non-individual PQS holder. This list of owners shall be provided to the individual level and will include the percentage of ownership held by each individual. This annual submission of information must be submitted as part of the complete annual application for crab IFQ/IPQ permit. A person will be considered to be a holder of PQS for purposes of applying the PQS use caps in this paragraph if that person:

(i) Is the sole proprietor of an entity that holds PQS; or

(ii) Directly or indirectly owns a 10 percent or greater interest in an entity that holds PQS.

(iii) A person that holds PQS would be limited to a PQS use cap that would be calculated based on the sum of all PQS held by that PQS holder and all PQS held by any entity in which that PQS holder has a 10 percent or greater direct or indirect ownership interest.

(iv) A person that holds IPQ would be limited to an IPQ use cap that would be calculated based on the sum of all IPQ held by that IPQ holder and all IPQ held by any entity in which that IPQ holder has a 10 percent or greater direct or indirect ownership interest.

(4) Before July 1, 2007, IPQ for the BSS, BBR, PIK, SMB, and EAG crab QS fisheries may not be used to process crab derived from PQS based on activities in an ECC, except in the geographic boundaries established in paragraph (b)(4)(iv) of this section, except that, before July 1, 2007:

(i) Ten percent of the IPQs that are issued for a crab QS fishery or an amount of IPQ that yields up to 500,000 raw crab pounds (226.7 mt) on an annual basis, whichever is less, may be leased for use in processing crab outside that ECC. The amount of IPQ that is issued on an annual basis for use in that ECC and the amount that may be leased outside that ECC will be established annually and will be divided on a pro rata basis among all PQS permit holders issued IPQ for use in that ECC for that year.

(ii) IPQ in excess of the amounts specified in paragraph (c)(7)(i) of this section may be used outside the ECC for which that IPQ is designated if an unavoidable circumstance prevents crab processing within that ECC. For purposes of this section, an unavoidable circumstance exists if the specific intent to conduct processing for a crab QS species in that ECC was thwarted by a circumstance that was:

(A) Unavoidable;

(B) Unique to the IPQ permit holder, or to the processing facility used by the IPQ permit holder in that ECC;

(C) Unforeseen and reasonably unforeseeable to the IPQ permit holder;

(D) The circumstance that prevented the IPQ permit holder from processing crab in that ECC actually occurred; and

(E) The IPQ permit holder took all reasonable steps to overcome the circumstance that prevented the IPQ permit holder from conducting processing for that crab QS fishery in that ECC.

(iii) This provision does not exempt any IPQ permit holder from any regional designation that may apply to that IPQ.

(iv) Geographic boundaries for use of IPQ outside ECCs for purposes of paragraph (b)(4) of this section:

(A) Akutan, False Pass, King Cove, or Port Moller: IPQ may not be used outside of the boundaries of the Aleutians East Borough as those boundaries are established by the State of Alaska;

(B) Kodiak: IPQ may not be used outside of the boundaries of the Kodiak Island Borough as those boundaries are established by the State of Alaska;

(C) Adak: IPQ may not be used outside of the boundaries of the City of Adak as those boundaries are established by the State of Alaska;

(D) Unalaska/Dutch Harbor: IPQ may not be used outside of the boundaries of the City of Unalaska as those boundaries are established by the State of Alaska.

(E) St. George: IPQ may not be used outside of the boundaries of the City of St. George as those boundaries are established by the State of Alaska.

(F) St. Paul: IPQ may not be used outside of the boundaries of the City of St. Paul as those boundaries are established by the State of Alaska.

(5) Any person harvesting crab under a Class A CVO or Class A CVC IFQ Permit, except as provided under paragraph (b)(4) of this section, must deliver that crab:

(i) Only to RCRs with unused IPQ for the same crab QS fishery; and

(ii) Only to an RCR in the region for which the QS and IFQ is designated.

(6) Any person harvesting crab under a Class B IFQ, CPO IFQ, CVC IFQ prior to July 1, 2008, or CPC IFQ permit may deliver that crab to any RCR.

(c) *Vessel limitations.* (1) Except for vessels that participate solely in a crab harvesting cooperative as described under § 680.21 and under the provisions described in paragraph (c)(4) of this section, no vessel may be used to harvest CVO or CPO IFQ in excess of the following percentages of the TAC for that crab QS fishery for that crab fishing year:

(i) 2.0 percent for BSS;

(ii) 2.0 percent for BBR;

(iii) 2.0 percent for BST;

(iv) 4.0 percent for PIK;

(v) 4.0 percent for SMB;

(vi) 20.0 percent for EAG;

(vii) 20.0 percent for WAG; or

(viii) 20.0 percent for the WAI crab QS fishery west of 179° W. long.

(2) CVC or CPC QS used on a vessel will not be included in determining whether a vessel use cap is met.

(3) A single person who receives an initial allocation of QS that results in IFQ that is in excess of the vessel use caps, in paragraph (c)(1) of this section, that person may catch and retain crab harvested with the resulting IFQ with a single vessel. However, this provision does not apply to IFQ resulting from QS derived from transfer of an LLP crab license that occurred after June 10, 2002. Two or more persons may not catch and retain their IFQ with one vessel in excess of these limitations.

(4) A vessel use cap would not apply to a vessel if all of the IFQ used on that vessel in a crab fishing year is held by a crab harvesting cooperative. This exemption is forfeited if that vessel is used to harvest any amount of IFQ not held by a crab harvesting cooperative during the same crab fishing year.

(5) A person holding a CVC or CPC IFQ permit is required to be aboard the vessel upon which their IFQ is being harvested.

(6) A person holding CVO or CPO QS does not have to be aboard the vessel being used to harvest their IFQ if they hold at least a 10 percent ownership interest in the vessel upon which the IFQ is to be harvested and are represented on board the vessel by a crab IFQ hired master employed by that QS holder as authorized under § 680.4.

(7) Ownership of a vessel means, for purposes of this section:

(i) A sole proprietor; or

(ii) A person that directly or indirectly owns a 10 percent or greater interest in an entity that owns a vessel.

§ 680.43 Determinations and appeals.

See § 679.43 of this chapter.

§ 680.44 Cost recovery.

(a) *Cost recovery fees*—(1) *Responsibility.* The person documented on the IFQ, IPQ, CDQ, RCR, Commercial Fisheries Entry Commission (CFEC), or State of Alaska Commissioner's permit as the permit holder at the time of a CR crab landing must comply with the requirements of this section.

(i) Subsequent transfer of IFQ, IPQ, CDQ, or QS does not affect the permit holder's liability for noncompliance with this section.

(ii) Non-renewal of an RCR permit does not affect the permit holder's liability for noncompliance with this section.

(2) *Fee liability determination.* (i) All CR allocation holders and RCR permit holders will be subject to a fee liability for any CR crab debited from a CR allocation during a crab fishing year.

(ii) Fee liability must be calculated by multiplying the applicable fee percentage by the ex-vessel value of the CR crab received by the RCR at the time of receipt, except as provided by paragraph (b)(3) of this section.

(iii) NMFS will provide a summary to all CR allocation and RCR permit holders available through a secure Internet site or on request during the last quarter of the crab fishing year. The summary will explain the fee liability determination including the current fee percentage, details of raw crab pounds debited from CR allocations by permit, port or port-group, species, date, and prices.

(3) *Fee collection.* (i) All RCRs who receive CR crab are responsible for submitting the cost recovery payment for all CR crab received.

(ii) All RCRs who receive CR crab in a crab fishing year must maintain and submit records for any crab cost recovery fees collected under the corresponding RCR permit.

(4) *Payment*—(i) *Payment due date.* An RCR permit holder must submit any crab cost recovery fee liability payment(s) to NMFS at the address provided in paragraph (a)(4)(iii) of this section no later than July 31 of the crab fishing year following the crab fishing year in which the payment for a CR crab landing was made.

(ii) *Payment recipient.* Make payment payable to NMFS.

(iii) *Payment address.* Mail payment and related documents to the Administrator, Alaska Region, NMFS, Attn: Operations, Management, & Information Division (OMI), P.O. Box 21668, Juneau, AK 99802–1668, Facsimile (907–586–7354). Payments may also be submitted electronically to NMFS via forms available from RAM or on the RAM area of the Alaska Region Home Page at *http://www.fakr.noaa.gov/ram.*

(iv) *Payment method.* Payment must be made in U.S. dollars by personal check drawn on a U.S. bank account, money order, bank certified check, or credit card.

(b) *Ex-vessel value determination and use*—(1) *General.* An RCR permit holder must use either the ex-vessel value determined for shoreside processors or the ex-vessel value determined for at-sea Catcher/Processors (CP), depending on their activity. Ex-vessel value includes all cash, services, or other goods-in-kind exchanged for CR crab.

(2) *Shoreside ex-vessel value.* Shoreside processing facilities must use the price paid at the time of purchase as ex-vessel value for the purposes of calculating fee liability. Shoreside processing facilities must include any

subsequent retroactive payments as adjustments to the initial calculation of fee liability.

(3) *Catcher/processor ex-vessel value*—(i) *General.* Catcher/processors must use the corresponding CP standard price(s) for the purposes of calculating fee liability.

(ii) *CP standard prices.* As part of the summary described in paragraph (a)(2)(iii) of this section, the Regional Administrator will provide CP standard prices calculated for the current year during the last quarter of each crab fishing year. The CP standard prices will be described in U.S. dollars per raw crab pound, for CR crab debited from CR allocations during the current crab fishing year.

(iii) *Effective period.* CP standard prices established by NMFS shall apply to all landings made in the same crab fishing year as the CP standard price provided for that year and shall replace any CP standard prices previously provided by NMFS.

(iv) *Determination.* NMFS will calculate the CP standard prices to reflect, as closely as possible, the current crab fishing year's average shoreside processor price by fishery and by species, and any variations in reported shoreside ex-vessel values of CR crab. The Regional Administrator will base CP standard prices on the following types of information:

(A) Landed pounds by CR crab, port-group, and month;

(B) Total shoreside ex-vessel value by CR crab, port-group, and month; and

(C) Price adjustments, including retroactive payments.

(4) *Fee liability calculation.* All RCRs must base all fee liability calculations on the ex-vessel value that correlates to CR crab that is debited from a CR allocation and recorded in raw crab pounds.

(c) *Crab fee percentage*—(1) *Default percentage.* The crab fee percentage is 3 percent of the ex-vessel value of crab unless adjusted by the Regional Administrator by publication in the **Federal Register** in accordance with paragraphs (c)(3) and (c)(4) of this section.

(i) The calculated crab fee percentage will be divided equally between the harvesting and processing sectors.

(ii) Catcher/processors must pay the full crab fee percentage determined by the fee percentage calculation for all CR crab debited from a CR allocation.

(2) *Calculating fee percentage value.* Each year the Regional Administrator will calculate the fee percentage.

(i) *Factors.* In making the calculations the Regional Administrator will consider the following factors:

(A) The catch to which the crab cost recovery fee will apply;

(B) The projected ex-vessel value of that catch;

(C) The costs directly related to the management and enforcement of the Crab Rationalization Program;

(D) The funds available for the Crab Rationalization Program in the Limited Access System Administrative Fund (LASAF);

(E) Nonpayment of fee liabilities.

(ii) *Methodology.* In making the calculation, the Regional Administrator will use the following methodology:

Harvesting and Processing Sectors: $[[100 \times (DPC–AB)/ V] / (1–NPR)] \times 0.5$

Catcher/Processors: $[100 \times (DPC–AB) /V]/ (1–NPR)$

Where:

DPC is the direct program costs for the Crab Rationalization Program for the previous fiscal year,

AB is the projected end of the year LASAF account balance for the Crab Rationalization Program, and

V is the projected ex-vessel value of the catch subject to the crab cost recovery fee liability for the current year, and NPR is the fraction of the fee assessments that is expected to result in nonpayment.

(3) *Adjustments.* During the first quarter of each crab fishing year, the Regional Administrator will consider adjusting the crab fee percentage. Consideration will be based on the calculations described in paragraph (c)(2) of this section.

(4) *Publication.* The Regional Administrator will make any adjustments in the crab fee percentage by publication in the **Federal Register**.

(5) *Applicable percentage.* The RCR permit holder must use the crab fee percentage in effect at the time a CR crab is debited from a CR allocation to calculate the crab cost recovery fee liability for such CR crab. The RCR permit holder must use the crab fee percentage in effect at the time a CR crab is debited from a CR allocation to calculate the crab cost recovery fee liability for any retroactive payments for that CR crab.

(d) *Underpayment of fee liability.* (1) Under § 680.4, an applicant will not receive new IFQ, IPQ, or RCR permits until he or she submits a complete application. A complete application shall include full payment of an applicant's complete crab cost recovery fee liability as reported by the RCR.

(2) If an RCR fails to submit full payment for crab cost recovery fee liability by the date described in paragraph (a)(4) of this section, the Regional Administrator may:

(i) At any time thereafter send an IAD to the RCR permit holder stating that the RCR permit holder's estimated fee liability, as indicated by his or her own submitted information, is the crab cost recovery fee liability due from the RCR permit holder.

(ii) Disapprove any transfer of IFQ, IPQ, QS, or PQS to or from the RCR permit holder in accordance with § 680.41.

(3) If an RCR fails to submit full payment by the application deadline described at § 680.4, no IFQ or IPQ permit will be issued to that RCR for that crab fishing year.

(4) Upon final agency action determining that an RCR permit holder has not paid his or her crab cost recovery fee liability, the Regional Administrator may continue to withhold issuance of any new IFQ, IPQ, or RCR permit for any subsequent crab fishing years. If payment is not received by the 30th day after the final agency action, the matter will be referred to the appropriate authorities for purposes of collection.

(e) *Over payment.* Upon issuance of final agency action, any amount submitted to NMFS in excess of the crab cost recovery fee liability determined to be due by the final agency action will be returned to the RCR permit holder unless the permit holder requests the agency to credit the excess amount against the permit holder's future crab cost recovery fee liability.

(f) *Appeals and requests for reconsideration.* An RCR permit holder who receives an IAD may either appeal the IAD pursuant to 50 CFR 679.43 or request reconsideration. Within 60 days from the date of issuance of the IAD, the Regional Administrator may undertake reconsideration of the IAD on his or her own initiative. If a request for reconsideration is submitted or the Regional Administrator initiates reconsideration, the 60-day period for appeal under 50 CFR 679.43 will begin anew upon issuance of the Regional Administrator's reconsidered IAD. The Regional Administrator may undertake only one reconsideration of the IAD, if any. If an RCR permit holder fails to file an appeal of the IAD pursuant to 50 CFR 679.43 or request reconsideration within the time period provided, the IAD will become the final agency action. In any appeal or reconsideration of an IAD made under this section, an RCR permit holder has the burden of proving his or her claim.

(g) *Fee submission form.* An RCR must submit an RCR permit holder fee submission form according to § 680.5(f).

TABLE 1 TO PART 680.—CRAB RATIONALIZATION (CR) FISHERIES

Fishery code	CR fishery	Geographic area
BBR	Bristol Bay red king crab (*Paralithodes camtshaticus*).	In waters of the EEZ with: (1) *a northern boundary* of 58°30′ N. lat., (2) *a southern boundary* of 54°36′ N. lat., and (3) *a western boundary* of 168° W. long. and including all waters of Bristol Bay.
BSS	Bering Sea Snow crab (*Chionoecetes opilio*).	In waters of the EEZ with: (1) *a northern and western boundary* of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991). (2) *a southern boundary* of 54°30′ N. lat. to 171° W. long., and then south to 54°36′ N. lat.
BST	Bering Sea Tanner crab (*Chionoecetes bairdi*).	In waters of the EEZ with: (1) *a northern and western boundary* of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991). (2) *a southern boundary* of 54°30′ N. lat. to 171° W. long., and then south to 54°36′ N. lat.
EAG	Eastern Aleutian Islands golden king crab (*Lithodes aequispinus*).	In waters of the EEZ with: (1) *an eastern boundary* the longitude of Scotch Cap Light (164°44′ W. long.) To 53°30′ N. lat., then West to 165° W. long. (2) *a western boundary* of 174° W. long., and (3) *a northern boundary* of a line from the latitude of Cape Sarichef (54°36′ N. lat.) westward to 171° W. long., then north to 55°30′ N. lat., then west to 174° W. long.
PIK	Pribilof red king and blue king crab (*Paralithodes camtshaticus and P. platypus*).	In waters of the EEZ with: (1) *a northern boundary* of 58°30′ N. lat., (2) *an eastern boundary* of 168° W. long., (3) *a southern boundary* line from 54°36′ N. lat., 168° W. long., to 54°36′ N. lat., 171° W. long., to 55°30′ N. lat., 171° W. long., to 55°30′ N. lat., 173°30′ E. lat., and then westward to the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991).
SMB	St. Matthew blue king crab (*Paralithodes platypus*).	In waters of the EEZ with: (1) *a northern boundary* of 62° N. lat., (2) *a southern boundary* of 58°30′ N. lat., and (3) *a western boundary* of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991).
WAG	Western Aleutian Islands golden king crab (*Lithodes aequispinus*).	In waters of the EEZ with: (1) *an eastern boundary* the longitude 174° W. long., (2) *a western boundary* the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991), and (3) *a northern boundary* of a line from the latitude of 55°30′ N. lat., then west to the U.S.-Russian Convention line of 1867.
WAI	Western Aleutian Islands red king (*Paralithodes camtshaticus*).	In waters of the EEZ with: (1) *an eastern boundary* the longitude 179° crab W. long., (2) *a western boundary* of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991), and (3) *a northern boundary* of a line from the latitude of 55°30′ N. lat., then west to the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991).

TABLE 2 TO PART 680.—CRAB SPECIES CODES

Species code	Common name	Scientific name
900	Box	*Lopholithodes mandtii.*
910	Dungeness	*Cancer magister.*
921	Red king crab	*Paralithodes camtshaticus.*
922	Blue king crab	*Paralithodes platypus.*
923	Golden (brown) king crab	*Lithodes aequispinus.*
924	Scarlet king crab	*Lithodes couesi.*
931	Tanner crab	*Chionoecetes bairdi.*
932	Snow crab	*Chionoecetes opilio.*
933	Grooved Tanner crab	*Chionoecetes tanneri.*
934	Triangle Tanner crab	*Chionoecetes angulatus.*
940	Korean horsehair crab	*Erimacrus isenbeckii.*
951	Multispinus crab	*Paralomis multispinus.*
953	Verrilli crab	*Paralomis verrilli.*

TABLE 3A TO PART 680.—CRAB DELIVERY CONDITION CODES

[The condition of the fish or shellfish at the point it is weighed and recorded on the ADF&G fish ticket]

Code	Description
01	Whole crab, live.
79	Deadloss.

TABLE 3B TO PART 680.—CRAB DISPOSITION OR PRODUCT CODES

Code	Description
80	Sections.
95	Personal use—not sold.
97	Other retained product (specify condition).

TABLE 3C TO PART 680.—CRAB PRODUCT CODES FOR ECONOMIC DATA REPORTS

Code	Description
01	Whole crab.
80	Sections.
81	Meats.
97	Other (specify).

TABLE 4 TO PART 680.—CRAB PROCESS CODES

Process code	Description
0	Other (specify).
1	Fresh.
2	Frozen.
3	Salted/brined.
6	Cooked.
7	Live.
18	Fresh/vacuum pack.
21	Frozen/block.
22	Frozen/shatter pack.
28	Frozen/vacuum pack.

TABLE 5 TO PART 680.—CRAB SIZE CODES

Size code	Description
1	Standard or large sized crab or crab sections.
2	Smaller size crab or crab sections, *e.g.*, snow crab less than 4 inches.

TABLE 6 TO PART 680.—CRAB GRADE CODES

Grade/code	Description
1	Standard or premium quality crab or crab sections.
2	Lower quality product, *e.g.*, dirty shelled crab or a pack that is of lower quality than No. 1 crab.

TABLE 7 TO PART 680.—INITIAL ISSUANCE OF CRAB QS BY CRAB QS FISHERY

Column A: Crab QS Fisheries	*Column B:* Qualifying years for QS	*Column C:* Eligibility years for CVC and CPC QS	*Column D:* Recent participation seasons for CVC and CPC QS	*Column E:* Subset of qualifying years
For each crab QS fishery the Regional Administrator shall calculate (see § 680.40(c)(2):	QS for any qualified person based on that person's total legal landings of crab in each of the crab QS fisheries for any:	In addition, each person receiving CVC and CPC QS must have made at least one landing per year, as recorded on a State of Alaska fish ticket, in any three years during the base period described below:	In addition, each person receiving CVC or CPC QS, must have made at least one landing, as recorded on a State of Alaska fish ticket, in at least 2 of the last 3 fishing seasons in each of the crab QS fisheries as those seasons are described below:	The maximum number of qualifying years that can be used to calculate QS for each QS fishery is:

TABLE 7 TO PART 680.—INITIAL ISSUANCE OF CRAB QS BY CRAB QS FISHERY—Continued

Column A: Crab QS Fisheries	*Column B:* Qualifying years for QS	*Column C:* Eligibility years for CVC and CPC QS	*Column D:* Recent participation seasons for CVC and CPC QS	*Column E:* Subset of qualifying years
1. Bristol Bay red king crab (BBR)	4 years of the 5-year QS base period beginning on: (1) November 1, 1996 through November 5, 1996; (2) November 1, 1997 through November 5, 1997; (3) November 1, 1998 through November 6, 1998; (4) October 15, 1999 through October 20, 1999; and (5) October 16, 2000 through October 20, 2000	3 years of the 5-year QS base period beginning on: (1) November 1, 1996 through November 5, 1996; (2) November 1, 1997 through November 5, 1997; (3) November 1, 1998 through November 6, 1998; (4) October 15, 1999 through October 20, 1999; and (5) October 16, 2000 through October 20, 2000	(1) October 16, 2000 through October 20, 2000. (2) October 15, 2001 through October 18, 2001. (3) October 15, 2002 through October 18, 2002.	4
2. Bering Sea snow crab (BSS)	4 years of the 5-year period beginning on: (1) January 15, 1996 through February 29, 1996; (2) January 15, 1997 through March 21, 1997; (3) January 15, 1998 through March 21, 1998; (4) January 15, 1999 through March 22, 1999; and (5) April 1, 2000 through April 8, 2000	3 years of the 5-year period beginning on: (1) January 15, 1996 through February 29, 1996; (2) January 15, 1997 through March 21, 1997; (3) January 15, 1998 through March 21, 1998; (4) January 15, 1999 through March 22, 1999; and (5) April 1, 2000 through April 8, 2000	(1) April 1, 2000 through April 8, 2000. (2) January 15, 2001 through February 14, 2001. (3) January 15, 2002 through February 8, 2002.	4
3. Bering Sea Tanner crab (BST)	4 of the 6 seasons beginning on: (1) November 15, 1992 through March 31, 1993; (2) November 1, 1993 through November 10, 1993; (3) November 20, 1993 through January 1, 1994; (4) November 1, 1994 through November 21, 1994; (5) November 1, 1995 through November 16, 1995; and (6) November 1, 1996 through November 5, 1996 and November 15, 1996 through November 27, 1996.	3 of the 6 seasons beginning on: (1) November 15, 1991 through March 31, 1992; (2) November 15, 1992 through March 31, 1993; (3) November 1, 1993 through November 10, 1993, and November 20, 1993 through January 1, 1994; (4) November 1, 1994 through November 21, 1994; (5) November 1, 1995 through November 16, 1995; and (6) November 1, 1996 through November 5, 1996 and November 15, 1996 through November 27, 1996.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries.	4

TABLE 7 TO PART 680.—INITIAL ISSUANCE OF CRAB QS BY CRAB QS FISHERY—Continued

Column A: Crab QS Fisheries	*Column B:* Qualifying years for QS	*Column C:* Eligibility years for CVC and CPC QS	*Column D:* Recent participation seasons for CVC and CPC QS	*Column E:* Subset of qualifying years
4. Eastern Aleutian Islands golden king crab (EAG)	5 years of the 5-year base period beginning on: (1) September 1, 1996 through December 25, 1996; (2) September 1, 1997 through November 24, 1997; (3) September 1, 1998 through November 7, 1998; (4) September 1, 1999 through October 25, 1999; and (5) August 15, 2000 through September 24, 2000.	3 years of the 5-year base period beginning on: (1) September 1, 1996 through December 25, 1996; (2) September 1, 1997 through November 24, 1997; (3) September 1, 1998 through November 7, 1998; (4) September 1, 1999 through October 25, 1999; and (5) August 15, 2000 through September 25, 2000.	(1) September 1, 1999 through October 25, 1999. (2) August 15, 2000 through September 24, 2000. (3) August 15, 2001 through September 10, 2001.	5
5. Pribilof red king and blue king crab (PIK)	4 years of the 5-year period beginning on: (1) September 15, 1994 through September 21, 1994; (2) September 15, 1995 through September 22, 1995; (3) September 15, 1996 through September 26, 1996; (4) September 15, 1997 through September 29, 1997; and (5) September 15, 1998 through September 28, 1998.	3 years of the 5-year period beginning on: (1) September 15, 1994 through September 21, 1994; (2) September 15, 1995 through September 22, 1995; (3) September 15, 1996 through September 26, 1996; (4) September 15, 1997 through September 29, 1997; and (5) September 15, 1998 through September 28, 1998.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries, except that persons applying for an allocation to receive QS based on legal landings made aboard a vessel less than 60' LOA at the time of harvest are exempt from this requirement.	4
6. St. Matthew blue king crab (SMB)	4 years of the 5-year period beginning on: (1) September 15, 1994 through September 22, 1994; (2) September 15, 1995 through September 20, 1995; (3) September 15, 1996 through September 23, 1996; (4) September 15, 1997 through September 22, 1997; and (5) September 15, 1998 through September 26, 1998.	3 years of the 5-year period beginning on: (1) September 15, 1994 through September 22, 1994; (2) September 15, 1995 through September 20, 1995; (3) September 15, 1996 through September 23, 1996; (4) September 15, 1997 through September 22, 1997; and (5) September 15, 1998 through September 26, 1998.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries	4
7. Western Aleutian Islands golden king crab (WAG)	5 of the 5 seasons beginning on: (1) September 1, 1996 through August 31, 1997; (2) September 1, 1997 through August 21, 1998; (3) September 1, 1998 through August 31, 1999; (4) September 1, 1999 through August 14, 2000; and (5) August 15, 2000 through March 28, 2001.	3 of the 5 seasons beginning on: (1) September 1, 1996 through August 31, 1997; (2) September 1, 1997 through August 31, 1998; (3) September 1, 1998 through August 31, 1999; (4) September 1, 1999 through August 14, 2000; and (5) August 15, 2000 through March 28, 2001.	(1) September 1 1999 through August 14, 2000. (2) August 15, 2000 through March 28, 2001. (3) August 15 2001 through March 30, 2002.	5

TABLE 7 TO PART 680.—INITIAL ISSUANCE OF CRAB QS BY CRAB QS FISHERY—Continued

Column A: Crab QS Fisheries	*Column B:* Qualifying years for QS	*Column C:* Eligibility years for CVC and CPC QS	*Column D:* Recent participation seasons for CVC and CPC QS	*Column E:* Subset of qualifying years
8. Western Aleutian Islands red king crab (WAI)	3 of the 4 seasons beginning on: (1) November 1, 1992 through January 15, 1993; (2) November 1, 1993 through February 15, 1994; (3) November 1, 1994 through November 28, 1994; and (4) November 1, 1995 through February 13, 1996.	3 of the 4 seasons beginning on: 3 of the 4 seaons beginning on: (1) November 1, 1992 through January 15, 1993; (2) November 1, 1995 through February 15, 1994; (3) November 1, 1994 through November 28, 1994; and (4) November 1, 1995 through February 13, 1996.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea snow crab, or Bristol Bay red king crab fishiers.	3

TABLE 8 TO PART 680.—INITIAL QS AND PQS POOL FOR EACH CRAB QS FISHERY

Crab QS fishery	Initial QS pool	Initial PQS pool
BBR—Bristol Bay red king crab	400,000,000	400,000,000
BSS—Bering Sea snow crab (*C. opilio*)	1,000,000,000	1,000,000,000
BST—Bering Sea Tanner crab (*C. bairdi*)	200,000,000	200,000,000
EAG—Eastern Aleutian Islands golden king crab	10,000,000	10,000,000
PIK—Pribilof Islands red and blue king crab	30,000,000	30,000,000
SMB—St. Matthew blue king crab	30,000,000	30,000,000
WAG—Western Aleutian Islands golden king crab	40,000,000	40,000,000
WAI—Western Aleutian Islands red king crab	60,000,000	60,000,000

TABLE 9 TO PART 680.—INITIAL ISSUANCE OF CRAB PQS BY CRAB QS FISHERY

Column A: For each crab QS fishery	*Column B:* The Regional Administrator shall calculate PQS for any qualified person based on that person's total legal purchase of crab in each of the crab QS fisheries for any . . .
Bristol Bay red king crab (BBR)	3 years of the 3-year QS base period beginning on: (1) November 1, 1997 through November 5, 1997; (2) November 1, 1998 through November 6, 1998; and (3) October 15, 1999 through October 20, 1999.
Bering Sea snow crab (BSS)	3 years of the 3-year period beginning on: (1) January 15, 1997 through March 21, 1997; (2) January 15, 1998 through March 21, 1998; and (3) January 15, 1999 through March 22, 1999.
Bering Sea Tanner crab (BST)	Equivalent to 50 percent of the total legally processed crab in the Bering Sea snow crab fishery during the qualifying years established for that fishery, and 50 percent of the total legally processed crab in the Bristol Bay red king crab fishery during the qualifying years established for that fishery.
Eastern Aleutian Island golden king crab (EAG)	4 years of the 4-year base period beginning on: (1) September 1, 1996 through December 25, 1996; (2) September 1, 1997 though November 24, 1997; (3) September 1, 1998 through November 7, 1998; and (4) September 1, 1999 through October 25, 1999.
Pribilof Islands red and blue king crab (PIK)	3 years of the 3-year period beginning on: (1) September 15, 1996 through September 26, 1996; (2) September 15, 1997 through September 29, 1997; and (3) September 15, 1998 through September 28, 1998.
St. Matthew blue king crab (SMB)	3 years of the 3-year period beginning on: (1) September 15, 1996 through September 23, 1996; (2) September 15, 1997 through September 22, 1997; and (3) September 15, 1998 through September 26, 1998.
Western Aleutian Island golden king crab (WAG)	4 years of the 4-year base period beginning on: (1) September 1, 1996 through August 31, 1997; (2) September 1, 1997 though August 31, 1998; (3) September 1, 1998 through August 31, 1999; and (4) September 1, 1999 through August 14, 2000.
Western Aleutian Island red king crab (WAI)	Equivalent to the total legally processed crab in the Western Aleutian Islands golden (brown) king crab fishery during the qualifying years established for that fishery.

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Federal Register

Wednesday,
March 2, 2005

Part III

Nuclear Regulatory Commission

Notice of Opportunity To Comment on Model Safety Evaluation on Technical Specification Improvement To Modify Requirements Regarding the Addition of LCO 3.4.[17] on Steam Generator Tube Integrity Using the Consolidated Line Item Improvement Process; Notice

NUCLEAR REGULATORY COMMISSION

Notice of Opportunity To Comment on Model Safety Evaluation on Technical Specification Improvement To Modify Requirements Regarding the Addition of LCO 3.4.[17] on Steam Generator Tube Integrity Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model safety evaluation (SE) relating to the addition of a steam generator (SG) tube integrity specification to technical specifications (TS). The NRC staff has also prepared a model no-significant-hazards-consideration (NSHC) determination relating to this matter. The purpose of these models is to permit the NRC to efficiently process amendments that propose to add an LCO 3.4.[17] that requires that SG tube integrity be maintained and requires that all SG tubes that satisfy the repair criteria be plugged or repaired in accordance with the Steam Generator Program. Licensees of nuclear power reactors to which the models apply could then request amendments, confirming the applicability of the SE and NSHC determination to their reactors. The NRC staff is requesting comment on the model SE and model NSHC determination prior to announcing their availability for referencing in license amendment applications.

DATES: The comment period expires April 1, 2005. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted either electronically or via U.S. mail. Submit written comments to Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Copies of comments received may be examined at the NRC's Public Document Room, 11555 Rockville Pike (Room O–1F21), Rockville, Maryland. Comments may be submitted by electronic mail to *CLIIP@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Tom Boyce, Mail Stop: O–12H4, Division of Inspection Program Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–0184.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, ''Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for Power Reactors,'' was issued on March 20, 2000. The consolidated line item improvement process (CLIIP) is intended to improve the efficiency of NRC licensing processes by processing proposed changes to the standard technical specifications (STS) in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on a proposed change to the STS after a preliminary assessment by the NRC staff and a finding that the change will likely be offered for adoption by licensees. This notice solicits comment on a proposed change that requires that SG tube integrity be maintained and requires that all SG tubes that satisfy the repair criteria be plugged or repaired in accordance with the Steam Generator Program. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or announce the availability of the change for adoption by licensees. Licensees opting to apply for this TS change are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable rules and NRC procedures.

This notice involves the addition of LCO 3.4.[17] to the TS which requires that SG tube integrity be maintained and requires that all SG tubes that satisfy the repair criteria be plugged or repaired in accordance with the Steam Generator Program. This change was proposed for incorporation into the standard technical specifications by the owners groups participants in the Technical Specification Task Force (TSTF) and is designated TSTF–449. TSTF–449 can be viewed on the NRC's Web page at *http://www.nrc.gov/reactors/operating/licensing/techspecs.html.*

Applicability

This proposal to modify technical specification requirements by the addition of LCO 3.4.[17], as proposed in TSTF–449, is applicable to all licensees who have adopted or will adopt, in conjunction with the proposed change, technical specification requirements for a Bases control program consistent with the TS Bases Control Program described in Section 5.5 of the applicable vendor's STS.

To efficiently process the incoming license amendment applications, the staff requests that each licensee applying for the changes proposed in TSTF–449 include Bases for the proposed TS consistent with the Bases proposed in TSTF–449. In addition, licensees that have not adopted requirements for a Bases control program by converting to the improved STS or by other means are requested to include the requirements for a Bases control program consistent with the STS in their application for the proposed change. The need for a Bases control program stems from the need for adequate regulatory control of some key elements of the proposal that are contained in the proposed Bases for LCO 3.4.[17]. The staff is requesting that the Bases be included with the proposed license amendments in this case because the changes to the TS and the changes to the associated Bases form an integral change to a plant's licensing basis. To ensure that the overall change, including the Bases, includes appropriate regulatory controls, the staff plans to condition the issuance of each license amendment on the licensee's incorporation of the changes into the Bases document and on requiring the licensee to control the changes in accordance with the Bases Control Program. The CLIIP does not prevent licensees from requesting an alternative approach or proposing the changes without the requested Bases and Bases control program. However, deviations from the approach recommended in this notice may require additional review by the NRC staff and may increase the time and resources needed for the review.

Public Notices

This notice requests comments from interested members of the public within 30 days of the date of publication in the **Federal Register**. After evaluating the comments received as a result of this notice, the staff will either reconsider the proposed change or announce the availability of the change in a subsequent notice (perhaps with some changes to the safety evaluation or the proposed no significant hazards

consideration determination as a result of public comments). If the staff announces the availability of the change, licensees wishing to adopt the change must submit an application in accordance with applicable rules and other regulatory requirements. For each application the staff will publish a notice of consideration of issuance of amendment to facility operating licenses, a proposed no significant hazards consideration determination, and a notice of opportunity for a hearing. The staff will also publish a notice of issuance of an amendment to an operating license to announce the addition of the steam generator tube integrity requirements for each plant that receives the requested change.

Proposed Safety Evaluation

U.S. Nuclear Regulatory Commission; Office of Nuclear Reactor Regulation; Consolidated Line Item Improvement; Technical Specification Task Force (TSTF) Change TSTF–449 Revision 3; Steam Generator Tube Integrity

1.0 Introduction

By application dated [Date], [Licensee] (the licensee) requested changes to the Technical Specifications (TS) for [facility] concerning the maintaining of steam generator (SG) tube integrity. This amendment request is the culmination of NRC and industry efforts since the mid-1990s to develop a programmatic, largely performance-based regulatory framework for ensuring SG tube integrity. In letters dated March 14 and September 9, 2003, October 7, 2004, and January 14, 2005, the Technical Specification Task Force (TSTF) proposed requirements for steam generator tube integrity and changes to the steam generator program in the standard technical specifications (STS) (NUREGs 1430—1432) on behalf of the industry. This proposed change is designated TSTF–449.

The scope of the TS amendment request includes:

a. Revised Table of Contents
b. Revised TS definition of LEAKAGE
c. Revised TS 3.4.13 and TS Bases B 3.4.13, ''RCS [Reactor Coolant System] Operational LEAKAGE''
d. New TS 3.4.[17] and new TS Bases B 3.4.[17], ''Steam Generator (SG) Tube Integrity''
e. Revised TS 5.5.9, ''Steam Generator (SG) Program''
f. Revised TS 5.6.9, ''Steam Generator Tube Inspection Report''
g. Revised TS Bases B 3.4.4, ''RCS Loops—Modes 1 and 2''
h. Revised TS Bases B 3.4.5, ''RCS Loops—Mode 3''
i. Revised TS Bases B 3.4.6, ''RCS Loops—Mode 4''
j. Revised TS Bases B 3.4.7, ''RCS Loops—Mode 5''

The proposed new TS 3.4.[17], ''Steam Generator (SG) Tube Integrity,'' in conjunction with the proposed revisions to administrative TS 5.5.9, ''Steam Generator (SG) Program,'' would establish a new programmatic, largely performance-based framework for ensuring SG tube integrity. Proposed TS Bases B 3.4.[17] documents the licensee's bases for this framework. Proposed TS 3.4.[17] would establish new limiting conditions for operation (LCOs) related to SG tube integrity; namely, (1) SG tube integrity shall be maintained, and (2) all SG tubes satisfying the tube repair criteria (*i.e.*, tubes with measured flaw sizes exceeding the tube repair criteria) shall be plugged [or repaired] in accordance with the SG Program. TS 3.4.[17] would include surveillance requirements (SRs) to verify that the above LCOs are met in accordance with the SG Program.

Proposed administrative TS 5.5.9, ''Steam Generator (SG) Program,'' would replace the current administrative TS 5.5.9, ''Steam Generator Tube Surveillance Program.'' This revised TS would require establishing and implementing a program that ensures that SG tube integrity is maintained. Tube integrity is defined in the proposed TS in terms of specified performance criteria for structural and leakage integrity. TS 5.5.9 would also provide for monitoring the condition of the tubes relative to these performance criteria during each SG tube inspection and for ensuring that tube integrity is maintained between scheduled inspections of the SG tubes. TS 5.5.9 would retain the currently specified tube repair limit(s).

The proposed changes to TS 5.6.9, ''Steam Generator (SG) Tube Inspection Report,'' revise the existing requirements for, and the contents of, the SG tube inspection report consistent with the proposed revisions to TS 5.5.9. The current requirement for a 12-month report would be changed to a 180-day report.

The proposed amendment revises the TS definition of LEAKAGE. Currently, the TS definition of LEAKAGE refers to ''SG LEAKAGE'' in the definition of Identified LEAKAGE and Pressure Boundary Leakage. ''SG LEAKAGE'' is not used in the TS or BASES. Therefore, the more appropriate term ''primary to secondary LEAKAGE'' is used in the TS definition of LEAKAGE.

[**Note to reviewers:** With respect to the following paragraph, some plants may have a less restrictive limit than the 150 gpd per SG. If so, the amendment should propose changing this to 150 gpd, and this will need to be acknowledged in the SE.]

The proposed amendment includes proposed revisions to TS 3.4.13 and its bases, ''RCS Operational LEAKAGE.'' The proposed changes would delete the current LCO limit of [576] gallons per day (gpd) for total primary-to-secondary leakage through all SGs, [but would retain the current LCO limit of 150 gpd for primary-to-secondary leakage from any one SG]. Retaining this latter requirement effectively ensures that total primary-to-secondary leakage through all the SGs is not allowed to exceed [600] gpd. (Note, [Plant Name, Units 1 and 2], are [four]-loop plants.) The proposed changes would also revise the TS 3.4.13 conditions and SRs to better clarify the requirements related to primary-to-secondary leakage.

Finally, the TS Bases for TS [3.4.4,] 3.4.5, 3.4.6, and 3.4.7 would be revised to eliminate the reference to the Steam Generator Tube Surveillance Program as the method for ensuring SG OPERABILITY.

2.0 Regulatory Evaluation

2.1 Current Licensing Basis/SG Tube Integrity

The SG tubes in pressurized water reactors (PWRs) have a number of important safety functions. These tubes are an integral part of the reactor coolant pressure boundary (RCPB) and, as such, are relied upon to maintain primary system pressure and inventory. As part of the RCPB, the SG tubes are unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system and are relied upon to isolate the radioactive fission products in the primary coolant from the secondary system. In addition, the SG tubes are relied upon to maintain their integrity to be consistent with the containment objectives of preventing uncontrolled fission product release under conditions resulting from core damage severe accidents.

Title 10 of the Code of Federal Regulations (10 CFR) establishes the fundamental regulatory requirements with respect to the integrity of the steam generator tubing. Specifically, the General Design Criteria (GDC) in Appendix A to 10 CFR Part 50 states that the RCPB shall have ''an extremely low probability of abnormal leakage * * * and gross rupture'' (GDC 14), ''shall be designed with sufficient margin'' (GDC 15 and 31), shall be of ''the highest quality standards possible''

(GDC 30), and shall be designed to permit ''periodic inspection and testing * * * to assess * * * structural and leak tight integrity'' (GDC 32). To this end, 10 CFR 50.55a specifies that components which are part of the RCPB must meet the requirements for Class 1 components in Section III of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code). Section 50.55a further requires, in part, that throughout the service life of a PWR facility, ASME Code Class 1 components meet the requirements, except design and access provisions and pre-service examination requirements, in Section XI, ''Rules for Inservice Inspection [ISI] of Nuclear Power Plant Components,'' of the ASME Code, to the extent practical. This requirement includes the inspection and repair criteria of Section XI of the ASME Code.

In the 1970s, Section XI requirements pertaining to ISI of SG tubing were augmented by additional SG tube SRs in the TSs. Paragraph (b)(2)(iii) of 10 CFR, 50.55a, states that where TS SRs for SGs differ from those in Article IWB–2000 of Section XI of the ASME Code, the ISI program shall be governed by the TSs.

The existing plant TSs include LCOs and accompanying SRs and action statements pertaining to the integrity of the SG tubing. SG operability in accordance with the SG tube surveillance program is necessary to satisfy the LCOs governing RCS loop operability, as stated in the accompanying TS Bases. The LCO governing RCS Operational LEAKAGE includes limits on allowable primary-to-secondary LEAKAGE through the SG tubing. Accompanying SRs require verification that RCS operational LEAKAGE is within limits every 72 hours by an RCS water inventory balance and that SG tube integrity is in accordance with the SG tube surveillance program. The SG tube surveillance program requirements are contained in the administrative TSs. These administrative TSs state that the SGs are to be determined OPERABLE after the actions required by the surveillance program are completed.

Under the plant TS SG surveillance program requirements, licensees are required to monitor the condition of the steam generator tubing and to perform repairs, as necessary. Specifically, licensees are required by the plant TSs to perform periodic ISIs and to remove from service, by plugging, all tubes found to contain flaws with sizes exceeding the acceptance limit, termed ''plugging limit'' (old terminology) or ''tube repair criteria'' (new terminology). The frequency and scope of the inspection and the tube repair limits are specified in the plant TSs.

The tube repair limits in the TSs were developed with the intent of ensuring that degraded tubes (1) maintain factors of safety against gross rupture consistent with the plant design basis (*i.e.*, consistent with the stress limits of the ASME Code, Section III) and (2) maintain leakage integrity consistent with the plant licensing basis while, at the same time, allowing for potential flaw size measurement error and flaw growth between SG inspections.

As part of the plant licensing basis, applicants for PWR licenses are required to analyze the consequences of postulated design basis accidents (DBAs) such as an SG tube rupture (SGTR) and main steam line break (MSLB). These analyses consider the primary-to-secondary leakage through the tubing which may occur during these events and must show that the offsite radiological consequences do not exceed the applicable limits of 10 CFR 100 for offsite doses, GDC–19 criteria for control room operator doses, or some fraction thereof as appropriate to the accident, or the NRC approved licensing basis (*e.g.*, a small fraction of these limits).

2.2 10 CFR 50.36

In 10 CFR 50.36, the Commission established its regulatory requirements related to the content of TSs. In doing so, the Commission emphasized those matters related to the preventing of accidents and mitigating their consequences. As recorded in the Statements of Consideration, Technical Specifications for Facility Licenses: Safety Analysis Reports (33 FR 18610, December 17, 1968), the Commission noted that applicants are expected to incorporate into their TSs those items that are directly related to maintaining the integrity of the physical barriers designed to contain radioactivity. Pursuant to 10 CFR 50.36, TSs are required to include items in five specific categories related to station operation. Specifically, those categories include: (1) Safety limits, limiting safety system settings, and limiting control settings; (2) limiting conditions for operation (LCO); (3) surveillance requirements (SRs); (4) design features; and (5) administrative controls. However, the rule does not specify the particular requirements to be included in a plant's TS. The licensee's application contains proposed LCOs, SRs and administrative controls involving steam generator integrity, an important element of the physical barriers designed to contain radioactivity.

Additionally, 10 CFR 50.36(c)(2)(ii) sets forth four criteria to be used in determining whether an LCO is required to be included in the TS for a certain item. These criteria are as follows:

1. Installed instrumentation that is used to detect, and indicate in the control room, a significant abnormal degradation of the reactor coolant pressure boundary.
2. A process variable, design feature, or operating restriction that is an initial condition of a design-basis accident or transient analysis that assumes either the failure of or presents a challenge to the integrity of a fission product barrier.
3. A structure, system, or component that is part of the primary success path and which functions or actuates to mitigate a design-basis accident or transient that either assumes the failure of or presents a challenge to the integrity of a fission product barrier.
4. A structure, system or component which operating experience or probabilistic risk assessment has shown to be significant to public health and safety.

The NRC staff has reviewed the proposed changes to ensure that these changes conform with 10 CFR 50.36 as discussed herein.

2.3 Background—Technical Specification Amendment Request

The current TS requirements for inspection and repair of SG tubing date to the mid-1970s and define a prescriptive approach for ensuring tube integrity. This prescriptive approach involves inspection of the tubing at specified intervals, implementation of specified tube inspection sampling plans, and repair or removal from service by plugging all tubes found by inspection to contain flaws in excess of specified flaw repair criteria. However, as evidenced by operating experience, the prescriptive approach defined in the TSs is not sufficient in-and-of-itself to ensure that tube integrity is maintained. For example, in cases of low to moderate levels of degradation, the TSs require that only 3 to 21 percent of the tubes be inspected, irrespective of whether the inspection results indicate that additional tubes may need to be inspected to reasonably ensure that tubes with flaws that may exceed the tube repair criteria, or that may impair tube integrity, are detected. In addition, the TSs (and ASME Code, Section XI) do not explicitly address the inspection methods to be employed for different tube degradation mechanisms or tube locations, nor are the specific objectives to be fulfilled by the selected methods explicitly defined. Also, incremental flaw growth between inspections can, in

many instances, exceed what is allowed in the specified tube repair criteria. In such cases, the specified inspection frequencies may not ensure reinspection of a tube before its integrity is impaired. In short, the current TS SRs do not require licensees to actively manage their SG surveillance programs so as to provide reasonable assurance that tube integrity is maintained.

In view of the shortcomings of the current TS requirements, licensees experiencing significant degradation problems have frequently found it necessary to implement measures beyond minimum TS requirements to ensure that adequate tube integrity is being maintained. Until the 1990s, these measures tended to be ad hoc. By letter dated December 16, 1997 (Reference 1), the Nuclear Energy Institute (NEI) provided NRC with a copy of NEI 97–06 (Original), ''Steam Generator Program Guidelines,'' and informed the NRC of the following formal industry position.

> Each licensee will evaluate its existing steam generator program and, where necessary, revise and strengthen program attributes to meet the intent of the guidance provided in NEI 97–06, ''Steam Generator Program Guidelines,'' no later than the first refueling outage starting after January 1, 1999.

The stated objectives of this initiative were to have a clear commitment from utility executives to follow industry SG related guidelines developed through Electric Power Research Institute (EPRI) to assure a unified industry approach to emerging SG issues and to apply tube integrity performance criteria in conjunction with the performance-based philosophy of the maintenance rule, 10 CFR 50.65. Reference 2 is the most recent update to NEI 97–06 available to the NRC staff. NEI 97–06 provides general, high-level guidelines for a programmatic, performance-based approach to ensuring SG tube integrity. NEI 97–06 references a number of detailed EPRI guideline documents for programmatic details. Subsequently, the NRC staff had extensive interaction with the industry to resolve NRC staff concerns with this industry initiative and to identify needed changes to the plant TSs to ensure that tube integrity is maintained (Reference 3).

Ultimately, in consideration of the performance-based objective of this initiative, the NRC staff determined it was not necessary for the NRC staff to formally review or endorse the NEI 97–06 guidelines or the EPRI guideline documents referenced by NEI 97–06. The subject application for changes to the TS is programmatically consistent with the industry's NEI 97–06 initiative. As discussed in this safety evaluation, these changes will ensure that an SG program that provides reasonable assurance that SG tube integrity will be maintained will be implemented.

3.0 Evaluation

3.1 TS 3.4.[17], ''Steam Generator (SG) Tube Integrity''

The current TS establishes an operability requirement for the SG tubing; namely, the tubes shall be determined OPERABLE after completion of the actions defined in the SG tube surveillance program (TS 5.5.9). In addition, this surveillance program (and SG operability) is directly invoked by TS 3.4.13, which contains the LCO relating to RCS leakage. However, these specifications do not directly require that tube integrity be maintained. Instead, they require implementation of an SG tube surveillance program, which is assumed to ensure tube integrity, but, as discussed above, may not depending on the circumstances of degradation at a plant.

To address this shortcoming, the [Name of plant] TS amendment package includes a proposed new specification, TS 3.4.[17], ''Steam Generator (SG) Tube Integrity,'' which includes a new LCO requirement and accompanying conditions, required actions, completion times, and SRs. The new LCO is applicable in MODES 1, 2, 3, and 4 and requires: (1) SG tube integrity shall be maintained, *AND* 2) all SG tubes satisfying the tube repair criteria shall be plugged [or repaired] in accordance with the Steam Generator Program (specified in the proposed TS 5.5.9). This LCO supplements the LCO in TS 3.4.13 to directly make tube integrity an operating restriction. This is consistent with Criterion 2 of 10 CFR 50.36(c)(2)(ii) since the assumption of tube integrity as an initial condition is implicit in DBA analyses (with the exception of analysis of a design-basis SGTR where one tube is assumed not to have structural integrity) and is acceptable to the NRC staff.

[**Note to reviewers:** Inclusion of the words ''or repaired'' is acceptable only in cases where the plant TS already include provision for tube repair methods. In general, such provisions do not exist for plants with replacement SGs.]

Proposed SR 3.4.[17].1 would require that SG tube integrity be verified in accordance with the Steam Generator Program, which is described in proposed revisions to TS 5.5.9. The required frequency for this surveillance would also be in accordance with the SG Program, thus meeting the requirements of 10 CFR 50.36(c)(3). The revised TS 5.5.9 would define tube integrity in terms of satisfying tube integrity performance criteria for tube structural integrity and leakage integrity as specified therein. SR 3.4.[17].1 would replace the existing surveillance requirement (SR 3.4.13.2) in the RCS Operational LEAKAGE specification (TS 3.4.13), which provides that tube integrity be verified in accordance with the SG surveillance program as provided in the current TS 5.5.9. The proposed SR improves upon the current SR in that it refers to a program that is directly focused on maintaining tube integrity rather than on implementing a prescriptive surveillance program which, as discussed above, may not be sufficient to ensure tube integrity is maintained. Proposed SR 3.4.[17].2 would require verification that each inspected SG tube that satisfies the tube repair criteria is plugged [or repaired] in accordance with the SG Program. The tube repair criteria are contained in the SG Program. The required frequency for SR 3.4.[17].2 is prior to entering MODE 4 following a SG tube inspection. The NRC staff concludes that SR 3.4.[17].1 and SR 3.4.[17].2 are sufficient to determine whether the proposed LCO is met, meet the requirements of 10 CFR 50.36(c)(3), and are acceptable.

The licensee has proposed conditions, required actions, and completion times for the new LCO 3.4.[17] as shown in Table 1. The proposed TS 3.4.[17] allows separate condition entry for each SG tube.

TABLE 1.—TS 3.4.[17] ACTIONS

Condition	Required action	Completion time
A. One or more SG tubes satisfying the tube repair criteria and not plugged [or repaired] in accordance with the Steam Generator Program.	A.1 Verify tube integrity of the affected tube(s) is maintained until the next inspection. *AND*.	7 days.

TABLE 1.—TS 3.4.[17] ACTIONS—Continued

Condition	Required action	Completion time
	A.2 Plug [or repair] the affected tube(s) in accordance with the Steam Generator Program.	Prior to entering MODE 4 following the next refueling outage or SG tube inspection.
B. Required Action and associated Completion Time of Condition A not met. *OR* SG tube integrity not maintained.	B.1 Be in MODE 3. *AND*	6 hours.
	B.2 Be in MODE 5	36 hours.

Should SG tube integrity be found by the SG Program not to be maintained, Required Actions B.1 and B.2 would require that the plant be in MODE 3 within 6 hours and MODE 5 within 36 hours, respectively. These required actions and completion times are consistent with (1) the general requirements in TS 3.0.3 for failing to meet an LCO and (2) the requirements of TS 3.4.13 when the LCO on primary to secondary leakage rate is not met. The NRC staff concludes that these required actions and completion times provide adequate remedial measures should SG tube integrity be found not to be maintained and are acceptable to the NRC staff.

Condition A of proposed TS 3.4.[17] addresses the condition where one or more tubes satisfying the tube repair criteria are inadvertently not plugged [or repaired] in accordance with the SG Program. Under Required Action A.1, the licensee would be required to verify within 7 days that tube integrity of the affected tubes is maintained until the next inspection. The accompanying Bases state that the tube integrity determination would be based on the estimated condition of the tube at the time the situation is discovered and the estimated growth of the degradation prior to the next inspection. The NRC staff notes that details of how this assessment would be performed are not included in proposed TS 3.4.[17] or 5.5.9. The NRC staff finds this to be consistent with having performance-based requirements, finds that the performance criteria (*i.e.*, performance objectives) for assessing tube integrity are clearly defined (in TS 5.5.9), and finds that it is appropriate that the licensee have the flexibility to determine how best to perform this assessment based on what information is and is not available concerning the circumstances of the subject flaw. The proposed 7 days allowed to complete the assessment ensures that the risk increment associated with operating with tubes in this condition will be very small. Should the assessment reveal that tube integrity cannot be maintained until the next scheduled inspection or if the assessment is not completed in 7 days, Condition B applies, leading to Required Actions B.1 and B.2, which are evaluated above. Finally, if Required Action A.1 successfully verifies that tube integrity is being maintained until the next inspection, Required Action A.2 would require that the subject tube be plugged [or repaired] in accordance with the SG Program prior to entering MODE 4 after the next refueling outage or SG inspection. Based on the above, the NRC staff concludes that the proposed LCO and accompanying ACTIONS related to failure to plug [or repair] a tube that satisfies the tube repair criteria to be acceptable.

The licensee has proposed administrative changes to the TS Title page and Bases supporting the proposed new TS 3.4.[17]. Although the TS Bases are controlled under the auspices of 10 CFR 50.59 and TS 5.5.14, TS Bases Control Program, the NRC staff finds the proposed changes to the proposed TS 3.4.[17] Bases to be acceptable.

3.2 Steam Generator Operability

The TS Bases for [TS 3.4.4, RCS Loops—MODES 1 and 2,] TS 3.4.5, RCS Loops—MODE 3, and TS 3.4.6, RCS Loops—MODE 4, define an OPERABLE RCS Loop as consisting of an OPERABLE reactor coolant pump (RCP) in operation providing forced flow for heat transport and an OPERABLE SG in accordance with the Steam Generator Tube Surveillance Program. The Bases for TS 3.4.7, RCS Loops—MODE 5, Loops Filled, define an OPERABLE SG as a SG that can perform as a heat sink via natural circulation when it has an adequate water level and is OPERABLE in accordance with the Steam Generator Tube Surveillance Program. Although the TS Bases are controlled under the auspices of 10 CFR 50.59 and TS 5.5.14, TS Bases Control Program, the licensee has proposed to delete the phrases, ''in accordance with the Steam Generator Tube Surveillance Program,'' from TS [B3.4.4], B3.4.5, and B3.4.6, and ''and is OPERABLE in accordance with the Steam Generator Tube Surveillance Program,'' from TS B3.4.7.

With the deletion of these phrases, an OPERABLE SG will be defined under the definition of OPERABLE—OPERABILITY defined in TS 1.1 and stated below:

> A system, subsystem, train, component, or device shall be OPERABLE or have OPERABILITY when it is capable of performing its specified safety function(s) and when all necessary attendant instrumentation, controls, normal or emergency electrical power, cooling and seal water, lubrication, and other auxiliary equipment that are required for the system, subsystem, train, component, or device to perform its specified safety function(s) are also capable of performing their related support function(s).

The NRC staff has evaluated the proposed Bases changes. The current Bases refer to the SG Tube Surveillance Program for the requirements of an OPERABLE SG. The SG Tube Surveillance Program provided the controls for the ISI of SG tubes that was intended to ensure that the structural integrity of this portion of the RCS is maintained. Using the definition of OPERABLE—OPERABILITY expands the definition of an OPERABLE SG beyond maintaining structural integrity and is acceptable.

3.3 Proposed Administrative TS 5.5.9, ''Steam Generator Program''

The proposed Administrative TS 5.5.9, ''Steam Generator Program'' replaces the existing administrative TS 5.5.9, ''Steam Generator Tube Surveillance Program.'' The current TS 5.5.9 defines a prescriptive strategy for ensuring tube integrity consisting of tube inspections performed at specified intervals, with a specified inspection scope (tube inspection sample sizes), and with a specified tube acceptance limit for degraded tubing, termed ''tube repair criterion,'' beyond which the affected tubes must be plugged [or repaired]. The proposed TS 5.5.9 incorporates a largely performance-based strategy for ensuring tube integrity, requiring that a SG Program be established and implemented to ensure tube integrity is maintained. The proposed specification contains only a few details concerning how this is to be

accomplished, the intent being that the licensee will have the flexibility to determine the specific strategy to be employed to satisfy the required objective of maintaining tube integrity. However, as evaluated below, the NRC staff concludes that proposed TS 5.5.9 provides reasonable assurance that the SG Program will maintain tube integrity.

The proposed BASES for TS 3.4.[17] state that NEI 97–06 and its referenced EPRI guideline documents will be used to establish the content of the SG Program. The guidelines are industry-controlled documents and licensee SG programs may deviate from these guidelines. Except as may be specifically invoked by the TSs, the NRC staff's evaluation herein takes no credit for any of the specifics in the guidelines.

3.3.1 Performance Criteria for SG Tube Integrity

Proposed TS 5.5.9 would require that SG tube integrity shall be maintained by meeting the performance criteria for tube structural integrity, accident induced leakage, and operational leakage as specified therein.

The NRC staff's criteria for evaluating the acceptability of these performance criteria are that meeting these criteria is sufficient to ensure that tube integrity is within the plant licensing basis and that meeting these criteria, in conjunction with implementation of the SG Program, ensures no significant increase in risk. These performance criteria must also be evaluated in the context of the overall SG Program such that if the performance criteria are inadvertently exceeded, the consequences will be tolerable before the situation is identified and corrected. In addition, the performance criteria must be expressed in terms of parameters that are measurable, directly or indirectly.

3.3.1.1 Structural Integrity Criterion. The proposed structural integrity criterion is as follows:

All inservice steam generator tubes shall retain structural integrity over the full range of normal operating conditions (including startup, operation in the power range, hot standby, cooldown, and all anticipated transients included in the design specification) and design basis accidents. This includes maintaining a safety factor of 3.0 against burst under normal steady state full power operation primary-to-secondary pressure differential and a safety factor of 1.4 against burst applied to design basis accident primary to secondary pressure differentials. Apart from the above requirements, additional loading conditions associated with design basis accidents, or combination of accidents in accordance with the design and licensing basis, shall also be evaluated to determine if the associated loads contribute significantly to burst or collapse. In the assessment of tube integrity, those loads that do significantly affect burst or collapse shall be determined and assessed in combination with the loads due to differential pressure with a safety factor of 1.2 on the combined primary loads and 1.0 on axial secondary loads.

The NRC staff has evaluated this proposed criterion for consistency with the safety factors embodied in the current licensing basis, specifically, the safety factors embodied in the TS tube repair criterion. The tube repair criterion typically specified in plant TSs is 40 percent of the initial tube wall thickness. This criterion is typically applicable to all tubing flaws found by inspection, except for certain flaw types at certain locations for which less restrictive repair criterion may be applicable (as specified in the TSs) and for certain sleeve repairs for which a more restrictive tube repair criterion may be specified. [For [plant name Units 1 and 2], the 40 percent tube repair criterion is the only such criterion and is applicable to all flaw types at all tube locations.]

[**Note to reviewers:** If plant TS already include an ARC, add a statement to the effect that in addition to the 40% tube repair criterion, the subject plant also has alternate repair criteria as discussed in Section 3.3.4 of this SE.]

In 1976 the NRC staff prepared RG 1.121 (Draft), ''Basis for Plugging Degraded PWR Steam Generator Tubes,'' (Reference 4) describing a technical basis for the development of tube repair criteria. This draft RG was issued for public comment, but was never finalized. Although not finalized, the RG is generally cited in licensee and industry documentation as the bases for the TS tube repair criterion in plant TSs. The draft RG includes the following with respect to safety factors:

a. Degraded tubing should retain a factor of safety against burst of not less than three under normal operating conditions.

b. Degraded tubing should not be stressed beyond the elastic range of the tube material during the full range of normal reactor operation. The draft regulatory guide also states that loadings associated with normal plant conditions, including startup, operation in the power range, hot standby, and cooldown, as well as all anticipated transients (*e.g.*, loss of electrical load, loss of off-site power) that are included in the design specifications for the plant, should not produce a primary membrane stress in excess of the yield stress of the tube material at operating temperature.

c. Degraded tubes should maintain a margin of safety against tube failure under postulated accidents consistent with the margin of safety determined by the stress limits specified in NB–3225 of Section III of the ASME Code. Note, NB–3225 specifies that the rules in Appendix F of Section III may be used for evaluating these loadings.

The ''safety factor of three'' criterion stems from Section III of the ASME Code which, in part, limits primary membrane stress under design conditions to one third of ultimate strength. The proposed structural integrity criterion would limit application of the ''safety factor of three'' criterion to those pressure loadings existing during normal full power, steady state operating conditions. Differential pressures under this condition are plant specific, ranging from 1250 psi to 1500 psi (Reference 5). However, differential pressure loadings can be considerably higher during normal operating transients, ranging to between 1600 psi to 2150 psi during plant heatup and cooldown (Reference 5). Given a factor of safety equal to three under normal full power conditions, the factor of safety during heatups and cooldowns can be as low as about two. The industry stated in a white paper (Reference 5) that it was not the intent of the 40 percent depth-based tube repair criterion to ensure a factor of safety of three for operating transients such as heatups and cooldowns. The industry stated that maintaining a safety factor of three for such transients would lead to a tube repair criterion less than the standard 40 percent criterion for many plants. The NRC staff has independently performed calculations that support the industry's contention that applying the ''safety factor of three'' criterion to the full range of normal operating conditions would lead to a tube repair criterion more restrictive than the 40 percent criterion that the NRC staff has accepted since the 1970s. The NRC staff concludes that the ''safety factor of three'' criterion for application to normal full power, steady state pressure differentials, as proposed by the licensee and the industry, is consistent with the safety margins implicit in existing TS tube repair criteria and, thus, is consistent with the current licensing basis.

Item b above from draft RG 1.121 is often referred to as the ''no yield'' criterion. The purpose of this criterion is to prevent permanent deformation of the tube to assure that degradation of the tube will not occur due to mechanical effects of the service condition. This is consistent with the ASME Code, Section III, stress limits,

which serve to limit primary membrane stress to less than yield. The proposed structural integrity criteria do not include this ''no yield'' criterion. The industry states in its white paper (Reference 5) that, if a tube satisfies the ''safety factor of three'' criterion at full power operating pressure differentials, the tube will generally satisfy the ''no yield'' criterion for the operating transient (*e.g.*, heatup and cooldown) pressure differentials. The white paper acknowledges that this may not be true for all plant-specific conditions and material properties. For this reason, NEI 97–06, Rev. 1, and the EPRI Steam Generator Integrity Assessment Guidelines state that, in addition to meeting the safety factor of three for normal steady state operation, the integrity evaluation shall verify that the primary pressure stresses do not exceed the yield strength for the full range of normal operating conditions. The white paper, which has been incorporated as part of the EPRI Steam Generator Integrity Assessment Guidelines, recommends that this be demonstrated for each plant using plant specific conditions and material properties.

The NRC staff concurs that the ''no yield'' criterion need not be specifically spelled out in the TS definition of the structural integrity criterion. The NRC staff finds that the appropriate focus of the TS criteria should be on preventing burst. The NRC staff calculations confirm that the proposed ''safety factor of three'' criterion bounds or comes close to bounding the ''no yield'' criterion for most of the cases investigated. This is not absolute, however. For once-through steam generators (OTSGs), the NRC staff noted a case where elastic hoop stress in a uniformly thinned tube could exceed the yield strength by 20 percent under heatup and cooldown conditions and still satisfy the ''safety factor of three'' criterion against burst under normal steady state, full power operating conditions. Such a tube would still retain a factor of safety of two against burst under heatup and cooldown conditions. The amount of plastic strain induced would be limited to between 1 and 2 percent based on typical strain hardening characteristics of the material. This is quite small compared to cold working associated with fabrication of tube u-bends and tube expansions. Operating experience shows that this level of plastic strain (*i.e.*, permanent strain caused by exceeding the yield stress) has not adversely affected the stress corrosion cracking resistance of OTSG tubing relative to that expected for non-plastically strained tubing. Thus, the NRC staff concludes that the ''safety factor of three'' criterion is sufficient to limit plastic strains to values that will not contribute significantly to degradation of the tubing and that the ''no yield'' criterion need not be specifically spelled out in the structural integrity performance criterion.

The proposed safety factor of 1.4 against burst applied to design basis primary-to-secondary pressure differentials derives from the 0.7 times ultimate strength limit for primary membrane stress in the ASME Code, Appendix F, F–1331.1(a). This criterion is consistent with the stress limit criterion used to develop the standard 40 percent tube repair criterion in the TSs and with the safety factor criteria used in the derivation of alternate tube repair criteria in plant TSs, such as the voltage based criterion for outer-diameter stress corrosion cracking. Thus, the criterion is consistent with the current licensing basis and is acceptable.

Apart from differential pressure loadings, other types of loads may also contribute to burst. Examples of such loads include bending moments on the tubes due to flow induced vibration, earthquake, and loss-of-coolant accident (LOCA) rarefaction waves. For OTSGs, axial loads are induced in the tubes due to pressure loadings acting on the SG shell and tube sheets and due to differential thermal expansion between the tubes and the SG shell. Such non-pressure loads generally produce negligible primary stress during normal operating conditions from the standpoint of influencing burst pressure. In general, such non-pressure loads may be more significant under certain accident loadings depending on SG design, flaw location, and flaw orientation. Such non-pressure sources of primary stress under accident conditions were explicitly considered in the development of the 40 percent tube repair criterion relative to ASME Code, Appendix F, stress limits.

The proposed structural criterion requires that, apart from the safety-factor requirements applying to pressure loads, additional loads associated with DBAs, or combination of accidents in accordance with the design and licensing basis, shall also be evaluated to determine whether these loads contribute significantly to burst or collapse. The NRC staff notes that examples of such additional loads include bending moments during LOCA, MSLB, or safe shutdown earthquake (SSE) and axial, differential thermal loads. ''Combination of accidents'' refers to the fact that the design and licensing basis for many plants is that DBAs, such as LOCA and MSLB, are assumed to occur concurrently with SSE. Whereas ''burst'' is the failure mode of interest where primary-to-secondary pressure loads are dominant, ''collapse'' is a potential limiting failure mode (although an unlikely one, according to industry, based on a recent study (Reference 6)) for loads other than pressure loads. ''Collapse'' refers to the condition where the tube is not capable of resisting further applied loading without unlimited displacement. Although the occurrence of a collapsed tube or tubes would not necessarily lead to perforation of the tube wall, the consequences of tube collapse have not been analyzed and, thus, the NRC staff finds it both appropriate and conservative to ensure there is margin relative to such a condition.

Where non-pressure loads are determined to significantly contribute to burst or collapse, the proposed structural criterion requires that such loads be determined and assessed in combination with the loads due to pressure with a safety factor of 1.2 on the combined primary loads and 1.0 safety factor on axial secondary loads. The 1.2 safety factor for combined primary loads was derived from the ratio of burst or collapse load divided by allowable load from ASME Code for faulted conditions. Burst or collapse load was assumed to be equal to the material flow stress, assuming Code minimum yield and ultimate strength values and a flow stress coefficient of 0.5. Allowable load was determined from ASME Code, Section III, Appendix F, F–1331.3.a, which defines an allowable primary membrane plus bending load for service level d (faulted) conditions. The NRC staff finds this 1.2 safety factor acceptable. The proposed 1.0 safety factor for axial secondary loads goes beyond what is required by the design basis in Section III of the ASME Code, since Section III assumes that a one time application of such a load cannot lead to burst or collapse. However, this is not necessarily the case for tubes with circumferential cracks. The proposed safety factor criterion of 1.0 is conservative for loads that behave as secondary since it ignores the load relaxation effect associated with axial yielding before tube severance (burst) occurs.

Apart from being consistent with the current licensing basis, NRC risk studies have indicated that maintaining the performance criteria safety factors is important to avoiding undue risk, particularly risk associated with severe accident scenarios involving a fully

pressurized primary system and depressurized secondary system and where the tubes may heat to temperatures well above design basis values, significantly reducing the strength of the tubes (Reference 7).

Based on the above, the NRC staff finds that the proposed structural performance criterion is consistent with the margins of safety embodied in existing plant licensing bases. Exceeding this criterion is not likely to lead to consequences that are intolerable provided that such a condition is infrequent and that, if it occurs, it is promptly detected and corrected so as to ensure that risk is limited. Even if a tube should degrade to the point of rupture under normal operating conditions, such an occurrence is an analyzed condition with reasonable assurance that the radiological consequences will be acceptable. Finally, the structural performance criterion is expressed in terms of parameters that are measurable. Specifically, structural margins can be directly demonstrated through in situ pressure testing or can be calculated from burst prediction models using as input flaw size measurements obtained by inspection. Thus, the NRC staff finds the proposed structural performance criterion to be acceptable.

3.3.1.2 Accident Induced Leakage Criterion. The proposed accident induced leak rate criterion is as follows:

The primary-to-secondary accident induced leakage rate for any design basis accident, other than a SG tube rupture, shall not exceed the leakage rate assumed in the accident analysis in terms of total leakage rate for all SGs and leakage rate for an individual SG. Leakage is not to exceed [1 gpm] per SG [except for specific types of degradation at specific locations as described in paragraph c of the Steam Generator Program.]

This performance criterion for accident induced leak rate is consistent with leak rates assumed in the licensing basis accident analyses for purposes of demonstrating that the consequences of DBAs meet the limits in 10 CFR 100 for offsite doses, GDC 19 for control room operator doses, or some fraction thereof as appropriate to the accident, or the NRC-approved licensing basis (*e.g.*, a small fraction of these limits). This criterion does not apply to design basis SGTR accidents for which leakage corresponding to a postulated double ended rupture of a tube is assumed in the analysis. The proposed criterion ensures that from the standpoint of accident induced leakage the plant will be operated within its analyzed condition and is acceptable.

For certain severe accident sequences involving high primary side pressure and a depressurized secondary system (''high-dry'' condition), primary-to-secondary leakage may lead to more heating of the leaking tube than would be the case were it not leaking, thus increasing the potential for failure of that tube and a consequent large early release. The proposed [1.0 gpm] limit on total leakage from each SGs during DBAs (other than an SGTR) ensures that the potential for induced leakage during severe accidents will be maintained at a level that will not increase risk.

[**Note to reviewers:** Where the limit on total leakage is higher than 1 gpm for the component of leakage associated with implementation of previously approved ARCs for specific types of degradation and locations, the following sentences should be included in the SE.]

[However, the staff finds that this limit may be exceeded for the component of accident leakage associated with [degradation mechanism] located [degradation locations] and calculated in accordance with the associated, approved ARC, provided the total leakage for all SGs from all degradation mechanisms doesn't exceed that assumed in the accident analyses. This is based on the fact that leakage associated with [degradation type] at [location] DBAs is conservatively treated as free span leakage by the ARC methodology. Because of the constraint against leakage provided by the [tight tube-to-tube support plate intersections or tubesheets, as the case may be] for the subject degradation type and location under high-dry severe accident sequences, allowing the calculated leakage during DBAs to exceed 1 gpm up to the value assumed in the accident analyses is not expected for practical purposes to increase the potential for leakage during high-dry severe accident sequences than would the case of a freespan crack leaking at the rate of 1 gpm under DBA conditions.]

It is not likely that exceeding this criterion will lead to intolerable consequences provided that such an occurrence is infrequent and that such an occurrence, if it occurs, is promptly detected and corrected so as to ensure that risk is minimized. It should be noted that the criterion applies to leakage that could be induced by an accident in the unlikely event that such an accident occurs. Finally, the accident leakage performance criterion is expressed in terms of parameters that are measurable, both directly and indirectly. Specifically, structural margins can be directly demonstrated through in situ pressure testing or can be calculated using leakage prediction models using flaw size measurements obtained by ISI as input.

Based on the foregoing, the NRC staff finds the proposed accident leakage performance criterion to be acceptable.

3.3.1.3 Operational Leakage Criterion. Proposed TS 5.5.9 states that the operational leakage performance criterion is specified in LCO 3.4.13, ''RCS Operational LEAKAGE.'' Given the TS LCO limit, a separate performance criterion for operational leakage is unnecessary for ensuring prompt shutdown should the limit be exceeded. However, operational leakage is an indicator of tube integrity performance, though not a direct indicator. It is the only indicator that can be monitored while the plant is operating. Maintaining leakage to within the limit provides added assurance that the structural and accident leakage performance criteria are being met. Thus, the NRC staff believes that inclusion of the TS leakage limit among the set of tube integrity performance criteria is appropriate from the standpoint of completeness and is, therefore, acceptable.

3.3.2 Condition Monitoring Assessment

Proposed TS 5.5.9 would require that the SG Program include provisions for condition monitoring assessments as follows:

Condition monitoring assessment means an evaluation of the ''as found'' condition of the tubing with respect to the performance criteria for structural integrity and accident induced leakage. The ''as found'' condition refers to the condition of the tubing during a SG inspection outage, as determined from the inservice inspection results or by other means, prior to the plugging [or repair] of tubes. Condition monitoring assessments shall be conducted during each outage during which the SG tubes are inspected or plugged [or repaired] to confirm that the performance criteria are being met.

The NRC staff finds that the proposed requirement for condition monitoring assessments addresses an essential element of any performance-based strategy, namely, the need to monitor performance relative to the performance criteria. Confirmation that the tube integrity criteria are met would confirm that the overall programmatic goal of maintaining tube integrity has been met to that point in time. However, failure to meet the tube integrity criteria would be indicative of potential shortcomings in the effectiveness of the licensee's SG Program and the need for corrective actions relative to the program to ensure that tube integrity is maintained in the future. Failure to meet either the structural or accident induced leakage

performance criterion would be reportable pursuant to 10 CFR 50.72 and 50.73 in accordance with guidelines in Reference 8. In addition, the NRC Regional Office would follow up on such an occurrence as appropriate consistent with the NRC Reactor Oversight Program (ROP) (Reference 10) and the risk significance of the occurrence.

TS 5.5.9 would require that condition monitoring be performed at each ISI of the tubing. The NRC staff's evaluation of the proposed frequency of ISI is addressed in section 3.3.3 of this safety evaluation.

3.3.3 Inservice Inspection

The proposed TS 5.5.9 would require that the SG Program include periodic tube inspections. This proposal includes a new performance-based requirement that the inspection scope, inspection methods, and inspection intervals shall be such as to ensure that SG tube integrity is maintained until the next inspection. This is a performance-based requirement that complements the requirement for condition monitoring from the standpoint of ensuring tube integrity is maintained. The requirement for condition monitoring is backward looking in that it is intended to confirm that tube integrity has been maintained up to the time the assessment is performed. The ISI requirement, by contrast, is forward looking. It is intended to ensure that tube inspections in conjunction with plugging [or repairing] of tubes are performed such as to ensure that the performance criteria will continue to be met at the next SG inspection. This would be followed again by condition monitoring at the next SG inspection to confirm that the performance criteria were in fact met.

With respect to scope and methods of inspection, the proposed specification would also require that the number and portions of tubes inspected and method of inspection be performed with the objective of detecting flaws of any type (for example, volumetric flaws, axial and circumferential cracks) that may be present along the length of the tube, from the tube-to-tubesheet weld at the tube inlet to the tube-to-tubesheet weld at the tube outlet, and that may satisfy the applicable tube repair criterion. Furthermore, an assessment of degradation shall be performed to determine the type and location of flaws to which the tubes may be susceptible and, based on this assessment, to determine which inspection methods need to be employed and at what locations.

The NRC staff finds that this proposal concerning the scope and methods of inspection includes a number of improvements relative to the current specification. The current specification requires that tube inspections be conducted from the point of entry on the hot leg side completely around the u-bend to the top support plate on the cold leg side. Thus, the current TS does not require inspection of tubing on the cold leg side up to the uppermost support plate elevation. Operating experience demonstrates that the entire length of tubing is subject to various forms of degradation. The proposed specification addresses this issue by requiring cold leg as well as hot leg inspections. Also, the proposed requirement clarifies the licensee's obligation under existing TSs and 10 CFR 50, Appendix B, to employ inspection methods capable of detecting flaws of any type that the licensee believes may potentially be present anywhere along the length of the tube based on a degradation assessment.

The proposed specification specifically excludes the tubesheet welds and the tube ends beyond the welds from the inspection requirements therein. The NRC staff finds this to be consistent with current actual practice and to be acceptable. The tube ends beyond the tube-to-tubesheet welds are not part of the primary pressure boundary.

The proposed specification would replace current specific requirements pertaining to the number of tubes to be inspected at each inspection, in part, with a requirement that is performance-based; that is, the number and portions of tubes inspected (in conjunction with other elements of inspection) shall be such as to ensure that tube integrity is maintained until the next inspection. The current minimum tube sampling requirement for an SG inspection is 3 percent of the SG tubing at the plant. The purpose of this initial sample is to determine whether active degradation is present and whether there is a need to perform additional inspection sampling. Actual industry practice, consistent with NEI 97–06 and the EPRI Examination Guidelines, Rev. 6, typically involves initial inspection samples of at least 20 percent. If moderate numbers of tubes (*i.e.*, category C–2 as defined in the current TS) are found to contain flaws, the current TS require that an additional 6 to 18 percent of the tubes be inspected. In many cases this requirement is very non-conservative since no consideration is given to whether uninspected tubes may contain flaws that could challenge the tube integrity performance criteria prior to the next inspection. Current industry practice and the industry guidelines involve substantially higher levels of sampling under these circumstances. This practice has been motivated by a desire to minimize forced outages as well as to ensure tube integrity. The NRC staff finds, therefore, that current TS sampling requirements do not drive actual sampling programs in the field for plants with low to moderate levels of tube degradation, and that for moderate levels of tube degradation the current TS requirements do not ensure adequate levels of sampling to ensure tube integrity will be maintained. The proposed specification addresses this shortcoming by requiring that inspection scope be consistent with the overall performance objective that tube integrity be maintained until the next SG inspection.

For SGs with high levels of degradation (*i.e.*, category C–3 as defined in current TS), the current TS requires that the inspections be expanded to include 100 percent of the tubes in the affected SG. This requirement is conservative in cases where the active degradation is confined to specific groups of tubes in the SG. This requirement does drive actual sampling programs in the field since industry guidelines would permit 100 percent sampling to be confined to those portions of the SG bounding the region where the degradation has been found to be active. The proposed specification would give licensees the flexibility to implement less than 100 percent inspection of the SG in these cases provided it is consistent with the performance-based objective of ensuring that tube integrity is maintained until the next SG inspection.

Overall, the NRC staff concludes that the proposed specification ensures that the licensee will implement inspection scopes consistent with the overall objective that tube integrity be maintained. To meet this requirement, it will be necessary to inspect tubes that may contain flaws that may challenge the tube integrity performance criteria prior to the next inspection. The proposed specification gives the licensee the flexibility to define an inspection scope that ensures that this objective is met while avoiding any unnecessary inspections.

With respect to frequency of inspection, the current specification requires that SG inspections be performed every 24 calendar months. This frequency may be extended to once every 40 calendar months if the previous two inspections revealed only low-level degradation (*i.e.*, category C–1 results as defined in the TS). The

inspection frequency is required to revert from the 40 calendar months to 20 calendar months if an extensive level of degradation (*i.e.*, category C–3 results as defined in the TS) is observed during the most recent inspection. Except in cases where extensive degradation (*i.e.*, category C–3) is found in any SG, SGs may be inspected on a rotating basis at each inspection. Thus, for 4-loop plants performing SG inspections at 24-month intervals, intervals for individual SGs may range to 96 months. Similarly, for 4-loop plants performing SG inspections at 40-month intervals, intervals for individual SGs may range to 160 months. However, these prescriptive requirements bear no direct relationship to the overall objective of ensuring tube integrity is maintained. These requirements apply irrespective of the flaw detection and sizing performance of the inspection methods utilized and the rate at which flaws may be growing in the subject SGs. These requirements do not ensure that flawed tubing remaining in service following an SG tube inspection and the incremental flaw growth that may take place prior to the next inspection are with within the allowances provided for by the TS tube repair limit or that tube integrity will be maintained prior to the next inspection.

Plants operating with their originally installed SGs have typically inspected each SG at each refueling outage, which typically occur at intervals of less than 24 calendar months. The vast majority of these SGs contained alloy 600 mill annealed (MA) tubing, which quickly became moderately to extensively degraded (*i.e.*, category C–2 or C–3 as defined in the TS) such that the TS would not allow longer intervals. The 24-month inspection interval requirement usually proved sufficient in maintaining tube integrity. Nonetheless, there have been instances where licensees have performed mid-cycle inspections to ensure tube integrity would be maintained.

[**Note to reviewers:** the following paragraph may be deleted for plants with alloy 600 MA tubing. For plants with 600 TT and 690 TT, the following paragraph may need to be extensively revised, as appropriate.]

[However, many SGs with alloy 600 MA tubing have been replaced with SGs with alloy 600 TT or alloy 690 TT tubing, which have proven to be much more resistant to SCC than alloy 600 MA tubing. In addition, a few plants are operating with originally installed SGs with alloy 600TT tubing. Based on early low levels of degradation, some of the plants with SGs with alloy 600TT or 690TT tubing are taking advantage of the longer inspection intervals permitted by the TS.]

Under the proposed specification (TS 5.5.9), the required frequency of inspection in conjunction with inspection scope and inspection methods shall be such as to ensure that tube integrity is maintained until the next SG inspection. This addresses existing shortcomings in the current requirements in that it requires that inspection frequency be part of a management strategy aimed at ensuring tube integrity. The proposed TS 3.4.[17] BASES states that inspection frequency will be determined, in part, by operational assessments that utilize additional information on existing degradation and flaw growth rates to determine an inspection frequency that provides reasonable assurance that the tubing will meet the SG performance criteria at the next SG inspection.

The NRC staff also notes, however, that any assessment or projection of the future condition of the SG tubing based on the existing condition of the tubing and anticipated flaw growth rates can involve significant uncertainty that may be difficult to conservatively and reliably bound. For this reason, the proposed specification (TS 5.5.9) supplements the performance-based requirement concerning inspection frequencies with a set of prescriptive requirements that provide added assurance that tube integrity will be maintained.

The proposed prescriptive requirements include a requirement that 100 percent of the tubes in each SG be inspected at the first refueling outage following SG replacement. [The NRC staff notes that this requirement is a moot point for [Plant Name] since the first ISI of the replacement SGs has already been performed.] The required scope of this inspection is substantially more restrictive than the current requirement, which requires a 3 percent sample of the total SG tube population and requires inspection of only [two] of the [four] SGs.

[**Note to reviewers:** The following three paragraphs apply to SGs with alloy 600 MA, 600 TT, and 690 TT tubing, respectively.]

[For [Plant Name], which has alloy 600 MA tubing, the proposed specification would require that 100 percent of the tubes be inspected at sequential periods of 60 effective full power months (EFPM), with the first sequential period being considered to begin at the time of the first ISI of the SGs [following SG replacement]. However, no SG shall operate for more than 24 EFPM or one refueling outage (whichever is less) without being inspected.]

[For [Plant Name], which has alloy 600 TT tubing, the proposed specification would require that 100 percent of the tubes be inspected at sequential periods of 120, 90, and, thereafter, 60 EFPM, with the first sequential period being considered to begin at the time of the first ISI of the SGs [following SG replacement]. This sliding scale is intended to address the increased potential for the initiation of stress corrosion cracking over time. In addition, the licensee would be required to inspect 50 percent of the tubes by the refueling outage nearest the mid-point of the period and the remaining 50 percent by the refueling outage nearest the end of the period. However, no SG shall operate for more than 48 EFPM or two refueling outages (whichever is less) without being inspected.]

[For [Plant Name], which has alloy 690 TT tubing, the proposed specification would require that 100 percent of the tubes be inspected at sequential periods of 144, 108, 72, and, thereafter, 60 EFPM, with the first sequential period being considered to begin at the time of the first ISI of the SGs following SG replacement. This sliding scale is intended to address the increased potential for the initiation of stress corrosion cracking over time. In addition, the licensee would be required to inspect 50 percent of the tubes by the refueling outage nearest the mid-point of the period and the remaining 50 percent by the refueling outage nearest the end of the period. However, no SG shall operate for more than 72 EFPM or three refueling outages (whichever is less) without being inspected.]

Regardless of the type of tubing, if crack indications are found in any tube, the proposed specification requires that the next inspection for each SG for the degradation mechanism causing the crack indication shall not exceed 24 EFPM or one refueling outage (whichever is less). As a point of clarification, the proposed requirements stipulate that if definitive information, such as from examination of a pulled tube, diagnostic non-destructive testing, or engineering evaluation, indicates that a crack-like indication is not a crack, then the indication need not be treated as such.

These proposed prescriptive requirements, in total, cannot be described simplistically as being more restrictive or less restrictive than current requirements. They are a quite different set of requirements, being generally more restrictive for SGs with low-to-moderate levels of degradation (*i.e.*, categories C–1 to C–2 as defined in

current TS) to somewhat less restrictive for plants with extensive levels of degradation other than cracks.

[**Note to reviewers:** The following sentences apply only for SGs with alloy 600 TT or 690 TT tubing.]

[As previously noted, management of SCC mechanisms relative to the performance criteria poses a particular challenge compared to other degradation mechanisms. The proposed requirement to limit inspection intervals to one refueling outage to address any cracking mechanism found to be present in the SGs is a substantially more restrictive requirement than current TS requirements that apply for plants with low-to-moderate levels of cracked tubes and, for practical purposes, leads to the same inspection frequency (every refueling outage) as would be required under current TS requirements for plants with moderate to extensive levels of cracked tubes.]

[**Note to reviewers:** The following sentence applies only to plants with alloy 600 MA tubing.]

[The proposed requirement to limit inspection intervals to one refueling outage ensures that inspection intervals will be no less restrictive than current requirements.]

The proposed prescriptive requirements relating to inspection frequency have been developed based on qualitative engineering considerations and experience[, reflecting the improved SCC resistance of alloy 690 TT tubing relative to alloy 600 TT and particularly relative to alloy 600 MA tubing, that the potential for cracking increases with increasing time in service, and the particular challenges associated with the management of SCC with respect to satisfying the tube integrity performance criteria].

[**Note to reviewers:** The preceeding words apply only to SGs with alloy 600 TT or 690 TT tubing.]

The proposed prescriptive requirements are intended primarily to supplement the performance-based requirement that inspection frequency in conjunction with inspection scope and methods be such as to ensure tube integrity is maintained. This performance-based requirement must be satisfied in addition to the prescriptive requirements. The NRC staff concludes that the proposed performance-based requirement, in conjunction with the proposed prescriptive requirements, represents a significantly more effective strategy for ensuring tube integrity than that provided by current TS requirements and will serve to ensure that tube integrity is maintained between SG inspections.

3.3.4 Tube Repair Criteria

Revised TS 5.5.9 would retain the current TS tube repair [criterion/criteria] (termed plugging limit[s] in current TSs) requirements. Specifically, the proposed specification would require that tubes found by ISI to contain flaws with a depth equal to or exceeding 40 percent of the nominal tube wall thickness be plugged. This criterion is consistent with the tube integrity performance criteria in that flaws not exceeding the tube repair criterion satisfy the performance criteria with allowances for flaw size measurement error and incremental crack growth between inspections.

[In addition to the 40 percent depth based criterion, the proposed specification would continue to permit (as is currently permitted by the existing TS) the following alternate tube repair criteria (ARC) to be applied as an alternative to 40 percent depth based criterion:

1)
2)

As is the case with the 40 percent depth-based criterion, flaws not exceeding the ARC satisfy the applicable performance criteria with allowance for inspection measurement error and flaw growth between inspections. The NRC staff has reviewed the descriptions of the ARCs in the revised specification and finds these descriptions to be equivalent to the descriptions in the existing specification and, thus, acceptable.]

[**Note to reviewers:** For certain ARCs such as the ODSCC voltage-based criteria and tube support plate PWSCC criteria, the following sentence applies.]

[[Specific ARC name] provides for an exception to the tube structural integrity and accident induced leakage criteria in lieu of demonstrating during condition monitoring that each tube satisfies the 1.4 criterion against burst under accident conditions as given in 5.5.9.b.1, the licensee can establish that structural integrity is assured by demonstrating that the conditional probability of burst during accidents (for the degradation mechanisms and locations subject to the alternate repair criteria) is less than $1.0 \times 10-2$. In addition, the component of accident induced leakage for the degradation mechanisms and locations subject to the ARC may exceed 1 gpm per SG. However, total accident induced leakage for all degradation mechanisms and locations for any design basis accident, other than an SGTR, shall not exceed the leakage rate assumed in the accident analysis in terms of total leak rate for all SGs and leakage rate for an individual SG.] The TS tube repair criteria provide added assurance that tube integrity will be maintained, given the performance-based strategy that is also to be followed under the proposed specification. The inclusion of tube repair criteria as part of the proposed specification also ensures that the NRC staff has the opportunity to review any risk implications should the licensee propose a license amendment for alternate tube repair criteria, in conjunction with alternate tube integrity performance criteria, at some time in the future.

3.3.5 Monitoring of Operational Primary to Secondary Leakage

Proposed TS 5.5.9 would require that the SG Program include provisions for monitoring primary-to-secondary leakage. The NRC staff's evaluation of this proposal is included as part of the NRC staff's evaluation of the proposed change to TS 3.4.13, ''RCS Operational Leakage,'' in Section 3.5 of this safety evaluation.

[**Note to reviewers:** The following section is applicable only for those plants with technical specifications authorizing the use of one or more tube repair methods.]

3.3.6 SG Tube Repair Methods Other Than Plugging

The proposed specification includes maintaining provisions for SG tube repair methods other than plugging as provided for in the existing TS. The proposed specification states that such repair methods shall provide the means to reestablish the RCS pressure boundary integrity of the SG tubes without removing the tube from service. The specification lists all acceptable repair methods, as follows:

1)
2)

The NRC staff has reviewed the descriptions of these repair methods in the revised specification, including associated inspection and repair limit requirements, and finds these descriptions to be equivalent to the descriptions in the existing specification and, thus, to be acceptable.]

3.4 TS 5.6.9, ''Steam Generator (SG) Tube Inspection Report''

The proposed administrative TS 5.6.9 would revise the reporting requirements of existing TS 5.6.9. Currently, this specification requires that the complete results of the SG Tube Surveillance Program (*i.e.*, the ISI results) be reported within 12 months following completion of the program and include (1) the

number and extent of the tubes inspected, (2) the location and percent of wall thickness penetration for each indication, and (3) identification of tubes plugged. Under the revised requirement, a report shall be submitted within 180 days of entry into MODE 4 following a SG inspection. The report shall include:

- The scope of the inspections performed in each SG,
- active degradation mechanisms found,
- non-destructive examination techniques used for each degradation mechanism,
- location, orientation (if linear), and measured sizes (if available) of service induced indications,
- number of tubes plugged [or repaired] during the inspection outage for each active degradation mechanism,
- total number and percentage of tubes plugged [or repaired] to date, [and]
- the results of condition monitoring, including the results of tube pulls and in-situ testing,
- [the effective plugging percentage for all plugging and tube repairs in each SG, and]
- [repair method utilized and the number of tubes repaired by each repair method.]

This revised reporting requirement is a more comprehensive requirement than the current 12-month report and will enhance the NRC staff's ability to monitor the kinds of inspections being performed, the extent and severity of each active degradation mechanism, degradation trends (stable or getting worse), and the degree of challenge faced by the licensee in maintaining tube integrity. The 180-day reporting requirement is adequate given that the failure of the SG program to maintain tube integrity as indicated by condition monitoring would be promptly reportable in accordance with 10 CFR 50.72 and Reference 8, allowing the NRC staff to engage in any follow-up activities that it determines to be necessary.

The specification currently requires that the number of tubes plugged in each SG be reported to the NRC within 15 days following completion of the program. In addition, the specification currently requires that inspection results falling into Category C–3 shall be reported to the NRC pursuant to 10 CFR 50.73 prior to the resumption of plant operation and that the report include a description of the tube degradation and corrective measures taken to prevent recurrence. The proposed administrative TS 5.6.9 deletes both of these requirements. The NRC staff finds deletion of these requirements to be acceptable. Neither the number of tubes plugged nor the finding of Category C–3 results (*i.e.*, 10 percent of the tubes inspected contain degradation or 1 percent of the tubes inspected satisfy the tube repair criterion) have any real bearing on whether tube integrity is being maintained. The NRC staff also notes that the proposed TS 5.6.9 would delete the definition of inspection results categories in the current TSs. If the SG program is effectively maintaining tube integrity, tubes found to be degraded or to be pluggable will also satisfy the tube integrity performance criteria. The regulation 10 CFR 50.72, in conjunction with Reference 8, requires that the NRC staff be promptly notified in the event that the tube integrity performance criteria are not met. The NRC staff would have the opportunity under the NRC ROP to follow up on such an occurrence as warranted. The regulation at 10 CFR 50.73 requires that a Licensee Event Report (LER) be issued within 60 days of the finding which addresses, in part, the degraded condition of the tube(s) and corrective measures being taken.

Based on the foregoing, the NRC staff finds the proposed revisions to the reporting requirements to be acceptable.

3.5 Definition of LEAKAGE

Technical Specification 1.1 currently defines LEAKAGE as (a) Identified LEAKAGE, (b) Unidentified LEAKAGE, and (c) Pressure Boundary LEAKAGE. The third definition under Identified LEAKAGE is: ''Reactor Coolant System (RCS) LEAKAGE through a steam generator (SG) to the Secondary System.'' Pressure Boundary LEAKAGE is defined as ''LEAKAGE (except SG Leakage) through a nonisolable fault in an RCS component body, pipe wall, or vessel wall.'' The licensee has proposed to replace the term ''SG LEAKAGE'' with ''primary to secondary LEAKAGE'' because ''SG LEAKAGE'' is not used in the TS or TS Bases. Therefore, the third definition of Identified LEAKAGE will state: ''Reactor Coolant System (RCS) LEAKAGE through a steam generator to the Secondary System (primary to secondary LEAKAGE),'' and the definition of Pressure Boundary LEAKAGE will state: ''LEAKAGE (except primary to secondary LEAKAGE) through a nonisolable fault in an RCS component body, pipe wall, or vessel wall.'' The proposed changes are editorial in nature and adequately reflect the terminology used throughout the TS and Bases. Therefore, the NRC staff finds the proposed revisions to the definition of LEAKAGE to be acceptable.

3.6 TS 3.4.13, RCS Operational Leakage

The licensee proposed several changes to the LCO, required actions, and SRs for TS 3.4.13, RCS Operational Leakage. These changes include administrative changes to the LCO, required action statements, and SR. The proposed administrative changes include the following:

(a) adding ''and'' to the end of LCO 3.4.13.c;

(b) replacing ''SG'' in LCO 3.4.13.e with ''steam generator (SG)';

(c) LCO 3.4.13.e is changed to LCO 3.4.13.d with the deletion of the existing LCO 3.4.13.d discussed below.

(d) adding ''operational'' to ''RCS operational LEAKAGE'' in Condition A;

(e) adding ''or primary to secondary LEAKAGE'' to the end of Condition A. Condition A will state ''RCS operational LEAKAGE not within limits for reasons other than pressure boundary LEAKAGE or primary to secondary LEAKAGE.''

(f) modifying the NOTE associated with SR 3.4.13.1. ''NOTE'' will be changed to ''NOTES,'' a ''1.'' and a second note, Note 2, will be added which will state ''Not applicable to primary to secondary LEAKAGE.''

The NRC staff has reviewed these administrative changes and finds them acceptable. In particular, the addition of ''or primary to secondary LEAKAGE'' to Condition A and SR 3.4.13.1 Note 2 are considered to be administrative changes because these changes support the more restrictive addition of primary to secondary LEAKAGE to Condition B and SR 3.4.13.2. The need for Note 2 with respect to SR 3.4.13.1 (*i.e.*, not applicable to primary to secondary LEAKAGE) and for the proposed new SR 3.4.13.2, which deals with primary to secondary LEAKAGE, is discussed in the proposed revision to the BASES in B3.4.13.2. The revised BASES states that SR 3.4.13.1 is not applicable to primary to secondary leakage because leakage rates of 150 gpd or less cannot be accurately measured by an RCS water inventory balance.

[**Note to reviewers:** The following section, 3.6.X, is needed only for those plants which currently have a higher than 150 gpd limit) per SG. Such plants should be proposing to change this limit to 150 gpd.]

[3.6.X Revision of Leakage Limit for Individual SGs. LCO 3.4.13.e (which will become LCO 3.4.13.d, as discussed above) currently specifies a [500] gpd limit for primary to secondary LEAKAGE through any one SG. The proposed specification would replace this limit with a more restrictive 150 gpd limit. Although no leakage limit, even if reduced to zero, can be totally

effective in preventing SG tube ruptures, the NRC staff notes that operating experience demonstrates that leakage limits are an important element of an overall approach to limiting the occurrence of tube rupture and for ensuring SG tube integrity. In addition, the proposed limit is [significantly less than the conditions assumed in the safety analyses.] For these reasons, the NRC staff finds the revised LCO limit to be more restrictive than the existing limit, to be in accordance with 10 CFR 50.36(c)(2)(ii) and, thus, acceptable.]

3.6.[1] Deletion of LCO 3.4.13.d

LCO 3.4.13.d currently requires that total primary to secondary LEAKAGE through all SGs be limited to 1 gpm and LCO 3.4.13.e requires that primary to secondary LEAKAGE through any one SG be limited to 150 gpd. The licensee states that the 1 gpm limit for LEAKAGE through all SGs is redundant with the 150 gpd limit through any one SG (each [Plant Name] unit has [4] SGs; thus, [4] x 150 = 600 gpd total leakage through all SGs) and, accordingly, the licensee is proposing deletion of the 1 gpm limit. Accordingly, the proposed specification would delete LCO 3.4.13.d, but would retain the 150 gpd limit for any one SG in LCO 3.4.13.e. This revised requirement would allow total LEAKAGE through all SGs to be equal to 600 gpd, assuming all SGs are leaking at the rate of 150 gpd. Because the existing LCO 3.4.13.d is redundant to LCO 3.4.13.e, the NRC staff concludes that deleting LCO 3.4.13.d results in no change to the existing limits on total primary to secondary leakage from all SGs. Thus, the NRC staff finds the proposed change to the LCO requirement to be acceptable.

3.6.[2] TS 3.4.13 Condition B Primary to Secondary LEAKAGE

The primary to secondary leakage limit, together with the allowable accident induced leakage limit, helps to ensure that the dose contribution from tube leakage will be limited to less than the 10 CFR 100 and General Design Criterion (GDC) 19 dose limits or other NRC approved licensing basis for postulated accidents. The licensee proposed to add an additional OR statement to Condition B with regards to primary to secondary LEAKAGE. As proposed, Condition B would state:

''Required Action and associated Completion Time of Condition A not met.

OR

Pressure boundary LEAKAGE exists.

OR

Primary to secondary LEAKAGE not within limit.''

The current requirements, Condition A, have a completion time of four hours to reduce LEAKAGE (other than pressure boundary LEAKAGE) to within limits after which Condition B (plant shutdown) must be entered. The TS limit is more restrictive than the current requirements in that if primary to secondary leakage exceeds 150 gpd, then a plant shutdown must be commenced without an allowance to reduce leakage, as provided in Condition A. The revised Condition B would require the reactor to be in MODE 3 in 6 hours and MODE 5 in 36 hours if primary to secondary leakage is not within limits. As discussed in Section 3.6 above, the licensee has excluded primary to secondary leakage from Condition A. The NRC staff has reviewed the proposed change to Condition B. These changes are additional restrictions on plant operations that enhance safety; therefore, the NRC staff has concluded that the addition of the primary to secondary leakage OR statement to Condition B is acceptable.

3.6.[3] Surveillance Requirements—Primary to Secondary Leakage

SR 3.4.13.1 currently requires verification that RCS operational LEAKAGE is within limits by performance of RCS water inventory balance. The accompanying BASES state that primary to secondary leakage is also measured by performance of an RCS water inventory balance in conjunction with effluent monitoring within the secondary steam and feedwater systems. The BASES further state that the RCS water inventory balance must be met with the reactor at steady state operating conditions and near operating pressure. As previously discussed in Section 3.6 of this SE, the licensee has proposed adding a note to SR 3.4.13.1 stating that this particular surveillance requirement is not applicable to primary to secondary leakage. The licensee would revise the accompanying BASES justifying this change, namely, LEAKAGE of 150 gpd cannot be measured accurately by an RCS water inventory balance. The licensee has proposed a new surveillance requirement, SR 3.4.13.2, which would verify with a frequency of 72 hours that primary to secondary leakage does not exceed the 150 gpd LCO limit. The NRC staff believes this to be acceptable and in accordance with 10 CFR 50.36(c)(3). The revised requirement would not specify the specific method to be employed; however, it would require that the SG Program include provisions for monitoring primary to secondary leakage. There are a variety of methods that can be used and the NRC staff concludes there is no need to tie this surveillance to a specific method in order to ensure that the plant is operated safely and within its LCO limits. The licensee would state in the accompanying BASES that the primary to secondary leakage measurement uses continuous process radiation monitors or radio chemical grab sampling. The NRC staff notes that the EPRI PWR Primary-to-Secondary Leak Guidelines provide extensive guidance to this effect.

The accompanying BASES would also state that primary to secondary LEAKAGE is measured against the 150 gpd limit under room temperature conditions as described in the EPRI PWR Primary-to-Secondary Leak Guidelines. The BASES state that steam line break (SLB) is the most limiting accident or transient from the standpoint of dose releases from primary to secondary LEAKAGE. The [Plant Name] safety analysis for SLB assumes [500] gpd and [470] gpd primary to secondary LEAKAGE (for room temperature conditions) in the faulted and intact SGs respectively as an initial condition. Thus, the assumed total primary to secondary LEAKAGE from all SGs is [1440] gpd (1 gpm). The NRC staff concludes that measurement of operational primary to secondary LEAKAGE under room temperature conditions relative to the 150 gpd operational limit is acceptable since it ensures that LEAKAGE under hot operational conditions will be less than assumed in the [Plant Name] safety analysis and, thus, is in accordance with 10 CFR 50.36(c)(2)(ii).

The new SR, SR 3.4.13.2, with respect to primary to secondary leakage replaces the current SR 3.4.13.2, which involved verifying SG tube integrity in accordance with the SG Tube Surveillance Program. As discussed earlier in this SE, TS 5.5.9, ''Steam Generator Tube Surveillance Program,'' would be replaced by TS 5.5.9, ''Steam Generator Program.'' The SR to verify tube integrity would be addressed in the proposed new TS 3.4.[17], ''Steam Generator Tube Integrity,'' SRs.

Based on the above, the NRC staff concludes that the proposed revisions to SR 3.4.13.1 and SR 3.4.13.2 are in accordance with 10 CFR 50.36(c)(3) and 10 CFR 50.36(c)(2)(ii) and are acceptable.

3.7 Technical Evaluation—Summary and Conclusions

The proposed [Plant Name] specification changes establish a programmatic, largely performance-

based regulatory framework for ensuring SG tube integrity is maintained. The NRC staff finds that it addresses key shortcomings of the current framework by ensuring that SG programs are focused on accomplishing the overall objective of maintaining tube integrity. It incorporates performance criteria for evaluating tube integrity that the NRC staff finds consistent with the structural margins and the degree of leak tightness assumed in the current plant licensing basis. The NRC staff finds that maintaining these performance criteria provides reasonable assurance that the SGs can be operated safely without increase in risk.

The revised TSs would contain limited details concerning how the SG Program is to achieve the required objective of maintaining tube integrity, the intent being that the licensee will have the flexibility to determine the specific strategy for meeting this objective. However, the NRC staff finds that the revised TSs include sufficient regulatory constraints on the establishment and implementation of the SG Program such as to provide reasonable assurance that tube integrity will be maintained.

Failure to meet the performance criteria will be reportable pursuant to 10 CFR 50.72 and 50.73. The NRC ROP provides a process by which the NRC staff can verify that the licensee has identified any SG Program deficiencies that may have contributed to such an occurrence and that appropriate corrective actions have been implemented.

In conclusion, the NRC staff finds that the [Plant Name] TS amendment request conforms to the requirements of 10 CFR 50.36 and establishes a TS framework that will provide reasonable assurance that tube integrity is maintained without undue risk to public health and safety.

4.0 References

(1) Letter, R.E. Beedle, NEI, to L.J. Callan, NRC, December 16, 1997, transmitting NEI 97–06 (Original), ''Steam Generator Program Guidelines.''

(2) NEI 97–06, Revision 1, ''Steam Generator Program Guidelines,'' January 2001. ADAMS Accession No. ML010430054.

(3) SECY–00–0078, ''Status and Plans for Revising the Steam Generator Tube Integrity Regulatory Framework,'' March 30, 2000.

(4) Draft Regulatory Guide 1.121, ''Bases for Plugging Degraded PWR Steam Generator tubes,'' August 1976.

(5) Memorandum dated September 8, 1999, to W.H. Bateman, Chief, EMCB, NRR, NRC from J.W. Anderson, EMCB, NRR, NRC, ''Summary of August 27, 1999, Senior Management Meeting with NEI/EPRI/Industry to Discuss Issues Involving Implementation of NEI 97–06.'' This memorandum encloses Industry White Paper entitled, ''Deterministic Structural Performance Criterion Pressure Loading Definition.''

(6) Memorandum dated May 19, 2004, from J.L. Birmingham, Project Manager, NRR, NRC to Cathy Haney, Program Director, Policy and Rulemaking Program, Division of Regulatory Improvement Programs, NRR, NRC, ''Summary of May 14, 2004 Meeting with Nuclear Energy Institute (NEI) on Status of Steam Generator Structural Integrity Performance Criteria.'' ADAMS Accession No. ML041540500.

(7) NUREG–1570, ''Risk Assessment of Severe Accident—Induced Steam Generator Tube Rupture,'' March 1998.

(8) NUREG–1022, Rev 2, ''Event Reporting Guidelines 10 CFR 50.72 and 50.73,'' October 31, 2000.[1]

(9) NUREG–1649, Rev 3, ''Reactor Oversight Process,'' July 2000.

5.0 State Consultation

In accordance with the Commission's regulations, the [ ] State official was notified of the proposed issuance of the amendment. The State official had [(1) no comments or (2) the following comments—with subsequent disposition by the staff].

6.0 Environmental Consideration

The amendments change a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR Part 20 and change surveillance requirements. The NRC staff has determined that the amendments involve no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendments involve no significant hazards consideration, and there has been no public comment on such finding (FR). Accordingly, the amendments meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b) no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendments.

7.0 Conclusion

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

Model No Significant Hazards Consideration Determination

Description of Amendment Request: The proposed amendment revises TS 1.1, Definitions, TS 3.4.13, RCS Operational LEAKAGE, TS 5.5.9, Steam Generator Tube Surveillance Program, and TS 5.6.9, Steam Generator Tube Inspection Report, and adds a new specification for Steam Generator Tube Integrity. The proposed changes are necessary in order to implement the guidance for the industry initiative on NEI 97–06, ''Steam Generator Program Guidelines.'' The licensee has evaluated whether or not a significant hazards consideration is involved with the proposed changes by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of Amendment,'' as discussed below:

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change requires a SG Program that includes performance criteria that will provide reasonable assurance that the SG tubing will retain integrity over the full range of operating conditions (including startup, operation in the power range, hot standby, cooldown and all anticipated transients included in the design specification). The SG performance criteria are based on tube structural integrity, accident induced leakage, and operational LEAKAGE.

A SGTR event is one of the design basis accidents that are analyzed as part of a plant's licensing basis. In the analysis of a SGTR event, a bounding primary to secondary LEAKAGE rate

[1] On September 24, 2004, a **Federal Register** notice (69 FR 57367) was published noticing the issuance of an errata to Revision 2 of NUREG–1022, ''Event Reporting Guidelines 10 CFR 50.72 and 50.73.'' The errata indicates that steam generator tube degradation is considered serious if either of the two criteria specified in Section 3.2.4(A)(3) of NUREG–1022 (*i.e.*, the structural and accident leakage performance criteria), Revision 2, are not satisfied.

equal to the operational LEAKAGE rate limits in the licensing basis plus the LEAKAGE rate associated with a double-ended rupture of a single tube is assumed.

For other design basis accidents such as MSLB, rod ejection, and reactor coolant pump locked rotor the tubes are assumed to retain their structural integrity (*i.e.*, they are assumed not to rupture). These analyses typically assume that primary to secondary LEAKAGE for all SGs is 1 gallon per minute or increases to 1 gallon per minute as a result of accident induced stresses. The accident induced leakage criterion introduced by the proposed changes accounts for tubes that may leak during design basis accidents. The accident induced leakage criterion limits this leakage to no more than the value assumed in the accident analysis.

The SG performance criteria proposed change to the TS identify the standards against which tube integrity is to be measured. Meeting the performance criteria provides reasonable assurance that the SG tubing will remain capable of fulfilling its specific safety function of maintaining reactor coolant pressure boundary integrity throughout each operating cycle and in the unlikely event of a design basis accident. The performance criteria are only a part of the SG Program required by the proposed change to the TS. The program, defined by NEI 97–06, Steam Generator Program Guidelines, includes a framework that incorporates a balance of prevention, inspection, evaluation, repair, and leakage monitoring. The proposed changes do not, therefore, significantly increase the probability of an accident previously evaluated.

The consequences of design basis accidents are, in part, functions of the DOSE EQUIVALENT 1–131 in the primary coolant and the primary to secondary LEAKAGE rates resulting from an accident. Therefore, limits are included in the plant technical specifications for operational leakage and for DOSE EQUIVALENT 1–131 in primary coolant to ensure the plant is operated within its analyzed condition. The typical analysis of the limiting design basis accident assumes that primary to secondary leak rate after the accident is 1 gallon per minute with no more than [500 gallons per day or 720 gallons per day] in any one SG, and that the reactor coolant activity levels of DOSE EQUIVALENT 1–131 are at the TS values before the accident.

The proposed change does not affect the design of the SGs, their method of operation, or primary coolant chemistry controls. The proposed approach updates the current TSs and enhances the requirements for SG inspections. The proposed change does not adversely impact any other previously evaluated design basis accident and is an improvement over the current TSs.

Therefore, the proposed change does not affect the consequences of a SGTR accident and the probability of such an accident is reduced. In addition, the proposed changes do not affect the consequences of an MSLB, rod ejection, or a reactor coolant pump locked rotor event, or other previously evaluated accident.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed performance based requirements are an improvement over the requirements imposed by the current technical specifications. Implementation of the proposed SG Program will not introduce any adverse changes to the plant design basis or postulated accidents resulting from potential tube degradation. The result of the implementation of the SG Program will be an enhancement of SG tube performance. Primary to secondary LEAKAGE that may be experienced during all plant conditions will be monitored to ensure it remains within current accident analysis assumptions.

The proposed change does not affect the design of the SGs, their method of operation, or primary or secondary coolant chemistry controls. In addition, the proposed change does not impact any other plant system or component. The change enhances SG inspection requirements.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The SG tubes in pressurized water reactors are an integral part of the reactor coolant pressure boundary and, as such, are relied upon to maintain the primary system's pressure and inventory. As part of the reactor coolant pressure boundary, the SG tubes are unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system. In addition, the SG tubes isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of an SG is maintained by ensuring the integrity of its tubes.

Steam generator tube integrity is a function of the design, environment, and the physical condition of the tube. The proposed change does not affect tube design or operating environment. The proposed change is expected to result in an improvement in the tube integrity by implementing the SG Program to manage SG tube inspection, assessment, repair, and plugging. The requirements established by the SG Program are consistent with those in the applicable design codes and standards and are an improvement over the requirements in the current TSs.

For the above reasons, the margin of safety is not changed and overall plant safety will be enhanced by the proposed change to the TS.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Dated at Rockville, Maryland, this 22nd day of February 2005.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Section Chief, Technical Specifications Section, Operating Improvements Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

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